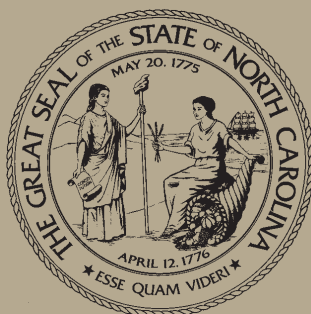


NORTH CAROLINA RETIREMENT SYSTEMS LAWS

2018 EDITION

**Legislative Retirement System
Consolidated Judicial Retirement System
Teachers' and State Employees' Retirement System
Local Governmental Employees' Retirement System
Firefighters' and Rescue Squad Workers' Pension Fund
Registers of Deeds' Supplemental Pension Fund
Supplemental Retirement Income Plan
National Guard Pension Fund
Disability Income Plan**



**DEPARTMENT OF STATE TREASURER
RETIREMENT SYSTEMS DIVISION
Raleigh, North Carolina**



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The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Convention in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Section 1, Clause 2. Supreme law.

This Constitution, and the Laws of the United States which shall be made Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall

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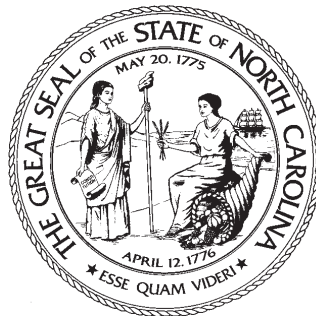
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**Reprinted from the General Statutes of North Carolina Annotated
2017 Replacement Edition and 2018 Interim Supplement**



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PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the

more certain security thereof and for the better government of this State, ordain and establish this Constitution.

History. similar to those of the Preamble, Const.
The provisions of the Preamble are 1868.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

§ 1. The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

§ 2. Sovereignty of the people.

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

§ 3. Internal government of the State.

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

§ 4. Secession prohibited.

This State shall ever remain a member of the American Union; the people thereof are part of the American Nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

§ 5. Allegiance to the United States.

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

§ 6. (Effective until contingent certification of approval of constitutional amendment — see notes) Separation of powers.

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Section Set Out Twice.

The section above is effective until certification of approval of the constitutional amendments proposed by Session

Laws 2018-117, s. 2. For this section as amended effective upon such certification, see the following section, also numbered § 6.

§ 6. (Effective upon certification of approval of constitutional amendment — see notes) Separation of powers.

(1) The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

(2) The legislative powers of the State government shall control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law. The executive powers of the State government shall be used to faithfully execute the general laws prescribing the board or commission.

History.

2018-117, s. 2.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-117, s. 2. For the version of this section in effect until such certification, see the preceding section, also numbered § 6.

Editor's Note.

Session Laws 2018-117, ss. 5-7, provide: "The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to establish a bipartisan Board of Ethics and

Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

"If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendments to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office.

"If the amendments are approved by the qualified voters as provided in this section, Sections 2 through 4 of this act become effective upon certification and Section 1 becomes effective March 1, 2019."

Effect of Amendments.

Session Laws 2018-117, s. 2, added subdivision (1) designation and subdivision (2). For contingent effective date, see editor's note.

§ 7. Suspending laws.

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

§ 8. Representation and taxation.

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

§ 9. Frequent elections.

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

§ 10. Free elections.

All elections shall be free.

§ 11. Property qualifications.

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

§ 12. Right of assembly and petition.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

§ 13. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

§ 14. Freedom of speech and press.

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

§ 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

§ 16. Ex post facto laws.

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

§ 17. Slavery and involuntary servitude.

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

§ 18. Courts shall be open.

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

§ 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

§ 20. General warrants.

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

§ 21. Inquiry into restraints on liberty.

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

§ 22. Modes of prosecution.

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when

represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

§ 23. Rights of accused.

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

§ 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, except that a person accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to procedures prescribed by the General Assembly. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

History.

The provisions of this section are similar to those of Art. I, § 13, Const. 1868,

as amended in 1946. Amended by 2013-300, s. 1.

§ 25. Right of jury trial in civil cases.

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

§ 26. Jury service.

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

§ 27. Bail, fines, and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

§ 28. Imprisonment for debt.

There shall be no imprisonment for debt in this State, except in cases of fraud.

§ 29. Treason against the State.

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No

person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

§ 30. Militia and the right to bear arms.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

§ 31. Quartering of soldiers.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

§ 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

§ 33. Hereditary emoluments and honors.

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

§ 34. Perpetuities and monopolies.

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

§ 35. Recurrence to fundamental principles.

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

§ 36. Other rights of the people.

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

§ 37. (Effective until certification of approval of constitutional amendment — see notes) Rights of victims of crime.

(1) **Basic rights.** — Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

- (a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.
- (b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.
- (c) The right as prescribed by law to receive restitution.
- (d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
- (e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.
- (f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
- (g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
- (h) The right as prescribed by law to confer with the prosecution.

(2) **No money damages; other enforcement.** — Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) **No ground for relief in criminal case.** — The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

History.

1995, c. 438, s. 1.

Section Set Out Twice.

The section above is effective until certification of approval of the constitu-

tional amendments proposed by Session Laws 2018-110, s. 1. For this section as amended effective upon such certification, see the following section, also numbered § 37.

§ 37. (Effective August 31, 2019, contingent upon certification of approval of constitutional amendment — see notes) Rights of victims of crime.

- (1) **Basic rights.** — Victims of crime or acts of delinquency shall be treated with dignity and respect by the criminal justice system.

- (1a) **Enumerated rights.** — When the crime or act of delinquency is one against or involving the person of the victim or is equivalent to a felony property crime, the victim is entitled to the following rights:
- (a) The right upon request to reasonable, accurate, and timely notice of court proceedings of the accused.
 - (a1) The right upon request to be present at court proceedings of the accused.
 - (b) The right to be reasonably heard at any court proceeding involving the plea, conviction, adjudication, sentencing, or release of the accused.
 - (c) The right to receive restitution in a reasonably timely manner, when ordered by the court.
 - (d) The right to be given information about the crime or act of delinquency, how the criminal justice system works, the rights of victims, and the availability of services for victims.
 - (e) The right upon request to receive information about the conviction, adjudication, or final disposition and sentence of the accused.
 - (f) The right upon request to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
 - (g) The right to present the victim's views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
 - (h) The right to reasonably confer with the prosecution.
- (2) **Enforcement of rights.** — Except as otherwise provided herein, the General Assembly shall further provide, by general law, the procedure whereby a victim may assert the rights provided in this section. The victim or, if the victim is a minor, is legally incapacitated, or deceased, a family member, guardian, or legal custodian may assert the rights provided in this section. The procedure shall be by motion to the court of jurisdiction within the same criminal or juvenile proceeding giving rise to the rights. The victim, family member, guardian, or legal custodian have the right to counsel at this hearing but do not have the right to counsel provided by the State. If the matter involves an allegation that the district attorney failed to comply with the rights of a victim when obligated to so do by law, the victim must first afford the district attorney with jurisdiction over the criminal action an opportunity to resolve any issue in a timely manner.
- (2) **No money damages; other claims.** — Nothing in this section shall be construed as creating a claim for money

damages, or any cause of action, against the State, a county, a municipality, or any of the agencies, instrumentalities, or officers and employees thereof.

- (3) **No ground for relief in criminal case.** — The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. Nothing in this section shall be construed to provide grounds for a victim (i) to appeal any decision made in a criminal or juvenile proceeding; (ii) to challenge any verdict, sentence, or adjudication; (iii) to participate as a party in any proceeding; or (iv) to obtain confidential juvenile records.
- (4) **No restriction of authority.** — Nothing in this section shall be construed to restrict the power of the district attorney, or the inherent authority of the court.
- (5) **Implementation.** — The General Assembly may prescribe general laws to further define and implement this section.

History.

1995, c. 438, s. 1; 2018-110, s. 1.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-110, s. 1. For the version of this section in effect until such certification, see the preceding section, also numbered § 37.

Editor's Note.

Session Laws 2018-110, s. 2, provides: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the election in November 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both, may be used in accordance with Chapter 163A of the General

Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to strengthen protections for victims of crime; to establish certain absolute basic rights for victims; and to ensure the enforcement of these rights."

Session Laws 2018-110, s. 3, provides: "If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective August 31, 2019."

Effect of Amendments.

Session Laws 2018-110, s. 1, rewrote the section. For contingent effective date, see editor's note.

§ 38. (Effective upon certification of approval of constitutional amendment — see notes) Right to hunt, fish, and harvest wildlife.

The right of the people to hunt, fish, and harvest wildlife is a valued part of the State's heritage and shall be forever preserved for the public good. The people have a right, including the right to use traditional methods, to hunt, fish, and harvest wildlife, subject only to laws enacted by the General Assembly and rules adopted pursu-

ant to authority granted by the General Assembly to (i) promote wildlife conservation and management and (ii) preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. Nothing herein shall be construed to modify any provision of law relating to trespass, property rights, or eminent domain.

History.

2018-96, s. 1.

Editor’s Note.

Session Laws 2018-96, s. 2, provides: “The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

“[] FOR [] AGAINST

“Constitutional amendment protecting the right of the people to hunt, fish, and harvest wildlife.”

Session Laws 2018-96, s. 3, provides: “If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act is effective upon certification.”

ARTICLE II

LEGISLATIVE

§ 1. Legislative power.

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

§ 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

§ 3. Senate districts; apportionment of Senators.

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

§ 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

§ 5. Representative districts; apportionment of Representatives.

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

§ 6. Qualifications for Senator.

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

§ 7. Qualifications for Representative.

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

§ 8. Elections.

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

§ 9. Term of office.

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

History.

1981 (Reg. Sess., 1982), c. 1241, s. 1.

§ 10. Vacancies.

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

§ 11. Sessions.

(1) **Regular sessions.** — The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) **Extra sessions on legislative call.** — The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

History.

1969, c. 1270, s. 1.

§ 12. Oath of members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

§ 13. President of the Senate.

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

§ 14. Other officers of the Senate.

(1) **President Pro Tempore — succession to presidency.** — The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the

Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) **President Pro Tempore — temporary succession.** — During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) **Other officers.** — The Senate shall elect its other officers.

§ 15. Officers of the House of Representatives.

The House of Representatives shall elect its Speaker and other officers.

§ 16. Compensation and allowances.

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

§ 17. Journals.

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

§ 18. Protests.

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

§ 19. Record votes.

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

§ 20. (Effective until certification of approval — see notes) Powers of the General Assembly.

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Section Set Out Twice.

The section above is effective until certification of approval of the constitutional amendments proposed by Session

Laws 2018-117, s. 3. For this section as amended effective upon such certification, see the following section, also numbered § 20.

§ 20. (Effective upon certification of approval of constitutional amendment — see notes) Powers of the General Assembly.

- (1) Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.
- (2) No law shall be enacted by the General Assembly that appoints a member of the General Assembly to any board or commission that exercises executive or judicial powers.

History.

2018-117, s. 3.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-117, s. 3. For the version of this section in effect until such certification, see the preceding section, also numbered § 20.

Editor's Note.

Session Laws 2018-117, ss. 5-7, provide: "The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to establish a bipartisan Board of Ethics and

Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

"If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendments to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office.

"If the amendments are approved by the qualified voters as provided in this section, Sections 2 through 4 of this act become effective upon certification and Section 1 becomes effective March 1, 2019."

Effect of Amendments.

Session Laws 2018-117, s. 3, added the subdivision (1) designation; and added subdivision (2). For contingent effective date, see editor's note.

§ 21. Style of the acts.

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

§ 22. (Effective until certification of approval of constitutional amendment — see notes) Action on bills.

(1) **Bills subject to veto by Governor; override of veto.** — Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) **Amendments to Constitution of North Carolina.** — Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) **Amendments to Constitution of the United States.** — Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) **Joint resolutions.** — Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) **Other exceptions.** — Every bill:

- (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
- (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
- (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

- (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) **Local bills.** — Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

- (a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or
- (b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) **Time for action by Governor; reconvening of session.** — If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider

vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) **Return of bills after adjournment.** — For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.

History.

1995, c. 5, s. 1.

Section Set Out Twice.

The section above is effective until certification of approval of the constitu-

tional amendments proposed by Session Laws 2018-118, s. 5. For this section as amended effective upon such certification, see the following section, also numbered § 22.

§ 22. (Effective upon certification of approval of constitutional amendment — see notes) Action on bills.

(1) **Bills subject to veto by Governor; override of veto.** — Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) **Amendments to Constitution of North Carolina.** — Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) **Amendments to Constitution of the United States.** — Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) **Joint resolutions.** — Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) **Other exceptions.** — Every bill:

- (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
- (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
- (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter;
- (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter;
- (e) Recommending a nominee or nominees to fill a vacancy in the office of Justice and Judge of the General Court of Justice, in accordance with Section 23 of Article IV of this Constitution; or
- (f) Electing a nominee or nominees to fill a vacancy in the office of Justice or Judge of the General Court of Justice, in accordance with Section 23 of Article IV of this Constitution,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) **Local bills.** — Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

- (a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or
- (b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) **Time for action by Governor; reconvening of session.** — If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) **Return of bills after adjournment.** — For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.

History.

1995, c. 5, s. 1; 2018-118, s. 5.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-118, s. 5. For the version of this section in effect until such certification, see the preceding section, also numbered § 22.

Editor's Note.

Session Laws 2018-118, ss. 6, 7 provides: "The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

"If a majority of the votes cast on the question are in favor of the amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective upon certification and applies to vacancies occurring on or after the date of the general election."

Effect of Amendments.

Session Laws 2018-118, s. 5, effective June 28, 2018, added subsections (5)(e) and (f); and made minor stylistic changes. For contingent effective date, see editor's note.

§ 23. Revenue bills.

No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

§ 24. Limitations on local, private, and special legislation.

(1) **Prohibited subjects.** — The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) **Repeals.** — Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) **Prohibited acts void.** — Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) **General laws.** — The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

§ 1. Executive power.

The executive power of the State shall be vested in the Governor.

§ 2. Governor and Lieutenant Governor: election, term, and qualifications.

(1) **Election and term.** — The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) **Qualifications.** — No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

History.

1977, c. 363, s. 1.

§ 3. Succession to office of Governor.

(1) **Succession as Governor.** — The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) **Succession as Acting Governor.** — During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) **Physical incapacity.** — The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) **Mental incapacity.** — The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) **Impeachment.** — Removal of the Governor from office for any other cause shall be by impeachment.

§ 4. Oath of office for Governor.

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of Governor.

**§ 5. (Effective until contingent upon certification of approval of constitutional amendment — see notes)
Duties of Governor.**

(1) **Residence.** — The Governor shall reside at the seat of government of this State.

(2) **Information to General Assembly.** — The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) **Budget.** — The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines

that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) **Execution of laws.** — The Governor shall take care that the laws be faithfully executed.

(5) **Commander in Chief.** — The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) **Clemency.** — The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) **Extra sessions.** — The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) **Appointments.** — The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) **Information.** — The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) **Administrative reorganization.** — The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) **Reconvened sessions.** — The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) **Sine die.** — If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term.

History.

1969, c. 932, s. 1; 1977, c. 690, s. 1;
1995, c. 5, s. 2.

certification of approval of the constitutional amendments proposed by Session Laws 2018-117, s. 5. For this section as amended effective upon such certification, see the following section, also numbered § 5.

Section Set Out Twice.

The section above is effective until

§ 5. (Effective upon certification of approval of constitutional amendment — see notes) Duties of Governor.

(1) **Residence.** — The Governor shall reside at the seat of government of this State.

(2) **Information to General Assembly.** — The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) **Budget.** — The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) **Execution of laws.** — The Governor shall take care that the laws be faithfully executed. In faithfully executing any general law enacted by the General Assembly controlling the powers, duties,

responsibilities, appointments, and terms of office of any board or commission, the Governor shall implement that general law as enacted and the legislative delegation provided for in Section 6 of Article I of this Constitution shall control.

(5) **Commander in Chief.** — The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) **Clemency.** — The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) **Extra sessions.** — The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) **Appointments.** — The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for. The legislative delegation provided for in Section 6 of Article I of this Constitution shall control any executive, legislative, or judicial appointment and shall be faithfully executed as enacted.

(9) **Information.** — The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) **Administrative reorganization.** — The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) **Reconvened sessions.** — The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

- (b) **Sine die.** — If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term.

History.

1969, c. 932, s. 1; 1977, c. 690, s. 1; 1995, c. 5, s. 2; 2018-117, s. 4.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-117, s. 4. For the version of this section in effect until such certification, see the preceding section, also numbered § 5.

Editor's Note.

Session Laws 2018-117, ss. 5-7, provide: "The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to estab-

lish a bipartisan Board of Ethics and Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

"If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendments to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office.

"If the amendments are approved by the qualified voters as provided in this section, Sections 2 through 4 of this act become effective upon certification and Section 1 becomes effective March 1, 2019."

Effect of Amendments.

Session Laws 2018-117, s. 4, added the last sentences in subdivisions (4) and (8). For contingent effective date, see editor's note.

§ 6. Duties of the Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

§ 7. Other elective officers.

(1) **Officers.** — A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) **Duties.** — Their respective duties shall be prescribed by law.

(3) **Vacancies.** — If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) **Interim officers.** — Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) **Acting officers.** — During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) **Determination of incapacity.** — The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) **Special Qualifications for Attorney General.** — Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

History.

1983, c. 298, s. 1; 1985 (Reg. Sess., 1986), c. 920, s. 1.

§ 8. Council of State.

The Council of State shall consist of the officers whose offices are established by this Article.

§ 9. Compensation and allowances.

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed

by law, which shall not be diminished during the time for which they have been chosen.

§ 10. Seal of State.

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called “The Great Seal of the State of North Carolina”. All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with “The Great Seal of the State of North Carolina”, and signed by the Governor.

§ 11. Administrative departments.

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

History.

1969, c. 932, s. 1.

ARTICLE IV

JUDICIAL

§ 1. Judicial power.

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

§ 2. General Court of Justice.

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

§ 3. Judicial powers of administrative agencies.

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably

necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

§ 4. Court for the Trial of Impeachments.

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

§ 5. Appellate division.

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

§ 6. Supreme Court.

(1) **Membership.** — The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) **Sessions of the Supreme Court.** — The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

§ 7. Court of Appeals.

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

§ 8. Retirement of Justices and Judges.

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

History.

1971, c. 451, s. 1; 1981, c. 513, s. 1.

§ 9. Superior Courts.

(1) **Superior Court districts.** — The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) **Open at all times; sessions for trial of cases.** — The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) **Clerks.** — A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

§ 10. (Effective until certification of approval of constitutional amendment — see notes) District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacan-

cies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly.

History.

2004-128, s. 16.

Section Set Out Twice.

The section above is effective until certification of approval of the constitu-

tional amendments proposed by Session Laws 2018-118, s. 2. For this section as amended effective upon such certification, see the following section, also numbered § 10.

§ 10. (Effective upon certification of approval of constitutional amendment — see notes) District Courts.

- (1) The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected.
- (2) For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years.
- (3) The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly.

History.

2004-128, s. 16; 2018-118, s. 2.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-118, s. 2. For the version of this section in effect until such certification, see the preceding section, also numbered § 10.

Editor's Note.

Session Laws 2018-118, ss. 6, 7 provide: "The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter

163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

“[] FOR [] AGAINST

“Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

“If a majority of the votes cast on the question are in favor of the amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State,

who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective upon certification and applies to vacancies occurring on or after the date of the general election.”

Effect of Amendments.

Session Laws 2018-118, s. 2, added subdivision (1), (2), and (3) designations and deleted the former second sentence of subdivision (3), which read: “Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law.” For contingent effective date and applicability, see editor’s note.

§ 11. Assignment of Judges.

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

§ 12. Jurisdiction of the General Court of Justice.

(1) **Supreme Court.** — The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over “issues of fact” and “questions of fact” shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) **Court of Appeals.** — The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) **Superior Court.** — Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) **District Courts; Magistrates.** — The General Assembly shall, by general law uniformly applicable in every local court

district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) **Waiver.** — The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) **Appeals.** — The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

History.

1981, c. 803, s. 1.

§ 13. Forms of action; rules of procedure.

(1) **Forms of Action.** — There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) **Rules of Procedure.** — The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

§ 14. Waiver of jury trial.

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

§ 15. Administration.

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

§ 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the

qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

§ 17. Removal of Judges, Magistrates and Clerks.

(1) **Removal of Judges by the General Assembly.** — Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) **Additional method of removal of Judges.** — The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) **Removal of Magistrates.** — The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) **Removal of Clerks.** — Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

History.

1971, c. 560, s. 1.

§ 18. (Effective until certification of approval of constitutional amendment — see notes) District Attorney and prosecutorial districts.

(1) **District Attorneys.** — The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) **Prosecution in District Court Division.** — Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

History.

1973, c. 394, s. 1; 1983, c. 298, s. 2.

Section Set Out Twice.

The section above is effective until certification of approval of the constitu-

tional amendments proposed by Session Laws 2018-118, s. 3. For this section as amended effective upon such certification, see the following section, also numbered § 18.

§ 18. (Effective upon certification of approval of constitutional amendment — see notes) District Attorney and prosecutorial districts.

(1) **District Attorneys.** — The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) **Prosecution in District Court Division.** — Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

(3) **Vacancies.** — All vacancies occurring in the office of District Attorney shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term in which a vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

History.

1973, c. 394, s. 1; 1983, c. 298, s. 2; 2018-118, s. 3.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-118, s. 3. For the version of this section in effect until such certification, see the preceding section, also numbered § 18.

Editor's Note.

Session Laws 2018-118, ss. 6, 7 provide: "The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

"If a majority of the votes cast on the question are in favor of the amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective upon certification and applies to vacancies occurring on or after the date of the general election."

Effect of Amendments.

Session Laws 2018-118, s. 3, added subdivision (3). For contingent effective date, see editor's note.

§ 19. (Repealed effective upon certification of approval of constitutional amendment — see notes) Vacancies.

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as

provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

History.

1985 (Reg. Sess., 1986), c. 920, s. 2.

Editor's Note.

Session Laws 2018-118, ss. 6, 7 provides: "The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to imple-

ment a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

"If a majority of the votes cast on the question are in favor of the amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective upon certification and applies to vacancies occurring on or after the date of the general election."

§ 20. Revenues and expenses of the judicial department.

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

§ 21. Fees, salaries, and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

§ 22. Qualification of Justices and Judges.

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

History.

1979, c. 638, s. 1.

§ 23. (Effective upon certification of approval of constitutional amendment — see notes) Merit selection; judicial vacancies.

- (1) All vacancies occurring in the offices of Justice or Judge of the General Court of Justice shall be filled as provided in this section. Appointees shall hold their places until the next election following the election for members of the General Assembly held after the appointment occurs, when elections shall be held to fill those offices. When the vacancy occurs on or after the sixtieth day before the next election for members of the General Assembly and the term would expire on December 31 of that same year, the Chief Justice shall appoint to fill that vacancy for the unexpired term of the office.
- (2) In filling any vacancy in the office of Justice or Judge of the General Court of Justice, individuals shall be nominated on merit by the people of the State to fill that vacancy. In a manner prescribed by law, nominations shall be received from the people of the State by a nonpartisan commission established under this section, which shall evaluate each nominee without regard to the nominee's partisan affiliation, but rather with respect to whether that nominee is qualified or not qualified to fill the vacant office, as prescribed by law. The evaluation of each nominee of people of the State shall be forwarded to the General Assembly, as prescribed by law. The General Assembly shall recommend to the Governor, for each vacancy, at least two of the nominees deemed qualified by a nonpartisan commission under this section. For each vacancy, within 10 days after the nominees are presented, the Governor shall appoint the nominee the Governor deems best qualified to serve from the nominees recommended by the General Assembly.
- (3) The Nonpartisan Judicial Merit Commission shall consist of no more than nine members whose appointments shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General Assembly, as prescribed by law. The General Assembly shall, by general law, provide for the establishment of local merit commissions for the nomination of judges of the Superior and District Court. Appointments to local merit commissions shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General Assembly, as prescribed by law. Neither the Chief Justice of the Supreme Court, the Governor, nor the General Assembly shall be allocated a majority of appointments to a nonpartisan commission established under this section.

- (4) If the Governor fails to make an appointment within 10 days after the nominees are presented by the General Assembly, the General Assembly shall elect, in joint session and by a majority of the members of each chamber present and voting, an appointee to fill the vacancy in a manner prescribed by law.
- (5) If the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Chief Justice shall have the authority to appoint a qualified individual to fill a vacant office of Justice or Judge of the General Court of Justice if any of the following apply:
 - (a) The vacancy occurs during the period of adjournment.
 - (b) The General Assembly adjourned without presenting nominees to the Governor as required under subsection (2) of this section or failed to elect a nominee as required under subsection (4) of this section.
 - (c) The Governor failed to appoint a recommended nominee under subsection (2) of this section.
- (6) Any appointee by the Chief Justice shall have the same powers and duties as any other Justice or Judge of the General Court of Justice, when duly assigned to hold court in an interim capacity and shall serve until the earlier of:
 - (a) Appointment by the Governor.
 - (b) Election by the General Assembly.
 - (c) The first day of January succeeding the next election of the members of the General Assembly, and such election shall include the office for which the appointment was made.

However, no appointment by the Governor or election by the General Assembly to fill a judicial vacancy shall occur after an election to fill that judicial office has commenced, as prescribed by law.

History.

2018-118, s. 1.

Editor's Note.

Session Laws 2018-118, ss. 6, 7 provide: "The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

"If a majority of the votes cast on the question are in favor of the amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective upon certification and applies to

vacancies occurring on or after the date
of the general election.”

ARTICLE V

FINANCE

§ 1. No capitation tax to be levied.

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

History.

1969, c. 1200, s. 1.

§ 2. (Effective until certification of approval of constitutional amendment — see notes) State and local taxation.

(1) **Power of taxation.** — The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) **Classification.** — Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) **Exemptions.** — Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) **Special tax areas.** — Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) **Purposes of property tax.** — The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) **Income tax.** — The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) **Contracts.** — The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

History.

1969, c. 872, s. 1; c. 1200, s. 1.

Section Set Out Twice.

The section above is effective until certification of approval of the constitu-

tional amendments proposed by Session Laws 2018-119, s. 1. For this section as amended effective upon such certification, see the following section, also numbered § 2.

§ 2. (Effective upon certification of approval of constitutional amendment, and applicable to taxable years beginning on or after January 1, 2019 — see notes) State and local taxation.

(1) **Power of taxation.** — The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) **Classification.** — Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) **Exemptions.** — Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) **Special tax areas.** — Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) **Purposes of property tax.** — The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) **Income tax.** — The rate of tax on incomes shall not in any case exceed seven percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) **Contracts.** — The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

History.

1969, c. 872, s. 1; c. 1200, s. 1; 2018-119, s. 1.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-119, s. 1. For the version of this section in effect until such certification, see the preceding section, also numbered § 2.

Editor's Note.

Session Laws 2018-119, s. 2-4, provides: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%).

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

"The constitutional amendment shall become effective upon such certification and apply to taxable years beginning on or after January 1, 2019."

Effect of Amendments.

Session Laws 2018-119, s. 1, substituted "seven" for "ten" in subdivision (6). For contingent effective date and applicability, see editor's note.

§ 3. Limitations upon the increase of State debt.

(1) **Authorized purposes; two-thirds limitation.** — The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a

majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding bien-nium.

(2) **Gift or loan of credit regulated.** — The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) **Definitions.** — A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) **Certain debts barred.** — The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assembly of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) **Outstanding debt.** — Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

History.

1969, c. 1200, s. 1.

§ 4. Limitations upon the increase of local government debt.

(1) **Regulation of borrowing and debt.** — The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) **Authorized purposes; two-thirds limitation.** — The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) **Gift or loan of credit regulated.** — No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) **Certain debts barred.** — No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) **Definitions.** — A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) **Outstanding debt.** — Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

History.

1969, c. 1200, s. 1.

§ 5. Acts levying taxes to state objects.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

History.

1969, c. 1200, s. 1.

§ 6. Inviolability of sinking funds and retirement funds.

(1) **Sinking funds.** — The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) **Retirement funds.** — Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

History.

1969, c. 1200, s. 1.

§ 7. Drawing public money.

(1) **State treasury.** — No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) **Local treasury.** — No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

History.

1969, c. 1200, s. 1.

§ 8. Health care facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

History.

1975, c. 641, s. 1.

§ 9. Capital projects for industry.

Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

History.

1975, c. 826, s. 1.

§ 10. Joint ownership of generation and transmission facilities.

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, “a unit of municipal government”) may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, “a co-owner”) within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

History.

1977, c. 528, s. 1.

§ 11. Capital projects for agriculture.

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly

may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

History.

1983, c. 765, s. 1.

§ 12. Higher education facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

History.

1985 (Reg. Sess., 1986), c. 814.

§ 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

- (a) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;
- (b) To finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

- (c) To secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

History.

1985 (Reg. Sess., 1986), c. 933, s. 1.

§ 14. Project development financing.

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit. This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect.

History.
2003-403, s. 1.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

§ 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

History.
1971, c. 201, s. 1; c. 1141, s. 1.

§ 2. (Effective until certification of approval of constitutional amendment — see notes) Qualifications of voter.

(1) **Residence period for State elections.** — Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) **Residence period for presidential elections.** — The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) **Disqualification of felon.** — No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that

person shall be first restored to the rights of citizenship in the manner prescribed by law.

Section Set Out Twice.

The section above is effective until certification of approval of the constitutional amendments proposed by Session

Laws 2018-128, s. 1. For this section as amended effective upon such certification, see the following section, also numbered § 2.

§ 2. (Effective upon certification of approval of constitutional amendment — see notes) Qualifications of voter.

(1) **Residence period for State elections.** — Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) **Residence period for presidential elections.** — The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) **Disqualification of felon.** — No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(4) **Photo identification for voting in person.** — Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

History.

2018-128, s. 1.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-128, s. 1. For the version of this section in effect until such certification, see the preceding section, also numbered § 2.

Editor's Note.

Session Laws 2018-128, s. 3, provides: "The amendment set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accor-

dance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

“[] FOR [] AGAINST

“Constitutional amendment to require voters to provide photo identification before voting in person.”

Session Laws 2018-128, s. 4, provides: “If a majority of votes cast on the question are in favor of the amendment set out in Sections 1 and 2 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the

amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.”

Session Laws 2018-128, s. 5, provides: “The amendments set out in Sections 1 and 2 of this act are effective upon certification.”

Effect of Amendments.

Session Laws 2018-128, s. 1, added subdivision (4). For contingent effective date, see editor’s note.

§ 3. (Effective until certification of approval of constitutional amendment — see notes) Registration.

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Section Set Out Twice.

The section above is effective until certification of approval of the constitutional amendments proposed by Session

Laws 2018-128, s. 2. For this section as amended effective upon such certification, see the following section, also numbered § 3.

§ 3. (Effective upon certification of approval of constitutional amendment — see notes) Registration; Voting in Person.

(1) Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

(2) Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

History.

2018-128, s. 2.

Section Set Out Twice.

The section above is effective upon certification of approval of the constitutional amendments proposed by Session Laws 2018-128, s. 2. For the version of this section in effect until such certification, see the preceding section, also numbered § 3.

Editor’s Note.

Session Laws 2018-128, s. 3, provides: “The amendment set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in No-

vember of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

“[] FOR [] AGAINST

“Constitutional amendment to require voters to provide photo identification before voting in person.”

Session Laws 2018-128, s. 4, provides: “If a majority of votes cast on the question are in favor of the amendment set out in Sections 1 and 2 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the

amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.”

Session Laws 2018-128, s. 5, provides: “The amendments set out in Sections 1 and 2 of this act are effective upon certification.”

Effect of Amendments.

Session Laws 2018-128, s. 2, rewrote the section heading; added subdivision (1) designation; and added subdivision (2). For contingent effective date, see editor’s note.

§ 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

§ 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

§ 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

History.

1971, c. 201, s. 1; c. 1141, s. 1.

§ 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

“I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God.”

§ 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also

would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

§ 9. Dual office holding.

(1) **Prohibitions.** — It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) **Exceptions.** — The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

§ 10. Continuation in office.

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

§ 11. (Effective March 1, 2019, contingent upon certification of approval of constitutional amendment — see notes) Bipartisan State Board of Ethics and Elections Enforcement.

- (1) The Bipartisan State Board of Ethics and Elections Enforcement shall be established to administer ethics and election laws, as prescribed by general law. The Bipartisan State Board of Ethics and Elections Enforcement shall be located within the Executive Branch for administrative purposes only but shall exercise all of its powers independently of the Executive Branch.
- (2) The Bipartisan State Board of Ethics and Elections Enforcement shall consist of eight members, each serving a term of

four years, who shall be qualified voters of this State. Of the total membership, no more than four members may be registered with the same political affiliation, if defined by general law. Appointments shall be made as follows:

- (a) Four members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, from nominees submitted to the President Pro Tempore by the majority leader and minority leader of the Senate, as prescribed by general law. The President Pro Tempore of the Senate shall not recommend more than two nominees from each leader.
- (b) Four members by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, from nominees submitted to the Speaker of the House by the majority leader and minority leader of the House of Representatives, as prescribed by general law. The Speaker of the House of Representatives shall not recommend more than two nominees from each leader.

History.

2018-117, s. 1.

Editor's Note.

Session Laws 2018-117, ss. 5-7, provide: "The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

"Constitutional amendment to establish a bipartisan Board of Ethics and Elections to administer ethics and elec-

tion laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

"If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the Bipartisan State Board of Elections and Ethics Enforcement shall certify the amendments to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office.

"If the amendments are approved by the qualified voters as provided in this section, Sections 2 through 4 of this act become effective upon certification and Section 1 becomes effective March 1, 2019."

ARTICLE VII

LOCAL GOVERNMENT

§ 1. General Assembly to provide for local government.

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

History.

1971, c. 857, s. 1.

§ 2. Sheriffs.

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law. No person is eligible to serve as Sheriff if that person has been convicted of a felony against this State, the United States, or another state, whether or not that person has been restored to the rights of citizenship in the manner prescribed by law. Convicted of a felony includes the entry of a plea of guilty; a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or a plea of no contest, nolo contendere, or the equivalent.

History.

2010-49, s. 1.

§ 3. Merged or consolidated counties.

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII

CORPORATIONS

§ 1. Corporate charters.

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

§ 2. Corporations defined.

The term “corporation” as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

§ 1. Education encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

§ 2. Uniform system of schools.

(1) **General and uniform system: term.** — The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) **Local responsibility.** — The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

§ 3. School attendance.

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

§ 4. State Board of Education.

(1) **Board.** — The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) **Superintendent of Public Instruction.** — The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

§ 5. Powers and duties of Board.

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

§ 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

§ 7. County school fund; State fund for certain moneys.

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county

school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

History.

2003-423, s. 1.

§ 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

§ 9. Benefits of public institutions of higher education.

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

§ 10. Escheats.

(1) **Escheats prior to July 1, 1971.** — All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) **Escheats after June 30, 1971.** — All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

History.
1969, c. 827, § 1.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

§ 1. Personal property exemptions.

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

§ 2. Homestead exemptions.

(1) **Exemption from sale; exceptions.** — Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) **Exemption for benefit of children.** — The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) **Exemption for benefit of surviving spouse.** — If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) **Conveyance of homestead.** — Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgment of his or her spouse.

History.
1977, c. 80, ss. 1, 2.

§ 3. Mechanics' and laborers' liens.

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for

work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

§ 4. Property of married women secured to them.

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

§ 5. Insurance.

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

History.

1977, c. 115, s. 1.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

§ 1. Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

History.

1995, c. 429, s. 2.

§ 2. Death punishment.

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

§ 3. Charitable and correctional institutions and agencies.

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

§ 4. Welfare policy; board of public welfare.

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

§ 1. Governor is Commander in Chief.

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

§ 1. Convention of the People.

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submit-

ting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

§ 2. Power to revise or amend Constitution reserved to people.

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

§ 3. Revision or amendment by Convention of the People.

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

§ 4. Revision or amendment by legislative initiation.

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

§ 1. Seat of government.

The permanent seat of government of this State shall be at the City of Raleigh.

§ 2. State boundaries.

The limits and boundaries of the State shall be and remain as they now are.

§ 3. General laws defined.

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

History.

1969, c. 1200, s. 1.

§ 4. Continuity of laws; protection of officeholders.

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

§ 5. Conservation of natural resources.

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the “State Nature and Historic Preserve,” and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

History.

1971, c. 630, s. 1; 1999-268, s. 3; 2001-217, s. 3; 2002-3 (Extra Session), s. 1.

§ 6. (See Editor’s note) Marriage.

Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts.

History.

2011-409, s. 1.

Editor’s Note.

Session Laws 2011-409, ss. 2, 3, provide: “The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a state-wide election to be held on the date of the first primary in 2012, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

“[] FOR [] AGAINST

“Constitutional amendment to provide that marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State.

“If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.”

Session Laws 2011-409, s. 4, provides: “The amendment set out in Section 1 of this act is effective upon certification.”

The constitutional amendment was approved by the voters in the primary election held on May 8, 2012, and the results were certified by the State Board of Elections on May 23, 2012.

In *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609, 2015 U.S. LEXIS 4250 (2015), the United States Supreme Court held that the Due Process and Equal Protection Clauses of the Fourteenth Amendment require a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex

licensed and performed out-of-state. For prior Fourth Circuit case law on this issue, see *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), cert. denied, 2014 U.S. LEXIS 6405 (2014), invalidating the Commonwealth of Virginia's ban on same-sex marriage on due process and equal protection grounds.

Legal Periodicals.

For article, "Déjà Vu All Over Again": The Recourse to Biology by Opponents of Transgender Equality," see 95 N.C.L. Rev. 1161 (2017).

CHAPTER 58. INSURANCE.

Article 86. North Carolina Firefighters' and Rescue Squad Workers' Pension Fund.

Section

- 58-86-1. Fund established; administration by board of trustees; rules and regulations.
- 58-86-2. Definitions.
- 58-86-5. [Repealed.]
- 58-86-6. Firefighters' and Rescue Squad Workers' Pension Fund Advisory Panel.
- 58-86-10. Powers and duties of the board.
- 58-86-11. Powers and duties of the advisory panel.
- 58-86-15. [Repealed.]
- 58-86-20. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures.
- 58-86-25. Determination and certification of eligible firefighters.
- 58-86-30. Determination and certification of "eligible rescue squad worker."
- 58-86-35. Firefighters' application for membership in fund; monthly payments by members; payments credited to separate accounts of members; termination of membership.
- 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members; termination of membership.
- 58-86-45. Additional retroactive membership.
- 58-86-50. [Repealed.]
- 58-86-55. Monthly pensions upon attaining the age of 55 years.
- 58-86-60. Payments in lump sums.
- 58-86-65. Pro rata reduction of benefits when fund insufficient to pay in full.
- 58-86-70. Provisions subject to future legislative change.
- 58-86-75. Determination of creditable service; information furnished by applicants for membership.
- 58-86-80. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.
- 58-86-85. [Repealed.]
- 58-86-90. Exemptions of pensions from attachment; rights nonassignable.
- 58-86-91. [Repealed.]
- 58-86-95. Leaves of absence; inactive membership.
- 58-86-100. Forfeiture of retirement benefits for certain felonies that would bring disrepute on a fire department or rescue squad.
- 58-86-101. Prohibition on purchase of forfeited service.

ARTICLE 86.

NORTH CAROLINA FIREFIGHTERS' AND RESCUE SQUAD WORKERS' PENSION FUND.

§ 58-86-1. Fund established; administration by board of trustees; rules and regulations.

For the purpose of furthering the general welfare and police powers and obligations of the State with respect to the protection of all its citizens from the consequences of loss or damage by fire and of injury by serious accident or illness, of increasing the protection of life and property against loss or damage by fire, of improving firefighting and life saving techniques, of increasing the potential of

fire departments, rescue squads, organizations and groups, of fostering increased and more widely spread training of personnel of these organizations and groups, and of providing incentive and inducement to participate in fire prevention, firefighting and rescue squad activities and for the establishment of new, improved or extended fire departments, rescue squads, organizations and groups to the end that ultimately all areas of the State and all of its citizens will receive the benefits of fire protection and rescue squads' activity and a resulting reduction of loss or damage to life and property by fire hazard or injury by serious accident or illness, and in recognition of the public service rendered to the State of North Carolina and its citizens by "eligible firefighters and rescue squad workers," as defined by this Article, there is created in this State a fund to be known, and designated as "The North Carolina Firefighters' and Rescue Squad Workers' Pension Fund" to be administered as provided in this Article.

The North Carolina Firefighters' and Rescue Squad Workers' Pension Fund is established to provide pension allowances and other benefits for eligible firefighters and rescue squad workers in the State who elect to become members of the fund. The board of trustees created by this Article shall have authority to administer the fund and shall make necessary rules and regulations to carry out the provisions of this Article.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1981, c. 1029, s. 1; 2013-284, s. 1(a).

Cross References.

As to statutory provisions pertaining to a prior transfer of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund to the Department of State Auditor, see G.S. 143A-27.1.

Editor's Note.

This Article is former Article 3 of former Chapter 118, rewritten by Session Laws 1981, c. 1029, s. 1, effective January 1, 1982, and recodified as Article 4 of former Chapter 118, which in turn has been recodified and incorporated as Article 86 of Chapter 58 pursuant to Session Laws 1987, c. 752, s. 9, as amended by Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

Session Laws 1981, c. 1029, s. 2, provides: "The Fund established by Session Laws 1961 Chapter 980, G.S. 118-18 et seq., 'the Firemen's Pension Fund' is made a part of the Fund established by this act as the 'Firemen's and Rescue Squad Workers' Pension Fund'."

Session Laws 1991 (Reg. Sess., 1992), c. 833, s. 1 provides: "The statutory au-

thority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of State Auditor to administer the North Carolina Firemen's and Rescue Squad Workers' Pension Fund are transferred to the Department of State Treasurer."

Session Laws 2009-567, s. 1, provides: "Notwithstanding any other provision of law, any member who was a firefighter employed by the Asheville Regional Airport Fire Department on April 1, 2005, and who has not received credit for periods of service with the Firemen's and Rescue Squad Workers' Pension Fund since that time, may receive credit for that service upon making a lump-sum payment of ten dollars (\$10.00) for each month of service not credited. Any employee of the Asheville Regional Airport Fire Department that meets all the criteria of this section may continue as a member of the Pension Fund."

Session Laws 2014-64, s. 3(c), (d), provides: "(c) Using a portion of the additional funds made available to the General Fund through the amendment to G.S. 105-228.5 made by Section 3(b) of

this act, the sum of one million four hundred thousand dollars (\$1,400,000) is appropriated for fiscal year 2014-2015, recurring from the General Fund to the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund established under G.S. 58-86-1.

"(d) The Department of State Treasurer shall report by March 1, 2015, and for two years thereafter, to the House Committee on State Personnel and the Senate Committee on Pensions & Retirement and Aging on the Department's progress toward the following efforts related to the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund:

"(1) Building appropriate lapse assumptions into the State's annual required contribution to the pension fund.

"(2) Collecting timely member contributions to the pension fund."

Session Laws 2016-108, s. 5, provides: "The Board of Trustees of the Local Governmental Employees' Retirement System shall develop a 'State Contribution Rate Stabilization Policy' for the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund and report it to the Office of State Budget and Management and the Fiscal Research Division on or before March 1, 2017."

Session Laws 2016-108, s. 9, is a severability clause.

§ 58-86-2. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Board" means the Board of Trustees of the Local Governmental Employees' Retirement System.
- (2) "Chair" means the chair of the Board of Trustees of the Local Governmental Employees' Retirement System.
- (3) "Director" means the Director of the Retirement Systems Division of the North Carolina Department of State Treasurer. The Director shall promptly transmit to the State Treasurer all moneys collected on behalf of members, which moneys shall be deposited by the State Treasurer into the fund.
- (4) "Eligible fire department" means a bona fide fire department which is certified to the Commissioner of Insurance by the governing body thereof, and determined as classified as not less than class "9S," and said fire department holds training sessions not less than four hours monthly.
- (5) "Eligible firefighter" means all persons 18 years of age or older who are firefighters of the State of North Carolina or any political subdivision thereof, including those performing such functions in the protection of life and property through firefighting within a county or city governmental unit. "Eligible firefighter" shall also mean an employee of a county whose sole duty is to act as fire marshal, deputy fire marshal, assistant fire marshal, or firefighter of the county. "Eligible firefighter" shall also mean those persons meeting the other qualifications of this Article, not exceeding 25 volunteer firefighters plus one additional volunteer firefighter per 100 population in the area served by their respective departments.

- (6) "Eligible rescue or emergency medical services squad" means organized rescue squad units eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc.
- (7) "Eligible rescue squad worker" means all persons 18 years of age or older who are members of a rescue or emergency medical services squad that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc. "Eligible rescue squad worker" shall also mean those persons meeting the other qualifications of this Article.
- (8) "Fully credited service" means a period of time for which the Board has received certification that a member has met all eligibility requirements for participation in the Pension Fund and for which the Board has received timely monthly payments under G.S. 58-86-35 or G.S. 58-86-40. In lieu of monthly payments under G.S. 58-86-35 or G.S. 58-86-40, a member may purchase fully credited service for any period of service as set forth in G.S. 58-86-45.
- (9) "Inactive member" means a member of the fund who is not on a leave of absence under G.S. 58-86-95 and who has not made timely payments under G.S. 58-86-35 or G.S. 58-86-40 for two consecutive years.
- (9a) "Killed in the line of duty" has the same meaning as in G.S. 143-166.2.
- (10) "Member" means an eligible firefighter or eligible rescue squad worker who has elected to participate in the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund.
- (11) "Pension Fund" means the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund.
- (12) "Training sessions" for eligible rescue squad workers means sessions in which attendance will result in the preparation of, or knowledge gained by, the member in the area of rescue, emergency medical services, injury prevention, or protection of life and property. Such drill or training sessions held by the eligible rescue squad unit to meet the requirements of this Article shall be held for the purpose of providing a learning or preparation experience for the members.
- (13) "Training sessions" for eligible firefighters means sessions in which attendance will result in the preparation of, or knowledge gained by, the member in the area of fire prevention, fire suppression, or protection of life and property. Such drill or training sessions held by the eligible fire department to meet the requirements of this Article shall be held for the purpose of providing a learning or preparation experience for the members.

History.

2013-284, s. 1(a); 2014-97, s. 1; 2016-108, s. 1(a); 2018-5, s. 35.29(c).

Editor's Note.

Session Laws 2016-108, s. 1(e), made subdivision (9a) of this section, as added by Session Laws 2016-108, s. 1(a), applicable to benefits paid when a member is killed in the line of duty on or after June 1, 2016, but before July 1, 2018.

Session Laws 2016-108, s. 9, is a severability clause.

Session Laws 2018-5, s. 35.29(d), made the amendment of subdivision (9a) of this section by Session Laws 2018-5, s. 35.29(c), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

Session Laws 2018-5, s. 1.1, provides:

"This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year."

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 1(a), effective June 1, 2016, added subdivision (9a). See editor's note for applicability.

Session Laws 2018-5, s. 35.29(c), substituted "G.S. 143-166.2" for "G.S. 143-166.2(c)" in subdivision (9a). For effective date and applicability, see editor's note.

§ 58-86-5. Repealed by Session Laws 2013-284, s. 1(a), effective July 1, 2013.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1973, c. 875; 1981, c. 1029, s. 1; 1991 (Reg. Sess., 1992), c. 833, s. 2; 1993, c. 9, s. 1; repealed by 2013-284, s. 1(a), effective July 1, 2013.

Editor's Note.

Former G.S. 58-86-5 related to the creation and membership of the Board of

Trustees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund. For present similar provisions pertaining to the creation and membership of the Firefighters' and Rescue Squad Workers' Pension Fund Advisory Panel, and the provision allowing members of the Board of Trustees to serve on the advisory panel until the expiration of their current terms, see G.S. 58-86-6.

§ 58-86-6. Firefighters' and Rescue Squad Workers' Pension Fund Advisory Panel.

There is created an advisory panel to be known as the Firefighters' and Rescue Squad Workers' Pension Fund Advisory Panel, hereinafter referred to as "the advisory panel."

The advisory panel shall consist of seven persons:

- (1) The Director of the Retirement Systems Division of the North Carolina Department of State Treasurer or his or her designee, who shall act as chair.
- (2) A designee of the State Insurance Commissioner.
- (3) Five members to be appointed by the Board of Trustees of the Local Governmental Employees' Retirement System: one paid firefighter, one volunteer firefighter, one paid rescue squad worker, one volunteer rescue squad worker, and one representing the public at large, for terms of four years each. One member of the advisory panel appointed by the Board of Trustees of the Local Governmental Employees' Retirement System must be a member of that Board. Members of the advisory panel may succeed themselves if

reappointed by the Board of Trustees of the Local Governmental Employees' Retirement System.

The persons serving on the Board of Trustees of the Firefighters' and Rescue Squad Workers' Pension Fund on June 30, 2013, may serve as members of the advisory panel until the expiration of their current terms. No member of the advisory panel shall receive any salary, compensation, or expenses other than that provided in G.S. 138-6 for each day's attendance at duly and regularly called and held meetings of the advisory panel.

History.

2013-284, s. 1(a).

§ 58-86-10. Powers and duties of the board.

The Board of Trustees of the North Carolina Local Governmental Employees' Retirement System shall administer the Pension Fund. The board shall request appropriations out of the general fund for administrative expenses and to provide for the financing of this pension fund, employ necessary clerical assistance, determine all applications for pensions, provide for the payment of pensions, make all necessary rules and regulations not inconsistent with law for the governance of this fund, prescribe rules and regulations of eligibility of persons to receive pensions, expend funds in accordance with the provisions of this Article, and generally exercise all other powers necessary for the administration of the fund created by this Article. Should any change or error due to the submission of fraudulent or incorrect information result in any member or beneficiary receiving from the Retirement System more or less than he or she would have been entitled to receive had their records been correct, the Board of Trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 2013-284, s. 1(a); 2015-88, s. 2.

Editor's Note.

Session Laws 2016-108, s. 5, provides: "The Board of Trustees of the Local Governmental Employees' Retirement Sys-

tem shall develop a 'State Contribution Rate Stabilization Policy' for the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund and report it to the Office of State Budget and Management and the Fiscal Research Division on or before March 1, 2017."

Session Laws 2016-108, s. 9, is a severability clause.

CASE NOTES

Board Is Agency of State. — The board of trustees of the North Carolina Firemen's Pension Fund purports to be an agency of the State, charged with the duty, among others, of administering

moneys appropriated from the general fund of the State. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d 792 (1961), decided under former statutory provisions.

§ 58-86-11. Powers and duties of the advisory panel.

The advisory panel shall meet at least once annually upon call of the chair. The advisory panel shall have no administrative authority but shall prepare an annual report to the Board of Trustees of the North Carolina Local Governmental Employees' Retirement System regarding the status and needs of the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund.

History.

2013-284, s. 1(a).

§ 58-86-15. Repealed by Session Laws 2013-284, s. 1(a), effective July 1, 2013.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 359; 1981, c. 1029, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 113; 2013-382, s. 9.1(c); repealed by 2013-284, s. 1(a), effective August 21, 2013.

Editor's Note.

Former G.S. 58-86-15 pertained to directors.

§ 58-86-20. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures.

The State Treasurer shall be the custodian of the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The appropriations made by the General Assembly out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One-fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund, and all contributions made by the members of this pension fund shall be deposited in the special fund. All expenditures for refunds, investments or benefits shall be in the same manner as expenditures of other special funds.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 30; 1979, c. 467, s. 10; 1981, c. 1029, s. 1; 2013-284, s. 1(a).

CASE NOTES

Unconstitutionality of Former Provisions. — As to the unconstitutionality of former provisions imposing a tax on fire insurance contracts for the purpose of providing funds for the payment

of pensions to retired firemen, see *Great Am. Ins. Co. v. Johnson*, 257 N.C. 367, 126 S.E.2d 92 (1962).

As to the invalidity for discrimination and lack of uniformity of former

provisions imposing a tax on certain fire and lightning insurance policies, see *American Equitable Assurance Co. v. Gold*, 249 N.C. 461, 106 S.E.2d 875

(1959); *In re North Carolina Fire Ins. Rating Bureau*, 249 N.C. 466, 106 S.E.2d 879 (1959).

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firefighters' Association. Submission of such information by a department to the North Carolina State Firefighters' Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The North Carolina State Firefighters' Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3; 2016-51, s. 6.

Editor's Note.

Session Laws 2016-51, s. 6, provides: "Chapter 251 of the Private Laws of 1889 is hereby amended by replacing the words 'North Carolina State Firemen's Association' with the words 'North Carolina State Firefighters' Association.'"

"The entity formerly known as the North Carolina State Firemen's Association, and now known as the North Carolina State Firefighters' Association, is hereby authorized to amend its corporate documents to conform them to the association's new name by an appropriate filing with the Secretary of State.

"The Revisor of Statutes is hereby au-

thorized to replace any occurrences in the General Statutes of the words 'North Carolina State Firemen's Association,' 'North Carolina Firemen's Association,' 'State Firemen's Association,' or any reasonable derivative thereof, with the words 'North Carolina State Firefighters' Association,' including the following sections of the General Statutes: G.S. 58-2-121, 58-78-1, 58-80-5, 58-80-25, 58-80-60, 58-84-5, 58-84-25, 58-84-33, 58-84-35, 58-84-40, 58-84-41, 58-84-46, 58-84-50, 58-84-52, 58-85-1, 58-85-10, 58-85-20, 58-85-25, 58-85-30, 58-85-35, 58-86-25, 58-87-10, 135-27, 143-136, 143B-1401, 166A-26, and 166A-69."

Effect of Amendments.

Session Laws 2016-51, s. 6, effective July 1, 2016, substituted "North Carolina State Firefighters' Association" for "North Carolina State Firemen's Associ-

ation" twice and once for "Firemen's Association."

§ 58-86-30. Determination and certification of "eligible rescue squad worker."

Eligible rescue squad workers must attend at least 36 hours of training sessions in each calendar year. Each rescue or emergency medical services squad eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., must file a roster certified by the secretary of the association of those rescue or emergency medical services squad workers meeting the requirements of this section with the State Treasurer by January 31 of each calendar year. Submission of such information by a department to the North Carolina Association of Rescue and Emergency Medical Services, Inc., constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

An "eligible rescue squad worker" may not qualify also as an "eligible firefighter" in order to receive double benefits available under this Article.

History.

1981, c. 1029, s. 1; 1991 (Reg. Sess., 1992), c. 833, s. 3; 1995, c. 507, s. 7.21A(h); 2009-66, s. 2(c); 2013-284, s. 1(a); 2015-88, s. 4.

§ 58-86-35. Firefighters' application for membership in fund; monthly payments by members; payments credited to separate accounts of members; termination of membership.

Those firefighters who are eligible pursuant to G.S. 58-86-25 may apply to the board for membership. Each firefighter upon becoming a member of the fund shall pay the director of the fund the sum of ten dollars (\$10.00) per month; each payment shall be made no later than March 31 subsequent to the end of the calendar year in which the month occurred. The Pension Fund shall not award fully credited service based on payments received later than March 31 subsequent to the end of the calendar year in which the month occurred unless the payment is applied as provided in G.S. 58-86-45(a1). The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at any time and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member.

History. 7.21A(d); 2005-91, s. 14; 2005-281, s. 1.2;
 1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 2009-66, s. 2(d); 2013-284, s. 1(a).
 1981, c. 1029, s. 1; 1995, c. 507, s.

§ 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members; termination of membership.

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may apply to the board for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of ten dollars (\$10.00) per month; each payment shall be made no later than March 31 subsequent to the end of the calendar year in which the month occurred. The Pension Fund shall not award fully credited service based on payments received later than March 31 subsequent to the end of the calendar year in which the month occurred unless the payment is applied as provided in G.S. 58-86-45(a1). The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at any time and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member.

History. c. 507, s. 7.21A(e); 2005-91, s. 15; 2005-
 1981, c. 1029, s. 1; 1983, c. 500, s. 1; 281, s. 1.3; 2009-66, s. 2(e); 2013-284, s.
 1991 (Reg. Sess., 1992), c. 833, s. 4; 1995, 1(a).

§ 58-86-45. Additional retroactive membership.

(a) Repealed by Session Laws 2013-284, s. 1(a), effective July 1, 2013.

(a1) Any firefighter or rescue squad worker who is 35 years of age or older and who is a current or former member of a fire department or rescue squad chartered by the State of North Carolina may purchase credit for any periods of service to any chartered fire department or rescue squad not otherwise creditable by making a lump sum payment to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, which payment shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on a retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees. This provision for the payment of a

lump sum for service “not otherwise creditable” shall apply, inter alia, to all purchases of service credits for months as to which timely payments were not previously made pursuant to G.S. 58-86-35 or G.S. 58-86-40, whichever is applicable.

(b) An eligible firefighter or rescue squad worker who is not yet 35 years old may apply to the board of trustees for membership in the fund at any time. Upon becoming a member, the worker may make a lump sum payment of ten dollars (\$10.00) per month retroactively to the time the worker first became eligible to become a member, plus interest at an annual rate to be set by the board upon advice from actuary for each year of retroactive payments. Upon making this lump sum payment, the worker shall be given credit for all prior service in the same manner as if the worker had applied for membership upon first becoming eligible.

(c) A member of the Pension Fund who is not yet 35 years old may receive credit for the prior service upon making a lump sum payment of ten dollars (\$10.00) for each month since the worker first became eligible, plus interest at an annual rate to be set by the board for each year of retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if the worker had applied for membership upon first becoming eligible. This provision for the payment of a lump sum for service “not otherwise creditable” shall apply, inter alia, to all purchases of service credits for months as to which timely payments were not previously made pursuant to G.S. 58-86-35 or G.S. 58-86-40, whichever is applicable, for any firefighter or rescue squad worker who is not yet 35 years of age or older and who is a current or former member of a fire department or rescue squad chartered by the State of North Carolina.

History.

1985 (Reg. Sess., 1986), c. 1014, s. 49.1(a); 1989, c. 693; 1993, c. 429, s. 1; 1995, c. 507, s. 7.21A(f); 2000-67, s. 26.17(a); 2009-66, s. 2(f); 2013-284, s. 1(a); 2016-56, s. 1.

Editor's Note.

Session Laws 1995, c. 507, which amended this section, in s. 7.21A(i) provides: “The changes made to G.S. 58-86-45 and G.S. 58-86-55 by this Part do not affect the credit received for service performed before July 1, 1995. The increase in monthly pension contributions from five dollars (\$5.00) to ten dollars (\$10.00) in G.S. 58-86-55 does not affect the amount of monthly contributions made prior to July 1, 1995.”

Session Laws 1995, c. 507, s. 28.9, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium.”

Session Laws 2016-56, s. 10, is a severability clause.

Effect of Amendments.

Session Laws 2016-56, s. 1, effective June 30, 2016, in subsection (a1), inserted “35 years of age or older and who is” in the first sentence; inserted the subsection (c) designation, inserted “of the Pension Fund” in the first sentence and added the last sentence.

§ **58-86-50.** Repealed by Session Laws 2009-66, s. 2.(g), effective July 1, 2009.

§ **58-86-55. Monthly pensions upon attaining the age of 55 years.**

(a) Any member who has served 20 years as an “eligible firefighter” or “eligible rescue squad worker” in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of one hundred seventy dollars (\$170.00) per month. Any retired firefighter receiving a pension shall, effective July 1, 2008, receive a pension of one hundred seventy dollars (\$170.00) per month.

(b) Members shall pay ten dollars (\$10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No “eligible rescue squad member” shall receive a pension prior to July 1, 1983.

(c) A member who is totally and permanently disabled while in the discharge of the member’s official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of one hundred seventy dollars (\$170.00) per month beginning the first month after the member’s fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

(d) A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars (\$10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

(d1) Benefits shall be paid in the following manner when a member is killed in the line of duty and the requirements of Article 12A of Chapter 143 of the General Statutes are met:

- (1) If the member had been receiving a monthly pension fund benefit prior to being killed in the line of duty, there shall be

paid to the member's principal beneficiary, if only one principal beneficiary is eligible and has not accepted a return of contributions, an amount of one hundred seventy dollars (\$170.00) per month beginning the month following the member's month of death, payable until the beneficiary's death.

- (2) If the member had been receiving a monthly pension fund benefit prior to being killed in the line of duty and the beneficiary is not payable as described in subdivision (1) of this subsection, a lump sum payment equal to the difference between the amount paid into the member's separate account by or on behalf of the member and the amount received by the member as a pensioner will be paid to the eligible beneficiaries, or if there are no eligible beneficiaries, shall be paid to the member's estate.
- (3) If the member had not yet begun receiving a monthly benefit prior to being killed in the line of duty, there shall be paid to the member's principal beneficiary, if only one principal beneficiary is eligible and has not accepted a return of contributions, an amount of one hundred seventy dollars (\$170.00) per month beginning the month following the month the member would have attained age 55, or if the member had already attained age 55, beginning the month following the member's month of death, payable until the beneficiary's death.
- (4) If the member had not begun receiving a monthly benefit prior to being killed in the line of duty and the beneficiary is not payable as described in subdivision (3) of this subsection, a lump sum payment equal to the member's contributions will be paid to the eligible beneficiaries, or if there are no eligible beneficiaries, a return of the contributions shall be paid to the member's estate.

A beneficiary under this subsection shall not be required to make the monthly payment of ten dollars (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40 after the member has been killed in the line of duty.

(d2) Repealed by Session Laws 2016-108, s. 1(f), effective July 1, 2018.

(e) A member who, because the member's residence is annexed by a city under Part 2 or Part 3 of Article 4A of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4A of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a firefighter or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly

contribution of ten dollars (\$10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

(f) The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 336; 1977, c. 926, s. 1; 1981, c. 1029, s. 1; 1983, c. 500, s. 2; c. 636, s. 24; 1985 (Reg. Sess., 1986), c. 1014, s. 49.1(b); 1987 (Reg. Sess., 1988), c. 1099, s. 1; 1991, c. 720, s. 48; 1993 (Reg. Sess., 1994), c. 653, s. 1; 1995, c. 507, s. 7.21A(g); 1997-443, s. 33.25(a); 1998-212, s. 28.21(a); 2000-67, s. 26.18; 2002-113, s. 1; 2002-126, s. 28.7; 2003-284, s. 30.19; 2004-124, s. 31.18; 2005-276, s. 29.26; 2006-66, s. 22.19; 2007-323, s. 28.21; 2008-107, s. 26.25; 2013-284, s. 1(a); 2014-64, s. 3(a); 2016-108, s. 1(b), (d), (f); 2018-85, s. 9(a).

Editor's Note.

Session Laws 1983, c. 636, which inserted the next-to-last paragraph, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, provides in ss. 37.1 and 38, as amended by Session Laws 1983, c. 768, s. 25:

"Sec. 37.1. The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections.

"Sec. 38. This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall

become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1993 (Reg. Sess., 1994), c. 653, s. 1 which amended this section was effective July 1, 1994, contingent on whether funds to implement it are appropriated in the Current Operations and Capital Improvements Appropriations Act of 1994.

Session Laws 1995, c. 507, which amended this section, in s. 7.21A(i) provides: "The changes made to G.S. 58-86-45 and G.S. 58-86-55 by this Part do not affect the credit received for service performed before July 1, 1995. The increase in monthly pension contributions from five dollars (\$5.00) to ten dollars (\$10.00) in G.S. 58-86-55 does not affect the amount of monthly contributions made prior to July 1, 1995."

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 2016-108, s. 1(e), made subsection (d1) of this section, as added by Session Laws 2016-108, s. 1(b), applicable to benefits paid when a member is killed in the line of duty on or after July 1, 2018. Session Laws 2016-108, s. 1(e), made subsection (d2) of this section, as added by Session Laws 2016-108, s. 1(d), applicable to benefits paid when a mem-

ber is killed in the line of duty on or after June 1, 2016, but before July 1, 2018.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 1(b), effective July 1, 2018, added subsection (d1) and Session Laws 2016-108, s. 1(f), effective July 1, 2018, repealed subsection (d2). See editor's note for applicability.

Session Laws 2016-108, s. 1(d), effective June 1, 2016, added subsection (d2). See editor's note for applicability.

Session Laws 2018-85, s. 9(a), effective July 1, 2018, substituted "eligible and has not accepted a return of contributions," for "eligible," in subdivisions (d1)(1) and (d1)(3).

§ 58-86-60. Payments in lump sums.

The board shall direct payment in lump sums from the fund in the following cases:

- (1) To any firefighter or rescue squad worker upon the attaining of the age of 55 years, who, for any reason, is not qualified to receive the monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him. This provision shall not be construed to preclude any active firefighter or rescue squad worker from completing the requisite number of years of active service after attaining the age of 55 years necessary to entitle the firefighter or rescue squad worker to the pension.
- (2) If any firefighter or rescue squad worker dies, except if the individual is killed in the line of duty, before attaining the age at which a pension is payable to the firefighter or rescue squad worker under the provisions of this Article, there shall be paid to the person or persons designated by the member, or if the member has not designated a beneficiary, to the surviving spouse of the deceased member, or if not survived by a designated beneficiary or spouse, to the deceased member's legal representative, an amount equal to the amount paid into the member's separate account by or on behalf of the said firefighter or rescue squad worker.
- (3) If any firefighter or rescue squad worker dies, except if the individual is killed in the line of duty, after beginning to receive the pension payable to the firefighter or rescue squad worker by this Article, and before receiving an amount equal to the amount paid into the fund by him or her, there shall be paid to the person or persons designated by the member, or if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member, or if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative, an amount equal to the difference between the amount paid into the member's separate account by or on behalf of the said firefighter or rescue squad worker and the amount received by him or her as a pensioner.

- (4) Any member who withdraws from the fund shall, upon proper application, be paid all moneys without accumulated earnings on the payments after the time they were made. A member may not purchase time under G.S. 58-86-45 for which he or she has received a refund.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 2; 1981, c. 1029, s. 1; 1987, c. 667, s. 1; 2009-66, s. 2(h); 2009-365, s. 1; 2013-284, s. 1(a); 2016-108, s. 1(c).

Editor's Note.

Session Laws 2016-108, s. 1(e), made the amendment to this section by Session Laws 2016-108, s. 1(c), applicable to benefits paid when a member is killed in the line of duty on or after July 1, 2018.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 1(c), effective July 1, 2018, in subdivisions (2) and (3), substituted "dies, except if the indi-

viduals is killed in the line of duty" for "dies" and "to the person or persons designated by the member, or if the member has not designated a beneficiary, to the surviving spouse of the deceased member, or if not survived by the designated beneficiary or spouse, to the deceased member's legal representative" for "to his or her surviving spouse, or if there be no surviving spouse, to the person responsible for his or her child or children, or if there be no surviving spouse or children, then to his or her heirs at law as may be determined by the board or to his or her estate, if it is administered and there are no heirs." See editor's note for applicability.

§ 58-86-65. Pro rata reduction of benefits when fund insufficient to pay in full.

If, for any reason, the fund created and made available for any purpose covered by this Article shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.

§ 58-86-70. Provisions subject to future legislative change.

These pensions shall be subject to future legislative change or revision, and no member of the fund, or any person, is deemed to have acquired any vested right to a pension or other payment provided by this Article.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.

§ 58-86-75. Determination of creditable service; information furnished by applicants for membership.

The board shall determine by appropriate rules and regulations the number of years' credit for service of firefighters and rescue

squad workers. Firefighters and rescue squad workers who are now serving as such shall furnish the board with information upon applying for membership as to previous service. Notwithstanding any other provisions of this Article, the Board may grant qualified prior service credits to eligible firemen [firefighters] and rescue squad workers under such terms and conditions that the Board may adopt when the Board determines that an eligible firefighter or rescue squad worker has been denied such service credits through no fault of his or her own.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1987 (Reg. Sess., 1988), c. 1086, s. 29; 2013-284, s. 1(a).

Editor's Note.

The bracketed reference to "[firefighters]" has been inserted at the direction of the Revisor of Statutes.

§ 58-86-80. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.

A firefighter's or rescue squad worker's length of service shall not be affected by the fact that he or she may have served with more than one department or squad, and upon transfer from one department or squad to another, notice of the fact shall be given to the board.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 2013-284, s. 1(a).

§ 58-86-85. Repealed by Session Laws 2005-91, s. 13, effective July 1, 2005, and Session Laws 2005-281, s. 1.1, effective August 18, 2005.

§ 58-86-90. Exemptions of pensions from attachment; rights nonassignable.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments or judgments against the firefighter or rescue squad worker entitled to them, nor are any rights in the fund or the pensions or benefits assignable. Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payments to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions, or any other right accruing under this Article to the same person, the person's estate, or designated beneficiary.

History.

1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 486; 1981, c. 1029, s. 1; 1985, c. 402; 1989, c. 792, s. 2.1; 2013-284, s. 1(a); 2017-129, s. 1(a).

Effect of Amendments.

Session Laws 2017-129, s. 1(a), effective July 20, 2017, added the second sentence in the section.

§ **58-86-91.** Repealed by Session Laws 2013-284, s. 1(a), effective July 1, 2013.

History.

2002-126, s. 6.4(f); repealed by 2013-284, s. 1(a), effective July 1, 2013.

ductions for payments to certain employees' or retirees' associations allowed.

Editor's Note.

Former G.S. 58-86-91 pertained to de-

§ **58-86-95. Leaves of absence; inactive membership.**

(a) Any member who resigns as an eligible firefighter or an eligible rescue squad worker, whichever is applicable, may withdraw from the fund and seek a refund under G.S. 58-86-60 or take a leave of absence as provided by G.S. 58-86-95, or he or she will be considered an inactive member.

(b) In order to take a leave of absence, any member not on active military service must provide the office of the director with written notice that the member is taking a leave of absence. Any member not on active military service on leave of absence for more than five years in any six-year period shall be considered an inactive member.

(c) A member is not eligible for service credit for the time he or she is on leave of absence and is not required to make monthly payments for that time. During the time a member is on leave of absence he or she is not eligible for benefits from the pension fund. A member who has taken a leave of absence may subsequently withdraw from the pension fund and seek a refund under G.S. 58-86-60. If a member dies while he or she is on leave of absence, the appropriate person or persons may seek a refund under G.S. 58-86-60.

(d) Any member not on active military service who does not make contributions for two consecutive years and has not taken a leave of absence shall be considered an inactive member.

(e) The director of the pension fund shall communicate annually with each eligible fire department and eligible rescue or emergency medical services squad and transmit a list of those persons on a leave of absence. The director may consult with eligible fire departments and eligible rescue or emergency medical services squads with regard to the presumed status of members.

(f) The director of the pension fund shall maintain records of all inactive members of the fund, including dates of termination of service at an eligible fire department and eligible rescue or emergency medical services squad, and may consult with eligible fire

departments and eligible rescue or emergency medical services squads with regard to the presumed status of members.

(g) Members on active military service must notify the director prior to commencement of active military service and subsequent to return from active duty and shall be granted a leave of absence for the entire time of the military service.

(h) If a member who is in service and has not received 20 years of fully credited service in this System on December 1, 2013, is convicted of an offense listed in G.S. 58-86-100 for acts committed after December 1, 2013, then that member shall forfeit all benefits under this System, except for a return of member contributions. If a member who is in service and has not received 20 years of fully credited service in this System on December 1, 2013, is convicted of an offense listed in G.S. 58-86-100 for acts committed after December 1, 2013, then that member is not entitled to any fully credited service that accrued after December 1, 2013.

History.

2013-284, s. 1(a); 2013-284, s. 2(c).

§ 58-86-100. Forfeiture of retirement benefits for certain felonies that would bring disrepute on a fire department or rescue squad.

(a) Except as provided in G.S. 58-86-95(h), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is not yet 55 years of age or has not yet received 20 years of fully credited service or while the member is 55 years of age or older and has 20 years of fully credited service but is still serving as a participant in an eligible fire department or eligible rescue squad.
- (2) The conduct resulting in the member's conviction is directly related to service as a firefighter or rescue squad worker and brings disrepute on a fire department or rescue squad.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9a) or other applicable State or federal procedure that the offense is directly related to service as a firefighter or rescue squad worker.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions, subsequently receives an unconditional pardon of innocence or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of

the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited.

History.

2013-284, s. 2(a).

Editor's Note.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts

of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

Session Laws 2013-284, s. 4, made this section effective December 1, 2013, and applicable to offenses committed on or after that date.

§ 58-86-101. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 58-86-100 is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits.

History.

2018-52, s. 6(e).

Editor's Note.

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'".

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 11, made this section effective June 25, 2018.

CHAPTER 108A.
SOCIAL SERVICES.

Article 2. Programs of Public Assistance.

Part 8. Health Insurance Program for Children.

Section
108A-70.20A. [Repealed.]

ARTICLE 2.
PROGRAMS OF PUBLIC ASSISTANCE.
PART 8.
HEALTH INSURANCE PROGRAM FOR
CHILDREN.

§ 108A-70.20A. Repealed by Session Laws 2015-96, s. 3, effective June 19, 2015.

History.

2008-107, s. 10.13(c); 2011-85, s. 2.8; repealed by 2015-96, s. 3, effective June 19, 2015.

10.13(c). It was renumbered as G.S. 135-47.2 at the direction of the Revisor of Statutes.

Session Laws 2011-85, s. 2.8, effective January 1, 2012, recodified former G.S. 135-47.2 as G.S. 108A-70.20A.

Editor's Note.

This section was codified as G.S. 135-43, by Session Laws 2008-107, s.

Former G.S. 108A-70.20A pertained to a child health insurance fund.

**CHAPTER 115C.
ELEMENTARY AND SECONDARY EDUCATION.**

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 14A. Charter Schools.

Section

115C-218.100. Dissolution of a charter school.

SUBCHAPTER V. PERSONNEL.

Article 23. Employment Benefits.

115C-341. Annuity contracts from local boards of education.

115C-341.2. Department of State Treasurer sponsored 403(b) option.

**SUBCHAPTER IV.
EDUCATION PROGRAM.**

**ARTICLE 14A.
CHARTER SCHOOLS.**

§ 115C-218.100. Dissolution of a charter school.

(a) **Funds Reserved for Closure Proceedings.** — A charter school that has elected to participate in the North Carolina Retirement System pursuant to G.S. 135-5.3 shall, for as long as the charter school continues to participate in the North Carolina Retirement System, maintain for the purposes of ensuring payment of expenses related to closure proceedings in the event of a voluntary or involuntary dissolution of the charter school, one or more of the options set forth in this subsection. The minimum aggregate value of the options chosen by the charter school shall be fifty thousand dollars (\$50,000). The State Board of Education shall not allocate any funds under G.S. 115C-218.105 to a charter school unless the school has provided documentation to the State Board that the charter school has met the requirements of this subsection. Permissible options to satisfy the requirements of this subsection include one or more of the following:

- (1) An escrow account.
- (2) A letter of credit.
- (3) A bond.
- (4) A deed of trust.

(a1) In the event of a voluntary or involuntary dissolution of the charter school, the funds reserved for closure proceedings in subsection (a) of this section shall be used to pay wages owed to charter school employees, funds owed to the North Carolina Retirement System pursuant to G.S. 135-8, and funds owed to the State Health

Plan, in that order. Other expenses shall be paid from the remaining balance in the funds reserved for closure proceedings in subsection (a) of this section.

(b) **Distribution of Assets.** — Upon dissolution of a charter school, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located.

History.

2014-100, s. 8.34(b); 2014-101, s. 7; 2015-168, s. 4; 2015-248, s. 8(a).

Editor's Note.

This section is former G.S. 115C-238.29L, as enacted by Session Laws 2014-100, s. 8.34(b). It has been renumbered as this section at the direction of the Revisor of Statutes, pursuant to Session Laws 2014-101, s. 7.

Session Laws 2014-100, s. 38.8, made this section effective July 1, 2014. Session Laws 2014-100, s. 8.34, made this section applicable to charter schools that submit applications for an initial charter or the renewal of a charter to the State Board of Education on or after August 7, 2014.

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.7, is a severability clause.

Session Laws 2014-101, s. 8, provides, in part: "Except as otherwise provided, this act is effective when it becomes law [August 6, 2014] and applies beginning with the 2014-2015 school year."

Session Laws 2015-248, s. 8(b), provides: "The State Board of Education shall study and develop a proposed policy regarding circumstances in which a charter school, approved by the State Board pursuant to G.S. 115C-218.5,

should be subject to a minimum value requirement of fifty thousand dollars (\$50,000) for the purposes of ensuring payment of expenses related to closure proceedings. The State Board shall also consider whether certain charter schools should be provided with a total or partial waiver of such a requirement and shall examine criteria for potentially eligible charter schools, such as the years of operation of the charter school, proven compliance with finance, governance, academic requirements of its charter, State law, and State Board policy requirements, as well as appropriate documentation to show the charter school's financial health and sustainability."

Session Laws 2015-248, s. 8(c), provides: "By February 15, 2016, the State Board of Education shall report to the Joint Legislative Education Oversight Committee on the results of the study and a proposed policy as required by subsection (b) of this section, including any legislative recommendations."

Session Laws 2015-248, s. 8(e) provides: "This section is effective when it becomes law [September 23, 2015]. Subsection (a) of this section applies to charter schools that submitted applications for an initial charter or the renewal of a charter to the State Board of Education on or after August 2, 2014."

Effect of Amendments.

Session Laws 2015-168, s. 4, effective January 1, 2016, added subsection (a1).

SUBCHAPTER V.**PERSONNEL.****ARTICLE 23.****EMPLOYMENT BENEFITS.****§ 115C-341. Annuity contracts from local boards of education.**

Notwithstanding the provisions of this Chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, local boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The local board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the local boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall be included in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased by local boards of education for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees.

History.

1963, c. 582; 1981, c. 423, s. 1; 1989, c. 526, s. 1; 2011-310, s. 1.

§ 115C-341.2. Department of State Treasurer sponsored 403(b) option.

(a) In addition to the opportunities for local boards of education to offer section 403(b) of the Internal Revenue Code of 1986 retirement annuities and/or mutual funds to their employees under G.S. 115C-341, the Department of State Treasurer may establish an approved third-party vendor of retirement offerings as described in section 403(b) of the Internal Revenue Code of 1986, as now and hereafter amended, pursuant to which employees of local school boards may enter into nonforfeitable 403(b) plan options by way of salary reduction through the auspices of the Department of State Treasurer. This statewide plan of 403(b) offerings shall be known as the “North Carolina Public School Teachers’ and Professional Educators’ Investment Plan.” The vendor authorized under this section shall be selected by use of Supplemental Retirement Board of Trustees procurement procedures under Article 5 of Chapter 135 of the General Statutes, with the goal of attaining lower administrative fees and enhanced services for participants and employer compliance with applicable law and regulations. Eligible employees of local school boards shall all be allowed to use this vendor for the tax-deferred 403(b) option of their choice.

(b) The criteria in this subsection apply to the Department of State Treasurer’s 403(b) offerings to employees of local school boards under this section.

- (1) Annuity contracts, trust accounts, and/or custodial accounts shall be administered by a qualified third-party administrator that shall, under written agreement with the Department of State Treasurer, provide custodial, record-keeping, and administrative services. The third-party administrator may also be the selected vendor for the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan.

For employers choosing to participate in the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan, the third-party administrator shall, at a minimum, provide the following:

- a. Maintain a written plan document.
- b. Review hardship withdrawal requests, loan requests, and other disbursements permitted under section 403(b) of the Internal Revenue Code of 1986.
- c. Maintain specimen salary reduction agreements for the employer and employees of that employer to initiate payroll deferrals.
- d. Monitor maximum contributions.
- e. Coordinate responses to the Internal Revenue Service in any case of an IRS audit.

- f. Generate educational communication materials to employees concerning the enrollment process, program eligibility, and investment options.
 - g. Maintain internal reports to ensure compliance with Section 403(b) of the Internal Revenue Code and Title 26 of the Code of Federal Regulations.
 - h. Provide compliance monitoring/oversight for all 403(b) plans established under G.S. 115C-341 within each participating local board of education plan by creating and establishing the necessary connections and processes with existing and future vendors.
 - i. Keep an updated schedule of vendor fees and commissions as to the Department's statewide plan of 403(b) offerings.
- (2) Governance and oversight of the North Carolina Public School Teachers' and Professional Educators' Investment Plan will be performed under Article 5 of Chapter 135 of the General Statutes by the Department of State Treasurer and the Supplemental Retirement Board of Trustees established pursuant to G.S. 135-96. Because of the administrative and record-keeping duties enumerated in subdivision (1) of this subsection, any existing vendor of a 403(b) with a participating employer must either agree to share data with the State's 403(b) vendor under this provision (so as to permit oversight over contribution limits, loans, and hardship withdrawals) or be directed by the participating employer to cease accepting new contributions, loans, and hardship withdrawals.
- (3) Investment options shall be solely determined by the Department of State Treasurer and the Supplemental Retirement Board of Trustees consistent with section 403(b) of the Internal Revenue Code of 1986, as amended.
- (4) Investment staff of the Department of State Treasurer may make recommendations to the State Treasurer and the Supplemental Retirement Board of Trustees as to appropriate investment options. Pursuant to G.S. 135-96, the State Treasurer and Board of Trustees shall have sole responsibility for the selection of the vendor, third-party administrator, providers of investment options, and any other service provider for the North Carolina Public School Teachers' and Professional Educators' Investment Plan.
- (5) All contributions made in accordance with the provisions of section 403(b) of the Internal Revenue Code of 1986, as amended, and this section shall be remitted directly to the administrator and held by the administrator in a custodial account on behalf of each participating employee. Any investment gains or losses shall be credited to those ac-

counts. The forms of payment and disbursement procedures shall be consistent with those generally offered by similar annuity contracts, trust accounts, and custodial accounts and applicable federal and State statutes governing those contracts and accounts.

- (6) Any local board of education may elect to make contributions to the employee's account on behalf of the employee. The employer shall take whatever action is necessary to implement this section.
- (7) The design and administration of annuity contracts, trust accounts, and custodial accounts under this provision shall comply with all applicable provisions of the Internal Revenue Code of 1986, as amended.

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

History.

2011-310, s. 2; 2016-108, s. 7(a); 2018-84, s. 5(b).

Editor's Note.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 7(a), effective July 22, 2016, substituted "Supplemental Retirement Board of Trustees" for "Board of Trustees for the North Carolina Supplemental Retirement Plans" throughout the section; in subsection (a), inserted "of 403(b) offerings" in

the second sentence, and in the third sentence, substituted "Supplemental Retirement Board of Trustees" for "State" and "procedures under Article 5 of Chapter 135 of the General Statutes" for "procedures"; in subdivision (b)(1)i., substituted "plan of 403(b) offerings" for "plan"; in subdivision (b)(2), inserted "under Article 5 of Chapter 135 of the General Statutes" and in subdivision (b)(4), inserted "vendor, third-party administrator, providers of investment options, and any other"; and "Pursuant to G.S. 135-96."

Session Laws 2018-84, s. 5(b), effective June 25, 2018, added subsection (c).

CHAPTER 115D.

COMMUNITY COLLEGES.

Article 2. Local Administration.

Section

115D-25. Purchase of annuity or retirement income contracts for employees by local boards of trustees.

115D-25.4. Department of State Treasurer-sponsored 403(b) option.

ARTICLE 2.

LOCAL ADMINISTRATION.

§ 115D-25. Purchase of annuity or retirement income contracts for employees by local boards of trustees.

Notwithstanding any provision of law relating to salaries or salary schedules for the pay of faculty members, administrative officers, or any other employees of community colleges, the board of trustees of any of the above institutions may authorize the finance officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for reductions in salaries below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to in this section shall be effected under any necessary regulations and procedures adopted by the State Board of Community Colleges and on forms prepared by the State Board of Community Colleges. Notwithstanding any other provisions of this section or law, the amount by which the salary of an officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased by local boards of

trustees for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees.

History. 564, s. 11; 1989, c. 526, s. 2; 2015-169, s. 1965, c. 366; 1979, c. 462, s. 2; c. 896, s. 1. 13; 1979, 2nd Sess., c. 1130, s. 1; 1987, c.

§ 115D-25.4. Department of State Treasurer-sponsored 403(b) option.

(a) In addition to the opportunities for local boards of trustees to offer section 403(b) of the Internal Revenue Code of 1986 retirement annuities and/or mutual funds to their employees under G.S. 115D-25, local boards of trustees may also offer the “North Carolina Public School Teachers’ and Professional Educators’ Investment Plan” as operated by the Department of State Treasurer.

(b) The criteria in this subsection apply to the Department of State Treasurer’s 403(b) offerings to employees of local boards of trustees under this section:

- (1) Annuity contracts, trust accounts, and/or custodial accounts shall be administered by a qualified third-party administrator that shall, under written agreement with the Department of State Treasurer, provide custodial, record-keeping, and administrative services. The third-party administrator may also be the selected vendor for the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan.

For local boards of trustees as employers choosing to participate in the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan, the third-party administrator shall, at a minimum, provide the following:

- a. Maintain a written plan document.
- b. Review hardship withdrawal requests, loan requests, and other disbursements permitted under section 403(b) of the Internal Revenue Code of 1986.
- c. Maintain specimen salary reduction agreements for the employer and employees of that employer to initiate payroll deferrals.
- d. Monitor maximum contributions.
- e. Coordinate responses to the Internal Revenue Service in any case of an IRS audit.
- f. Generate educational communication materials to employees concerning the enrollment process, program eligibility, and investment options.
- g. Maintain internal reports to ensure compliance with section 403(b) of the Internal Revenue Code and Title 26 of the Code of Federal Regulations.

- h. Provide compliance monitoring/oversight for all 403(b) plans established under G.S. 115D-25 within each participating local board of trustees plan by creating and establishing the necessary connections and processes with existing and future vendors.
 - i. Keep an updated schedule of vendor fees and commissions as to the Department's statewide plan of 403(b) offerings.
- (2) Governance and oversight of the North Carolina Public School Teachers' and Professional Educators' Investment Plan will be performed under Article 5 of Chapter 135 of the General Statutes by the Department of State Treasurer and the Supplemental Retirement Board of Trustees established pursuant to G.S. 135-96. Because of the administrative and record-keeping duties enumerated in subdivision (1) of this subsection, any existing vendor of a 403(b) with a participating employer must either agree to share data with the State's 403(b) vendor under this provision (so as to permit oversight over contribution limits, loans, and hardship withdrawals) or be directed by the participating employer to cease accepting new contributions, loans, and hardship withdrawals.
- (3) Investment options shall be solely determined by the Department of State Treasurer and the Supplemental Retirement Board of Trustees consistent with section 403(b) of the Internal Revenue Code of 1986, as amended.
- (4) Investment staff of the Department of State Treasurer may make recommendations to the State Treasurer and the Supplemental Retirement Board of Trustees as to appropriate investment options. Pursuant to G.S. 135-96, the State Treasurer and Board of Trustees shall have sole responsibility for the selection of the vendor, third-party administrator, providers of investment options, and any other service provider for the North Carolina Public School Teachers' and Professional Educators' Investment Plan.
- (5) All contributions made in accordance with the provisions of section 403(b) of the Internal Revenue Code of 1986, as amended, and this section shall be remitted directly to the administrator and held by the administrator in a custodial account on behalf of each participating employee. Any investment gains or losses shall be credited to those accounts. The forms of payment and disbursement procedures shall be consistent with those generally offered by similar annuity contracts, trust accounts, and custodial accounts and applicable federal and State statutes governing those contracts and accounts.
- (6) Any local board of trustees may elect to make contributions to the employee's account on behalf of the employee. The

local board of trustees shall take whatever action is necessary to implement this section.

- (7) The design and administration of annuity contracts, trust accounts, and custodial accounts under this provision shall comply with all applicable provisions of the Internal Revenue Code of 1986, as amended.

History.

2015-169, s. 2; 2016-108, s. 7(b).

Editor's Note.

Session Laws 2015-169, s. 3, made this section effective October 1, 2015.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 7(b), effective July 22, 2016, in subsection (b), substituted "the Supplemental Retirement

Board of Trustees" for "Board of Trustees for the North Carolina Supplemental Retirement Plans" throughout; in subdivision (b)(1)i., added "of 403(b) offerings" at the end; in subdivision (b)(2), inserted "under Article 5 of Chapter 135 of the General Statutes" in the first sentence; and in subdivision (b)(4), inserted "Pursuant to G.S. 135-96" and "vendor, third-party administrator, providers of investment options, and any other" in the second sentence.

CHAPTER 120. GENERAL ASSEMBLY.

Article 1. Apportionment of Members; Compensation and Allowances.

Section

120-4.2. Repeal of Legislative Retirement Fund.

Article 1A. Legislative Retirement System.

120-4.8. Definitions.

120-4.9. Retirement system established.

120-4.10. Administration of retirement system.

120-4.11. Membership.

120-4.12. Creditable service.

120-4.12A. Reciprocity of creditable service with other state-administered retirement systems.

120-4.13. Transfer of membership and benefits.

120-4.14. Purchase of prior service.

120-4.15. Repayment of contributions.

120-4.16. Repayments and purchases.

120-4.17. Assets of retirement system.

120-4.18. Management of funds.

120-4.19. Contributions by the members.

120-4.20. Contributions by the State.

120-4.21. Service retirement benefits.

120-4.22. Disability retirement benefits.

120-4.22A. Post-retirement increases in allowances.

120-4.23. Reexamination for disability retirement allowance.

120-4.24. Return to membership of former member.

120-4.25. Return of accumulated contributions.

120-4.26. Benefit payment options.

120-4.26A. Benefits on death after retirement.

120-4.27. Death benefit.

120-4.28. Survivor's alternate benefit.

120-4.29. Exemption from garnishment, attachment.

120-4.30. Termination or partial termination; discontinuance of contributions.

120-4.31. Internal Revenue Code compliance.

120-4.32. Deduction for payments allowed.

120-4.33. Forfeiture of retirement benefits for certain felonies.

120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

120-4.33B. Prohibition on purchase of forfeited service.

120-4.34. Improper receipt of decedent's retirement allowance.

Article 7. Legislative Services Commission.

120-32.01. Information to be supplied.

Article 14A. Committees on Pensions and Retirement.

120-111.3. Analysis of legislation.

Article 15. Legislative Actuarial Note Act.

120-114. Actuarial notes; Retirement System cost estimates.

ARTICLE 1. APPORTIONMENT OF MEMBERS; COMPENSATION AND ALLOWANCES.

§ 120-4.2. Repeal of Legislative Retirement Fund.

(a) Effective as of the end of the term of the members of the 1973 General Assembly, G.S. 120-4.1 is repealed, subject to the following

provisions to preserve vested and inchoate rights in the Legislative Retirement Fund:

(b) All persons who have at least four terms of creditable service as of the end of the 1973 term shall be entitled to receive the retirement benefits provided under G.S. 120-4.1 as it existed prior to this repealing act, but no credit shall be given for any service performed after the end of the 1973 term.

(c) Solely for purposes of administering the benefits authorized by G.S. 120-3 to 120-4.2, the authority and duties created by G.S. 120-4.1 as it existed prior to this repealing act shall continue in effect, except that the General Assembly may opt to make annual transfers instead of quarterly transfers of funds to the Department of State Treasurer.

History.

1973, c. 1482, s. 3; 2014-97, s. 7.

Editor's Note.

Session Laws 1979, c. 467, s. 11, provided that: "Any other provisions of law to the contrary notwithstanding, the State Treasurer shall invest the assets of

the Legislative Retirement Fund created by Chapter 1269 of the Session Laws of 1969, as amended by Chapter 905 of the Session Laws of 1971 and Chapter 1482 of the Session Laws of 1973, in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3."

ARTICLE 1A.

LEGISLATIVE RETIREMENT SYSTEM.

§ 120-4.8. Definitions.

The following words and phrases as used in this Article, unless the context clearly requires otherwise, have the following meanings:

- (1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest as provided in G.S. 135-7(b).
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.
- (3) "Annuity" means payment for life derived from the "Accumulated contribution" of a member. All "annuities" are payable in equal monthly installments.
- (4) "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.
- (5) "Compensation" means salary and expense allowance paid for service as a legislator in the North Carolina General Assembly, exclusive of travel and per diem. Effective July 1,

2009, “compensation” also means payment of military differential wages.

- (6) “Filing,” when used in reference to an application for retirement, means the receipt of an acceptable application on a form provided by the Retirement System.
- (7) “Highest annual salary” means the twelve consecutive months of compensation authorized during a member’s final legislative term for the highest position that a member ever held as a member of the General Assembly.
- (8) “Medical Board” means the board of physicians provided for in G.S. 135-6, which shall determine disability as provided in this Article.
- (9) “Member in service” means a member in service on or after June 15, 1983.
- (10) “Pension reserve” means the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of the mortality tables adopted by the Board of Trustees, and regular interest.
- (11) “Pensions” means payments for life derived from money provided by the State of North Carolina. All pensions are payable in equal monthly installments.
- (12) “Present member of the General Assembly” means a person who is a member of the General Assembly on or after June 15, 1983.
- (13) “Regular interest” means interest compounded annually at the rate determined by the Board of Trustees in accordance with G.S. 135-7(b) and G.S. 120-4.10.
- (14) “Retirement” means the withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member’s retirement to become effective in any month, the member must render no service at any time during that month.
- (15) “Year” as used in this Article shall mean the regular fiscal year beginning July 1, and ending June 30 in the following calendar year unless otherwise defined by rule of the Board of Trustees.

History.

1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 769, s. 31(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.29(a); 2009-66, s. 6(h).
1984), c. 1034, s. 198; 1987, c. 738, s.

§ 120-4.9. Retirement system established.

A Retirement System is established and placed under the Board of Trustees of the Teachers’ and State Employees’ Retirement System for administrative purposes. This Retirement System is a governmental plan, within the meaning of Section 414(d) of the Internal

Revenue Code. Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not apply.

The Retirement System shall have all the power and privileges of a corporation and shall be known as the “Legislative Retirement System of North Carolina.” By this name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held. All direction and policies concerning the Legislative Retirement System shall be vested in the Board of Trustees.

Consistent with Section 401(a)(1) of the Internal Revenue Code, all member employee and employer contributions to this Retirement System shall be made to funds held in trust through trust instruments that have the purposes of distributing trust principal and income to retired members and their beneficiaries and of paying other definitely determinable benefits under this Chapter, after meeting the necessary expenses of administering this Retirement System. Neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan document, consisting of relevant statutory provisions in this Chapter, associated regulations in the North Carolina Administrative Code, substantive and procedural information on the official forms used by the Retirement System, and policies and minutes of the Board of Trustees.

History.

1983, c. 761, s. 238; 2012-130, s. 7(a);
2013-287, s. 6.

§ 120-4.10. Administration of retirement system.

The Board of Trustees of the Teachers’ and State Employees’ Retirement System shall be the trustee of the Retirement System. The provisions of this Article shall be administered by the Board of Trustees.

History.

1983, c. 761, s. 238; 2013-287, s. 7.

§ 120-4.11. Membership.

The following members of the General Assembly and former members of the General Assembly are eligible for membership in the Retirement System:

- (1) Members of the General Assembly who serve on and after June 15, 1983; and

- (2) Former members of the General Assembly who served prior to June 15, 1983; and
 - a. Who elect to transfer current and future entitlements, or contributions, from the Legislative Retirement Fund established by Chapter 1269 of the 1969 Session Laws; or
 - b. Who have five or more years of service as a member of the General Assembly.

History. ss. 1, 7; 1987 (Reg. Sess., 1988), c. 1109;
1983, c. 761, s. 238; 1983 (Reg. Sess., 2001-424, s. 32.30(a).
1984), c. 1034, ss. 188, 189; 1985, c. 400,

§ 120-4.12. Creditable service.

(a) Creditable service at retirement consists of the membership service rendered by the member of the Retirement System and any prior service purchased or granted by this Article.

(b) Membership Service means the number of years served as a member of the General Assembly as of the establishment of the Retirement System and thereafter. One year of membership service is equal to 12 months for which a legislator received compensation.

(c) Prior service means:

- (1) The number of years a present member of the General Assembly served in the General Assembly prior to becoming a member of the Retirement System;
- (2) The number of years served by former members of the General Assembly who were vested in the Legislative Retirement Fund. One year of prior service is equal to 12 months for which a legislator received compensation.

(c1) Any member of the Retirement System who was a member of the General Assembly as of January 1985 may purchase prior service credit for the month of January 1985 based upon seven percent (7%) of the compensation received for that period.

(d) Any member of the Retirement System who has eight or more years of creditable service as a member of the General Assembly may purchase prior service credit for service in the Armed Forces of the United States at the same rates and conditions as set forth in G.S. 120-4.14 and G.S. 120-4.16; provided that credit is allowed only for the initial period of active duty in the Armed Forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submits satisfactory evidence of the service claimed and that service credit be allowed only for the period of active service in the Armed Forces of the United States not creditable in any other retirement system, except the National

Guard or any reserve component of the Armed Forces of the United States.

(e) Any member of the Retirement System who has five or more years of creditable service as a member of the General Assembly may purchase credit for service in the Armed Forces of the United States eligible under subsection (d) of this section by making a lump sum payment into the Annuity Savings Fund equal to the full actuarial cost as provided for in G.S. 135-4(m).

(f) If a member who has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 120-4.33 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System. If a member who has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 120-4.33 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as a member of the General Assembly.

(g) If a member who is a present member of the General Assembly and who has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 120-4.33A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is a present member of the General Assembly and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 120-4.33A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012.

History.

1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 187, 190; 1989, c. 762, s. 1; 1993, c. 321, s. 71; 2007-179, s. 1(b); 2009-281, s. 1; 2011-183, s. 89; 2012-193, s. 8.

Editor's Note.

Session Laws 2012-193, s. 18, made subsection (g) effective December 1, 2012, and applicable to offenses committed on or after that date.

§ 120-4.12A. Reciprocity of creditable service with other state-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable

service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits.

History.

1989 (Reg. Sess., 1990), c. 1066, s. 35(a).

§ 120-4.13. Transfer of membership and benefits.

(a) The Board of Trustees shall set up procedures to transfer membership from the Legislative Retirement Fund to the Retirement System and to recompute benefits paid to retirees of the Legislative Retirement Fund who elect to transfer to the Retirement System.

(b) The accumulated contributions and creditable service of any member whose service as a member of the General Assembly has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-1(13), of the Teachers' and State Employees' Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Teachers' and State Employees' Retirement System. In order to effect the transfer of a member's creditable service from the Legislative Retirement System to the Teachers' and State Employees' Retirement System, there shall be transferred from the Legislative Retirement System to the Teachers' and State Employees' Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Legislative Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

(c) The accumulated contributions and creditable service of any member whose service as a member of the General Assembly has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-53(11), of the Consolidated Judicial

Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Legislative Retirement System to the Consolidated Judicial Retirement System, there shall be transferred from the Legislative Retirement System to the Consolidated Judicial Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Legislative Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

History.

1983, c. 761, s. 238; 2003-284, s. 30.18(a).

§ 120-4.14. Purchase of prior service.

Purchase of prior service rendered by a member of the General Assembly before becoming a member of the Retirement System that is not service that may be transferred pursuant to G.S. 120-4.12 shall be at the rate of one month of service for each month for which a legislator received compensation, computed as follows:

- (1) For final legislative terms beginning with the 1975 General Assembly, seven percent (7%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum.
- (2) Repealed by Session Laws 2018-85, s. 5, effective June 25, 2018.

History.

1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 191; 1985, c. 400, s. 2; 2018-85, s. 5.

Effect of Amendments.

The 2018 amendment, effective June

25, 2018, deleted former subdivision (2), which read: "For final legislative terms beginning prior to the 1975 General Assembly, five percent (5%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum."

§ 120-4.15. Repayment of contributions.

Repayment of contributions withdrawn from the Legislative Retirement Fund and System shall be at the rate of seven percent (7%) of the highest monthly compensation received as a legislator at the time of purchase for each month of creditable service restored plus an administrative fee to be paid in lump sum.

History.

1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 192.

§ 120-4.16. Repayments and purchases.

(a) All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible to make such repayments and purchases. All such repayments and purchases not made within two years after the member becomes eligible shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m).

(b) **Purchase of Service Credits Through Rollover Contributions From Certain Other Plans.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

(b1) **Purchase of Service Credits Through Plan-to-Plan Transfers.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) **Purchase of Service Credits Through Plan-to-Plan Transfers.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase

membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

History.

1983, c. 761, s. 238; 1987, c. 738, s. 31(b); 2002-71, s. 1; 2017-102, s. 18.

Editor's Note.

Session Laws 2002-71, s. 9, provides, in part, that s. 1 of the act becomes effective January 1, 2003, except that G.S. 120-4.16(c), as enacted by s. 1, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling

from the Internal Revenue Service approving the direct transfers provided for in that subsection. The Revisor of Statutes is informed that a favorable letter of determination has been received.

Effect of Amendments.

Session Laws 2017-102, s. 18, effective July 12, 2017, designated the former last sentence of subsection (b) as subsection (b1).

§ 120-4.17. Assets of retirement system.

(a) All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of two funds, either the Annuity Savings Fund or the Pension Accumulation Fund.

(b) The Annuity Savings Fund is the fund to which all members' contributions, and regular interest allowances provided for as in G.S. 135-7(b), shall be credited. From this fund shall be paid the accumulated contributions of a member.

(c) Upon the retirement of a member, his accumulated contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation Fund. In the event that a retired former member should subsequently again become a member of the Retirement System as provided for in G.S. 120-4.11, any excess of his accumulated contributions at his date of retirement over the sum of the retirement allowance payments received by him since his date of retirement shall be transferred from the Pension Accumulation Fund to the Annuity Savings Fund and shall be credited to his individual account in the Annuity Savings Fund.

(d) The Pension Accumulation Fund is the fund in which accumulated contributions by the State and amounts transferred from the Annuity Savings Fund in accordance with subsection (c) of this section and to which all income from the invested assets of the Retirement System are credited. From this fund is paid retirement allowances and any other benefits provided for under this Article except payments of accumulated contributions as provided in G.S. 120-4.14.

(e) The regular interest allowance on the members' accumulated contributions provided for as in G.S. 135-7(b) shall be transferred

each year from the Pension Accumulation Fund to the Annuity Savings Fund.

History.

1983, c. 761, s. 238.

§ 120-4.18. Management of funds.

The Board of Trustees shall manage the fund established by G.S. 120-4.17 pursuant to G.S. 135-7.

History.

1983, c. 761, s. 238.

§ 120-4.19. Contributions by the members.

Effective upon convening of the 1985 Regular Session of the General Assembly, each member shall contribute by payroll deduction for each pay period for which he receives compensation seven percent (7%) of his compensation for the period.

Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under this section with respect to the services of such members rendered after the effective date of this paragraph. The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the Annuity Savings Fund and accumulated within the Fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in G.S. 120-4.8(1). Picked-up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed.

History.

1983, c. 761, s. 238; 1985, c. 400, s. 8.

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contri-

butions computed as a set percentage of the employees' salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. *State Emples. Ass'n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 120-4.20. Contributions by the State.

(a) Effective upon convening of the 1985 Regular Session of the General Assembly, the State shall contribute annually an amount equal to the sum of the "normal contribution" and the "accrued liability contribution."

(b) The normal contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total compensation of the members for the period. The normal contribution rate shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the Retirement System, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, in excess of the part thereof provided by the members' contributions, to (ii) the total annual compensation of the members of the Retirement System.

(c) The accrued liability contribution for any period shall be determined as a percentage, equal to the accrued liability contribution rate, of the total compensation of the members for the period. The accrued liability contribution rate shall be determined as the percentage represented by the ratio of (i) the level annual contribution necessary to amortize the unfunded accrued liability over a period of 15 years, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, to (ii) the total annual compensation of the members of the Retirement System.

(d) The unfunded accrued liability as of any date shall be determined, in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, as the excess of (i) the then present value of the benefits to be provided under the Retirement System in the future over (ii) the sum of the assets of the Retirement System then currently on hand in the Annuity Savings Fund and the Pension Accumulation Fund, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the State.

(e) The normal contribution rate and the accrued liability contribution rate shall be determined after each annual valuation of the Retirement System and shall remain in effect until a new valuation is made.

(f) The annual contributions by the State for any year shall be at least sufficient, when combined with the amount held in the Pension Accumulation Fund at the start of the year, to provide the retirement allowances and other benefits payable out of the fund during the current year.

History.

1983, c. 761, s. 238.

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contri-

butions computed as a set percentage of the employees' salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. State Emples. Ass'n of N.C., Inc. v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 120-4.21. Service retirement benefits.

(a) **Eligibility; Application.** — Any member may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member may retire with reduced benefits who has reached the age of 50 years with 20 years of creditable service or 60 years with five years of creditable service. The member shall make electronic submission or written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 120 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) **Computation.** — Upon retirement from service in accordance with subsection (a) of this section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of

five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month his retirement date precedes his 65th birthday.

(b1) **Computation.** — Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, but before February 1, 1995, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his “highest annual salary,” multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month his retirement date precedes his 65th birthday.

(b2) **Computation.** — Upon retirement from service in accordance with subsection (a) of this section on or after February 1, 1995, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his “highest annual salary,” multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month his retirement date precedes his 65th birthday.
- (3) For a member whose retirement date occurs on or after his 50th birthday and before his 60th birthday and upon completion of 20 years of creditable service, computation as in subdivision (2) of this subsection, reduced by the same percentage as provided for in Article 1 of Chapter 135 of the General Statutes.

(c) **Limitations Applicable to Members Retiring Before September 1, 2005.** — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his “highest annual salary”.

(d) **Limitations Applicable to Members Retiring on or After September 1, 2005.** — In no event shall any member receive a service retirement allowance greater than seventy-five percent

(75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system.

History. s. 29.30A(j); 2006-226, ss. 23(a), (b); 1993 (Reg. Sess., 1994), c. 769, s. 2007-431, s. 3; 2009-66, s. 12(k). 7.30(p); 2001-424, s. 32.30(b); 2005-276,

§ 120-4.22. Disability retirement benefits.

(a) **Eligibility; Application.** — Upon application by or on behalf of the member, any member in service who has completed at least five years of creditable service and who has not reached his 60th birthday may, after medical certification, be retired on a disability retirement allowance by the Board of Trustees on the first day of the particular calendar month designated by the applicant. The designated date shall be no less than one day nor more than 120 days from the filing of the application.

(b) **Medical Certification.** — After a medical examination of the member, the medical board shall certify to the Board of Trustees that the member is mentally or physically incapacitated for further performance of duty as a member of the General Assembly, that the incapacity was incurred at the time of active employment and has been continuous thereafter, that the incapacity is likely to be permanent and whether the member should be retired.

(c) **Computation.** — Upon retirement for disability pursuant to subsection (a) of this section, a member shall receive a disability retirement allowance equal to a service retirement allowance calculated on the basis of the member's "highest annual salary" and the creditable service he would have had by the age of 60 had he continued in service.

(d) **Limitations.** — In no event shall any member receive a disability retirement allowance greater than seventy-five percent (75%) of his "highest annual salary".

History. s. 1; c. 738, s. 31(d); 2001-424, s. 32.30(c); 1983, c. 761, s. 238; 1983 (Reg. Sess., 2009-66, s. 3(l). 1984), c. 1034, ss. 195, 196; 1987, c. 513,

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to

retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ll) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ll) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months

that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of

months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(l) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of

months that a retirement allowance was paid between January 1, 2000, and June 30, 2000.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2002, and June 30, 2002.

(r) In accordance with subsection (a) of this section, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2003, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2003, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2003, and June 30, 2003.

(s) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2004, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2004, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2004, and June 30, 2004.

(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005.

(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2006, and June 30, 2006.

(v) In accordance with subsection (a) of this section, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007. Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2007, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2007, and June 30, 2007.

(w) In accordance with subsection (a) of this section, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2008, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008. Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2008, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2008, and June 30, 2008.

(x) In accordance with subsection (a) of this section, from and after July 1, 2012, the retirement allowance to or on account of

beneficiaries whose retirement commenced on or before January 1, 2012, shall be increased by one percent (1%) of the allowance payable on June 1, 2012. Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2012, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2012, and June 30, 2012.

(y) In accordance with subsection (a) of this section, from and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2014, shall be increased by one percent (1%) of the allowance payable on June 1, 2014. Furthermore, from and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2014, but before June 30, 2014, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2014, and June 30, 2014.

(z) In accordance with subsection (a) of this section, on or before October 31, 2016, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2016, and whose retirement commenced on or before September 1, 2016. The payment shall be one and six-tenths percent (1.6%) of the beneficiary's annual retirement allowance payable as of September 1, 2016, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

(aa) In accordance with subsection (a) of this section, from and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2017, shall be increased by one percent (1%) of the allowance payable on June 1, 2017. Furthermore, from and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2017, but before June 30, 2017, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2017, and June 30, 2017.

(bb) In accordance with subsection (a) of this section, on or before October 31, 2018, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2018, and whose retirement commenced on or before September 1, 2018. The payment shall be one percent (1%) of the

beneficiary's annual retirement allowance payable as of September 1, 2018, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

History.

1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d); 2003-284, s. 30.17(c); 2004-124, s. 31.17(c); 2005-276, s. 29.25(c); 2006-66, s. 22.18(b); 2007-323, s. 28.20(c); 2008-107, s. 26.23(c); 2012-142, s. 25.13(c); 2014-100, s. 35.14(c); 2016-94, s. 36.21(c); 2017-57, s. 35.19A(c); 2018-5, s. 35.28(c).

Editor's Note.

Session Laws 2016-94, s. 32.5(j), as amended by Session Laws 2016-123, s. 8.3(a), provides: "The responsibilities for the North Carolina Youth Legislative Assembly are transferred from the Department of Administration to the North Carolina General Assembly's Legislative Services Commission. Additionally, the budget associated with operations for the Youth Legislative Assembly and the North Carolina Youth Legislative Assembly Fund, enacted by subsection (k) of this section, are transferred as a Type II transfer from the Department of Administration to the General Assembly. The Administrative Officer II position will report directly to the Legislative Services Officer. The Youth Legislative Assembly will work collaboratively with existing resources within the General Assembly, including the Senate and House Page programs, to execute activities of the Youth Legislative Assembly."

Session Laws 2016-94, s. 36.21(d) provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement

system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year."

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2017-2019 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2017-2019 fiscal biennium."

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2018-57, s. 35.28(d), provides: "(d) Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year."

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-94, s. 36.21(c), effective July 1, 2016, added subsection (z).

Session Laws 2017-57, s. 35.19A(c), effective July 1, 2017, added subsection (aa).

Session Laws 2018-5, s. 35.28(c), effective July 1, 2018, added subsection (bb).

§ 120-4.23. Reexamination for disability retirement allowance.

Any disability retiree who has not reached age 65 shall be reexamined pursuant to G.S. 135-5(e). After he reaches age 65, no further examinations are required.

History.

1983, c. 761, s. 238.

§ 120-4.24. Return to membership of former member.

If a retired former member of the Retirement System or of the Legislative Retirement Fund returns to service as a member of the General Assembly, his retirement allowance shall cease and he shall be restored as a member of the Retirement System. The computation of the amount of benefits to which he may subsequently become entitled under this Article shall be computed as follows:

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

- (1) For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions.
- (2) For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service.

History.

1983, c. 761, s. 238; 1987, c. 738, s. 39(a).

§ 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, the member shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service the sum of the member's accumulated contributions provided the member has not in the meantime returned to

service. Upon payment of this sum his or her membership in the System ceases. If the individual becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons the member or former member nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28.

History.

1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 197; 1987, c. 738, s. 31(e); 1993, c. 531, s. 1; 2009-66, s. 11(k); 2014-88, s. 2(c); 2017-129, s. 3(f).

January 1, 2018, made gender-neutralizing changes throughout, and deleted "prior to completing 10 years of service" following "electronic submission" in the last sentence.

Effect of Amendments.

Session Laws 2017-129, s. 3(f) effective

§ 120-4.26. Benefit payment options.

Any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of the retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. No election may be made after the first payment becomes due, or the first retirement check cashed, nor may an election be revoked or a nomination changed. The election of Option 2 or Option 3 or the nomination of the person thereunder shall be revoked if the person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. The election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect imme-

diately prior to the effective date of the new nomination. Any member having elected Options 2 or 3 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent to the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. For Members Retiring Prior to July 1, 1993. — If a member dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one-one hundred twentieth ($\frac{1}{120}$) for each month for which he has received a retirement allowance payment, shall be paid to his legal representative or to the person he nominates by written designation acknowledged and filed with the Board of Trustees;

Option 2. — Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. If the person selected is other than his spouse, the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. — Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement.

History. 1993, c. 321, s. 74.1(a); 1998-212, s. 1983, c. 761, s. 238; 1985, c. 649, s. 9; 28.26(a).

§ 120-4.26A. Benefits on death after retirement.

In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions of G.S. 120-4.26 and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement

allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

History.

1993, c. 321, s. 74.1(b); 2009-66, s. 11(l).

§ 120-4.27. Death benefit.

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars (\$15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly. "In service" also means service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that service begins during the member's term of office. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased

retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement

System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 2015, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund, the North Carolina Teachers' and

State Employees' Benefit Trust, administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

The death benefit payable under this subsection shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if not survived by a designated beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

History.

1983, c. 761, s. 238; 1985, c. 400, s. 9; 1987, c. 824, s. 1; 1998-212, s. 28.27(d); 2004-147, s. 4; 2007-496, s. 3; 2009-66, s. 6(d); 2014-112, s. 3(d); 2017-129, s. 2(q).

Effect of Amendments.

Session Laws 2017-129, s. 2(q), effective June 30, 2017, divided the former last paragraph into the present next-to-last and last paragraphs; in the present

next-to-last paragraph substituted "the member's death required" for "his death required" and inserted "the North Carolina Teachers' and State Employees' Benefit Trust" in the proviso in the first sentence, and added the last three sentences; and substituted "The death benefit payable under this subsection" for "This death benefit" in the first sentence of the present last paragraph.

§ 120-4.28. Survivor's alternate benefit.

The designated beneficiary of a member who dies in service before retirement but after age 60 and after completing five years of creditable service or after completing 12 years of creditable service is entitled to Option 2 prescribed by G.S. 120-4.26.

In the event that a retirement allowance becomes payable to the one and only one beneficiary designated to receive a return of accumulated contributions pursuant to this subsection and that beneficiary dies before the total of the retirement allowances paid equals the amount of those accumulated contributions over the total of the retirement allowances paid to the beneficiary, the allowance shall be paid in a lump sum to the person or persons the member has

designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the one and only one beneficiary's legal representative.

History. 1987, c. 738, ss. 31(d), 37(c); 2012-130, s. 5.
1983, c. 761, s. 238; 1983 (Reg. Sess., 5.
1984), c. 1034, s. 199; 1985, c. 400, s. 3;

§ 120-4.29. Exemption from garnishment, attachment.

Except for the applications of the provisions of G. S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, annuity, or retirement allowance, to the return of contributions, or to the receipt of the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as this Article specifically provides. Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payments to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions, or any other right accruing under this Article to the same person, the person's estate, or designated beneficiary.

History. 1983, c. 761, s. 238; 1985, c. 402; c. 649, s. 5; 1989, c. 792, s. 2.2; 1991, c. 636, s. 13; 2017-135, s. 9(c).

Effect of Amendments.

Session Laws 2017-135, s. 9(c), effective July 20, 2017, rewrote the second sentence which formerly read: "Notwith-

standing any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

§ 120-4.30. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date,

or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested.

History.

1987, c. 177, s. 1(a), (b).

§ 120-4.31. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars (\$150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code.

If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(c1) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 120-4.21 shall be paid his contributions in a lump sum as provided in G.S. 120-4.25 by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a member of the General Assembly, except by death. If such member fails, following reasonable notification, to complete a refund application by such required date, the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld. For purposes of this subsection, a member shall not be considered to have ceased to be a member of the General Assembly if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System. A lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 120-4.21 shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a member of the General Assembly, except by death. If such member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 120 of the General Statutes by such required beginning date, the requirement that a retirement appli-

cation and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 120-4.21. For purposes of this subsection, a member shall not be considered to have ceased to be a member of the General Assembly if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System. A retirement benefit shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated

beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the exclusion of any after-tax portion from such a rollover distribution in the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code.

History.

s. 1(c); 2012-130, s. 4(a); 2015-164, s. 1989, c. 276, s. 1; 1993, c. 531, s. 2; 10(d).
1995, c. 361, s. 4; 2002-71, s. 2; 2009-66,

§ 120-4.32. Deduction for payments allowed.

(a) Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(b) Any beneficiary eligible for coverage under the State Health Plan may also authorize, in writing, the monthly deduction from the beneficiary's retirement benefits of a designated lump sum to be paid to the State Health Plan for any dependent whom the beneficiary wishes to cover under the State Health Plan. In the event that the beneficiary's own State Health Plan coverage is contributory, in whole or in part, the beneficiary may also authorize a designated lump sum to be paid to the State Health Plan on behalf of the beneficiary. In addition, a beneficiary may similarly authorize the deduction for supplemental voluntary insurance benefits, provided that the deduction is authorized by the Department of State Treasurer and is payable to a company with which the Department of State Treasurer has or had an exclusive contractual relationship. Any such authorization shall remain in effect until revoked by the beneficiary.

History.

2002-126, s. 6.4(d); 2012-178, s. 4(a).

§ 120-4.33. Forfeiture of retirement benefits for certain felonies.

(a) Except as provided in G.S. 120-4.12(f), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- (1) The federal or State offense is committed while serving as a member of the General Assembly.
 - (2) The conduct on which the federal or State offense is based is directly related to the member's service as a member of the General Assembly.
- (b) The federal offenses covered by this section are as follows:
- (1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Inter-

ference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C. § 1962 (Prohibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).

(2) Reserved for future codification purposes.

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

(1) A felony violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening) or G.S. 14-228 (Buying and selling offices), or Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of Legislative Ethics), Part 1 of Article 21 or Article 22 of Chapter 163A of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns).

(2) Perjury or false information as follows:

a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.

b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.

c. Perjury under Article 23 of Chapter 163A of the General Statutes.

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

History.

2007-179, s. 1(a); 2017-6, s. 3.

Recodification; Technical and Conforming Changes.

Session Laws 2017-6, s. 3, provides, in part: "The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 163A of the General Statutes to be entitled 'Elections and Ethics Enforcement Act,' as enacted by Section 4 of this act. The Revisor may also recodify into the new Chapter 163A of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate." The Revisor

was further authorized to make technical and conforming changes to catchlines, internal citations, and other references throughout the General Statutes to effectuate this recodification. Pursuant to this authority, the Revisor substituted "Part 1 of Article 21 or Article 22 of Chapter 163A" for "Article 20 or 22 of Chapter 163" in subsection (c)(1); and substituted "Article 23 of Chapter 163A" for "Article 22A of Chapter 163" in subsection (c)(2)c.

Editor's Note.

Session Laws 2007-179, s. 1(a), enacted this section with a subdivision (b)(1), but no subdivision (b)(2). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-179, s. 5, made this section effective July 1, 2007, and appli-

cable to offenses committed on or after that date.

§ 120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is serving as a member of the General Assembly.
- (2) The conduct resulting in the member's conviction is directly related to the member's office.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited.

History.

2012-193, s. 7.

Cross References.

As to forfeiture of retirement benefits for certain felonies related to public employment by or holding office in counties, cities, and towns, see G.S. 128-38.4A.

As to forfeiture of retirement benefits in the Retirement System for Teachers and State Employees for certain felonies related to employment or holding office, see G.S. 135-18.10A.

As to forfeiture of retirement benefits under the Judicial Retirement Act for certain felonies related to employment or holding office, see G.S. 135-75.1A.

Editor's Note.

Session Laws 2012-193, s. 18, made this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

§ 120-4.33B. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 120-4.3 or G.S. 120-4.3A is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits.

History.

2018-52, s. 6(d).

Editor's Note.

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 11, made this section effective June 25, 2018.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for

Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

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

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

History.

2011-232, s. 10(d); 2013-288, s. 9(e).

Editor's Note.

Session Laws 2011-232, s. 11, made this section effective December 1, 2011, and applicable to acts committed on or after that date.

Session Laws 2013-288, s. 12, made the amendment to this section by Session Laws 2013-288, s. 9(e), applicable to acts committed on or after December 1, 2013.

ARTICLE 7.

LEGISLATIVE SERVICES COMMISSION.

§ 120-32.01. Information to be supplied.

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal

Research, Program Evaluation, and Bill Drafting Divisions any information or records requested by them and access to any facilities and personnel requested by them. Except when accessibility is prohibited by a federal statute, federal regulation, or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and these divisions access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the BEACON/HR payroll system by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division and access to the system by the Program Evaluation Division shall only be through the Division Director and two employees of the Division designated by the Division Director.

(c) Consistent with subsection (a) of this section and notwithstanding any other law relating to privacy of personnel records, the Retirement Systems Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to active and retired member information or records maintained by the Retirement Systems Division in online information systems. Direct online read-only access shall not include access to medical records of individual members or to tax records and other tax-related documents of members and beneficiaries. Nothing in this subsection shall limit the provisions of subsection (a) of this section.

(d) For the purpose of ensuring financial transparency, accountability, and efficient operation of the Medicaid program finances by the Department of Health and Human Services, employees of the Fiscal Research Division designated by the Director of Fiscal Research shall have access to all records related to the Medicaid program. The Department of Health and Human Services shall cooperate fully with the designated employees of the Fiscal Research Division to facilitate (i) the evaluation of all financial and policy components of the Medicaid program, including financial projections, (ii) the evaluation of the budgetary construction and management of the Medicaid program, and (iii) the identification of unusual financial events. The Department shall also provide the Fiscal Research Division with electronic access to any departmental data for assessing or predicting Medicaid financial outcomes, and to any modeling software used for assessing or predicting Medicaid program financial outcomes. Employees of the Department shall not impede, delay, or restrict the provision of information or limit access to any departmental personnel necessary for the Fiscal Research Division to perform its monitoring and analysis of the Medicaid program.

Nothing in this subsection shall be construed to grant Fiscal Research Division employees access to medical records of individuals or other information protected under the Health Information Portability and Accountability Act (HIPAA).

Nothing in this subsection shall limit the provisions of subsection (a) of this section.

(e) The Department of Health and Human Services shall provide its annual financial projection of Medicaid program expenditures and requirements for any future fiscal years to the Chairs of the House Appropriations Committee and to the Chairs of the Senate Appropriations/Base Budget Committee no later than the date the Governor presents budget recommendations in accordance with G.S. 143C-3-5. Prior to providing this projection, the Secretary shall cooperatively engage designated employees of the Fiscal Research Division in ongoing bilateral analytical discussions about historical, current, and unanticipated factors that may impact projected Medicaid program financial outcomes that may affect the formulation of an official departmental annual financial projection.

Nothing in this subsection shall limit the provisions of subsection (a) of this section.

History.

1983 (Reg. Sess., 1984), c. 1034, s. 177; 1996, 2nd Ex. Sess., c. 18, s. 8.2; 2007-78, s. 2; 2007-103, s. 1; 2011-145, s. 29.21C; 2012-142, s. 6.12; 2012-178, s. 1.

ARTICLE 14A.

COMMITTEES ON PENSIONS AND RETIREMENT.

§ 120-111.3. Analysis of legislation.

Every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of each house. When the bill is reported out of committee it shall be accompanied by a written report by the Committee on Pensions and Retirement containing, among other matters which the Committee deems relevant, the actuarial note required by Article 15 of Chapter 120 of the General Statutes, and pursuant to the Rules of the General Assembly, and an evaluation of the proposed legislation's actuarial soundness and adherence to sound retirement and pension policy. Any bill referred to the Committee on Pensions and Retirement cannot be further considered by that house until such bill has received a favorable report, a report without prejudice, or has been recalled from that committee.

Whenever a bill is considered by the Committee on Pensions and Retirement that proposes changes in the benefits of any State-administered retirement or pension plan to be financed by unencumbered actuarial experience gains generated either through a change in actuarial assumptions adopted by the plan for the previous budget year or through a continuation of the actuarial assumptions adopted by the plan for the previous budget year, the Committee shall give equal consideration to the effects that such unencumbered actuarial gains would have upon annual employer or State contributions to the plan and to the amount by which the plan's unfunded accrued liabilities, if any, might be reduced. If such unencumbered actuarial experience gains could be used to modify annual employer or State contributions to the plan resulting in a corresponding effect upon State appropriations, the Committee on Pensions and Retirement shall, upon a favorable report, refer the bill to the Committee on Appropriations of the same house before the bill is considered by that house.

History. 85, s. 4; 1985, c. 187; c. 400, s. 10; 1987
1979, 2nd Sess., c. 1250, s. 1; 1981, c. (Reg. Sess., 1988), c. 1110, s. 11.1.

ARTICLE 15.

LEGISLATIVE ACTUARIAL NOTE ACT.

§ 120-114. Actuarial notes; Retirement System cost estimates.

(a) Every bill, joint resolution, and simple or concurrent resolution introduced in the General Assembly proposing any change in the law relative to any State, municipal, or other retirement system, funded in whole or in part out of public funds, or any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, shall have attached to it at the time of its consideration by any committee of either house of the General Assembly a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system or program of hospital, medical, disability, or related benefits. This actuarial note shall be attached to the original of each proposed bill or resolution which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

(b) The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the Fiscal Research Division which shall have the duty to prepare said actuarial note as promptly as possible. Actuarial notes shall be

prepared and transmitted to the author or authors no later than two weeks after the request for the actuarial note is made, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system, or to any actuary employed by a program of hospital, medical, disability, or related benefits provided for teachers and State employees, affected by the bill or resolution in question. Actuarial notes shall be prepared and transmitted to the author or authors of the measure no later than two weeks after the request for the actuarial note is received, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. The provisions of this subsection may be waived for any local government retirement or pension plans not administered by the State, and for any local government program of hospital, medical, disability, or related benefits for local government employees not administered by the State.

(d) The note shall be factual and shall, if possible, provide a reliable estimate of both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(e) At any time any committee of either house reports any legislative instrument, to which an actuarial note or notes are attached at the time of committee consideration, with any amendment of such nature as would substantially affect the cost to or the revenues of any retirement system, or program of hospital, medical, disability, or related benefits for teachers and State employees, as stated in the actuarial note or notes attached to the measure at the time of such consideration, it shall be the responsibility of the chairman of the committee reporting such instrument to obtain from the Fiscal Research Division an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A floor amendment to a bill or resolution to which an actuarial note was attached at the time of

committee consideration of the bill or resolution shall not be in order, if the amendment affects the costs to or the revenues of a retirement system, or program of hospital, medical, disability, or related benefits provided for teachers and State employees, unless the amendment is accompanied by an actuarial note, prepared by the Fiscal Research Division, as to the actuarial effect of the amendment.

(f) In addition to the other requirements of this section, if a bill or resolution contemplates removing a public agency as a participating employer from the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System, the Fiscal Research Division shall obtain an estimate of cost of the withdrawal liability the agency would owe under procedures established by the Boards of Trustees of the Retirement Systems.

(g) In addition to the other requirements of this section, if a bill or resolution adds or modifies service purchase provisions, the Fiscal Research Division shall obtain an estimate of the cost impact of those provisions using the 30-year United States Treasury constant maturity and cost-of-living adjustment and salary increase assumptions consistent with that rate as of December of the year of the most recent actuarial valuation in addition to the cost of the provision using the valuation assumptions.

History.

1977, c. 503, s. 3; 1985, c. 189; 1987 (Reg. Sess., 1988), c. 1091, s. 3; 1989, c. 261; 2015-168, s. 2(a), (b); 2016-82, s. 3.

Effect of Amendments.

Session Laws 2016-82, s. 3, effective June 30, 2016, added subsection (g).

CHAPTER 127A. MILITIA.

Article 3. National Guard.

Section

127A-40. Pensions for the members of the North Carolina National Guard.

Editor's Note.

Session Laws 1975, c. 604, repealed Chapter 127 and Article 23 of Chapter 143 and enacted this Chapter in lieu thereof. Where appropriate, the historical citations to the sections of the repealed Chapter and Article have been added to the corresponding sections of the new Chapter.

Session Laws 1977, c. 70, s. 2, provided that whenever the words "Department of Military and Veterans Affairs" were used in G.S. 127A-1 through G.S. 127A-195, the same would be deleted and the words

"Department of Crime Control and Public Safety" would be inserted in lieu thereof. The act made no mention of the Secretary of Military and Veterans Affairs; however, in order to give effect to its obvious intent, the editors have substituted "Secretary of Crime Control and Public Safety" for "Secretary of Military and Veterans Affairs" throughout this Chapter. Session Laws 2011-145, s. 19.1(g) further updated the chapter by substituting "Secretary of Public Safety" for "Secretary of Crime Control and Public Safety."

ARTICLE 3. NATIONAL GUARD.

§ 127A-40. Pensions for the members of the North Carolina National Guard.

(a) Every member and former member of the North Carolina National Guard who meets the requirements of this section shall receive, commencing at age 60, a pension of one hundred five dollars (\$105.00) per month for 20 years' creditable military service with an additional ten dollars and fifty cents (\$10.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed two hundred ten dollars (\$210.00) per month. The requirements for a pension are that each member shall:

- (1) Have served and qualified for at least 20 years' creditable military service, including National Guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.
- (2) Have at least 15 years of the aforementioned service as a member of the North Carolina National Guard.
- (3) Have received an honorable discharge from the North Carolina National Guard.

(b) Payment to a retired member of the North Carolina National Guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the

decedent's estate, except that the legal representative of a retired member who dies shall be entitled to a full check for the month in which the death occurred.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the Armed Forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3.

(f) The Board of Trustees of the Teachers' and State Employees' Retirement System shall administer the provisions of this section. The Secretary of Public Safety shall determine the eligibility of North Carolina National Guard members for the benefits provided in this section and shall certify those eligible to the Board of Trustees. In addition, the Department of Public Safety shall, on and after July 1, 1983, provide the Board of Trustees with an annual census population, by age and the number of years of creditable service, for all former members of the North Carolina National Guard in receipt of a pension as well as for all active members of the North Carolina National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Public Safety shall also provide the Board of Trustees an annual census population of all former members of the North Carolina National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to the Department of State Treasurer. The Board of Trustees shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out the State Treasurer's and the Board of Trustees' financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina National Guard who is qualified for the above retirements with eligibility commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(h1) Any member or former member of the North Carolina National Guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision.

(j) Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments, or judgments against the member or former member of the National Guard entitled to them, nor are any rights in the fund or the pensions or benefits assignable. Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payment to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions, or any other right accruing under this Article to the same person, the person's estate, or designated beneficiary.

History.

1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3; 2002-126, s. 6.4(g); 2005-276, s. 29.27; 2006-66, s. 22.20; 2007-323, s. 28.21A; 2009-66, s. 10; 2009-281, s. 1; 2009-451, s. 26.21; 2011-145, s. 19.1(g);

2011-195, s. 1(a); 2013-287, s. 3; 2014-100, s. 35.15C; 2015-241, s. 30.24; 2017-135, s. 9(d).

Effect of Amendments.

Session Laws 2017-135, s. 9(d), effective July 20, 2017, added subsection (j).

CASE NOTES

Action Time-Barred. — Declaratory judgment action by a former member of the North Carolina National Guard, regarding the denial of his application for certain retirement benefits, was time-barred by the three-year limitations period in G.S. 1-52(2) because the member

was on notice of the State's refusal to pay the retirement benefits on August 5, 2008, but waited until January 18, 2012 to file suit. *Ludlum v. State*, 227 N.C. App. 92, 742 S.E.2d 580, 2013 N.C. App. LEXIS 480 (2013).

OPINIONS OF ATTORNEY GENERAL

Prerequisites to Receipt of Pension. — A member of the North Carolina National Guard may receive the pension authorized by this section only after he meets the statutory age and length of service requirements and separates from

the Guard with an honorable discharge. See opinion of Attorney General to Mr. Robert A. Melott, Deputy Secretary, Department of Crime Control and Public Safety, 52 N.C.A.G. 118 (1983).

CHAPTER 128.

OFFICES AND PUBLIC OFFICERS.

Article 3. Retirement System for Counties, Cities and Towns.

Section

- 128-21. Definitions.
- 128-22. Name and date of establishment.
- 128-23. Acceptance by cities, towns and counties.
- 128-24. Membership.
- 128-25. [Repealed.]
- 128-26. Allowance for service.
- 128-26A. Reciprocity of creditable service with other State-administered retirement systems.
- 128-27. Benefits.
- 128-28. Administration and responsibility for operation of System.
- 128-29. Management of funds.
- 128-29.1. [Repealed.]
- 128-30. Method of financing.
- 128-31. Exemptions from execution; employing unit to offset amount owed by member or beneficiary.
- 128-32. Protection against fraud.
- 128-32.1. Failure to respond.
- 128-33. Certain laws not applicable to members.
- 128-33.1. Public records held by the Retirement System.
- 128-34. Transfer of members.
- 128-35. Obligations of pension accumulation fund.
- 128-36. Local laws unaffected; when benefits begin to accrue.
- 128-36.1. [Repealed.]
- 128-37. Membership of employees of district health departments or public health authorities.
- 128-37.1. Membership of employees of county social services department.
- 128-37.2. Continued membership for certain fire departments.
- 128-38. Reservation of power to change.
- 128-38.1. Termination or partial termination; discontinuance of contributions.
- 128-38.2. Internal Revenue Code compliance.
- 128-38.3. Deduction for payments allowed.
- 128-38.4. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.
- 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.
- 128-38.4B. Prohibition on purchase of forfeited service.
- 128-38.5. Improper receipt of decedent's retirement allowance.
- 128-38.6. Employee protection and remedies against unlawful retaliation for furnishing information to the Retirement Systems Division.
- 128-38.10. Qualified Excess Benefit Arrangement.

ARTICLE 3.

RETIREMENT SYSTEM FOR COUNTIES, CITIES AND TOWNS.

§ 128-21. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) “Accumulated contribution” shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in G.S. 128-30, subsection (b).
- (2) “Actuarial equivalent” shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (3) “Annuity” shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.
- (4) “Annuity reserve” shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (4a) “Authorized representatives who are assisting the Retirement Systems Division staff” means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).
- (5) “Average final compensation” shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Payout of vacation leave shall be included in “average final compensation” only if the payout is received by the member during the four consecutive calendar years of membership service producing the highest average annual compensation of the member.
- (6) “Beneficiary” shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Article.
- (7) “Board of Trustees” shall mean the Board provided for in G.S. 128-28 to administer the Retirement System.
- (7a)a. “Compensation” shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for

which he is performing full-time work. In addition to the foregoing, “compensation” shall include:

1. Performance-based compensation (regardless of whether paid in a lump sum, periodic installments, or on a monthly basis);
 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
 3. Payment of tax consequences for benefits provided by the employer so long as they constitute an adjustment or increase in salary and not a “reimbursement of expenses”;
 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation;
 5. Employee contributions to eligible deferred compensation plans; and
 6. Effective July 1, 2009, payment of military differential wages.
- b. “Compensation” shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Notwithstanding any other provision of this Chapter, “compensation” shall not include:
1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);
 3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
 5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
- c. In the event an employer reports as “compensation” payments not specifically included or excluded as “compensation”, such payments shall be “compensation” for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.

- (7b) “Compliance investigation” means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.
- (7c) “Consumer Price Index” shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- (8) “Creditable service” shall mean the total of “prior service” plus “membership service” plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 128-26. In no event, however, shall “creditable service” be deemed “membership service” for the purpose of determining eligibility for benefits accruing under this Chapter.
- (9) “Earnable compensation” shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.
- (10) “Employee” shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. “Employee” also means all full-time, paid firemen who are employed by any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds. “Employee” also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Re-employment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed “in service” until the

date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt the Board of Trustees shall decide who is an employee. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

- (11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General.
- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (11b) "Firefighter" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a fire department certified by the North Carolina Department of Insurance and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.
- (11c) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds.
- (11d) "Law Enforcement Officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Article 1 of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.

- (12) "Medical board" shall mean the board of physicians provided for in G.S. 128-28, subsection (l).
- (13) "Member" shall mean any person included in the membership of the Retirement System as provided in G.S. 128-24.
- (14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System or membership service in a North Carolina Retirement System that has been transferred into this system.
- (15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.
- (16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26. No prior service shall be allowed at any employer for which participation is adopted and approved by the Board of Trustees in this Retirement System on or after August 1, 2015.
- (18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the Board of Trustees in accordance with G.S. 128-29, subsection (b).
- (18a) "Regularly employed" shall mean employment in a position for which the duties require not less than 1,000 hours of work in a calendar year, provided that the term shall not include any individuals whose employment is considered "temporary employment" as defined in subdivision (22b) of this section or "statutorily-required interim employment" as defined in subdivision (22a) of this section.
- (18b) "Rescue squad worker" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a rescue squad or emergency medical services team certified by the North Carolina Department of Insurance or the Department of Health and Human Services and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the alleviation of human suffering and assistance to persons who are in difficulty, who are injured, or who become suddenly ill, by providing proper and efficient care or emergency medical services.
- (19) "Retirement" under this Article shall mean the commencement of monthly retirement benefits, along with the termi-

nation of employment and the complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Article may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time, temporary, substitute, or contractor work, at any time during the same month immediately following the effective first day of retirement.

- (20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.
- (21) "Retirement System" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this Article.
- (22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.
- (22a) "Statutorily-required interim employment" shall mean individuals whose employment for an employer as defined in subdivision (11) of this section occurs as a result of the individual's designation by the city council as an interim city manager, as provided in G.S. 160A-150 for a period not to exceed 12 months on a nonrecurring basis, or as a result of the individual's designation by the board of commissioners as an interim county manager, as provided in G.S. 153A-84 for a period not to exceed 12 months on a nonrecurring basis.
- (22b) "Temporary employment" shall mean employment for a limited term, in no case to exceed 12 consecutive months on a nonrecurring basis, for an employer as defined in subdivision (11) of this section.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30; in the following calendar year unless otherwise defined by regulation of the Board of Trustees.

History.

1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2; 1985, c. 479, s. 196(b); c. 649, s. 3; 1991, c. 51, s. 1; 1991 (Reg. Sess., 1992), c. 762, ss. 1, 2; 1997-144, s. 1; 1999-167, ss. 1, 2; 1999-456, s. 37; 2001-426, s. 1; 2003-359, ss. 13, 14; 2009-66, ss. 2(a), 6(f), (j); 2011-92, s. 1; 2011-294, s. 4; 2012-185, s. 2(a); 2013-

288, ss. 3(b), 4(b); 2014-97, s. 4(b); 2015-164, s. 8; 2015-168, s. 5; 2017-125, s. 1(b); 2017-128, s. 1(e), (f), (g).

Local Modification.

Catawba: 1995, c. 306, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 2; Mecklenburg: 1995, c. 532, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 1; city of Asheville: 1981, c. 737; city of Charlotte: 1947, c. 926, amended by Session Laws 1949, c. 734; 1951, c. 387; 1965, c. 575; 1969, c. 132; 1971, c. 860; c. 903, s. 2; 1973, c. 267; 1983, c. 506; (as to Art. 3) 1985, c. 185; 1987, c. 506;

1987 (Reg. Sess., 1988), c. 1033; 1989, c. 248; c. 770, s. 45; 1991 (Reg. Sess., 1992), c. 830; c. 1030, s. 51.6; 1993 (Reg. Sess., 1994), c. 640, s.1; 1995, c. 171, s. 1; 1999-100, s. 1; 2001-22, 2002-43, ss. 1-5; 2006-117, s. 1, 2; 2010-7, s. 1; 2017-71, s. 1; (as to Article 3) city of Fayetteville: 1998-61; city of High Point: 1987, c. 327; town of Stovall: 2008-52, s. 1 (as to prior service credits).

Open Enrollment — Contributory Death Benefit.

Session Laws 2007-388, s. 1, provides: “Notwithstanding any section of law or any rules and regulations adopted by the Boards of Trustees to the contrary, the Retirement Systems Division of the Department of State Treasurer shall allow for an open enrollment period in the Contributory Death Benefit for Retired Members of the Teachers’ and State Employees’ Retirement System, the Local Governmental Employees’ Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System. This open enrollment period shall begin February 1, 2008, and end May 31, 2008. The Retirement Systems Division shall send notice by U.S. mail of the open enrollment period to all retirees who elected not to be covered under this benefit or who failed to make any election at the time of their retirement and shall send a second notice by U.S. mail to any such retiree who fails to make an election within 60 days of the notification of the open enrollment period. Notice, at minimum, shall consist of notification of the open enrollment period and the consequences of failure to respond within the specified time frames, informational materials explaining the benefit program and the associated costs, and a preprinted personalized enrollment application to facilitate the enrollment process indicating each individual retiree’s contribution rate. The contribution rate for retirees electing coverage during the open enrollment period shall be increased by eleven and one-tenth percent (11.1%) the rate established for retirees who elected coverage when first eligible, at retirement. For retirees electing coverage during this open enrollment period, coverage shall become effective the first of the month following the month in which the election of coverage is received by the Retirement Systems Division but not before February 1, 2008. Contribution rates for coverage shall be based upon the retiree’s nearest age as of the effective date of

coverage and shall begin by deduction from the retiree’s net monthly retirement allowance in the month in which coverage becomes effective. Coverage elected by retirees during this open enrollment period shall be subject to all other laws and rules and regulations adopted by the Board of Trustees governing the Contributory Death Benefit for Retired Members.”

Editor’s Note.

Subdivision (7a)a, (7a)b, and (7a)c designations were added by the Revisor of Statutes.

At the direction of the Revisor of Statutes, subdivisions (7b) and (7c), as enacted by Session Laws 2011-92, s. 1, were redesignated as subdivisions (11b) and (18a), respectively, and former subdivision (11b) was redesignated as subdivision (11c).

Session Laws 1999-167, which in ss. 1 and 2 added the second sentence of subsection (10), deleted the second sentence of subdivision (11) (which was subsequently reinserted by Session Laws 1999-456, s. 37), and added the last sentence of subdivision (11), provided in s. 3 that the Board of Trustees of the North Carolina Local Governmental Employees’ Retirement System through the Office of the Attorney General was to request a letter of determination or ruling from the Internal Revenue Service as to whether the status of the North Carolina Local Governmental Employees’ Retirement System as a governmental plan would be adversely affected by the participation of employees affected by this legislation. The request was to be made no later than 30 days after the effective date of the act, June 8, 1999, and fire departments affected by this legislation were to be eligible for participation in the North Carolina Local Governmental Employees’ Retirement System upon the first day of the calendar quarter following receipt of a favorable letter of determination or ruling. An unfavorable determination was received.

Session Laws 2009-378, s. 2, applicable to local government furloughs on and after January 1, 2009, and before July 1, 2010, provides: “Notwithstanding any other provision of law and upon the one-time irrevocable election of the employer as defined in G.S. 128-21(11), a public employee on a furlough who is a member of the Local Governmental Employees’ Retirement System administered by the Retirement Systems Division of the Department of State Treasurer shall be

considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer who opts for this provision shall pay both employee and employer contributions to the Retirement Systems Division on behalf of the furloughed employee as though the employee were in active service. Notwithstanding the definition of ‘compensation’ in G.S. 128-21(7a), any employer who elects to cover its furloughed employees through this provision shall be entitled to include earnings lost due to furloughs taken after January 1, 2009, and before July 1, 2009, in the reported compensation and contributions for either July or August, 2009. Any compensation and contributions lost due to furloughs must be reported to the Retirement Systems Division within 90 days of the beginning of the period in which the compensation and contributions will be included.”

Session Laws 2011-92, s. 1, which added subdivisions (11b) and (18a), is applicable to beneficiaries of firefighters and rescue squad workers killed in the line of duty on or after July 1, 2011.

Session Laws 2011-144, s. 1, provides: “Johnston Memorial Hospital Authority may elect to discontinue its participation as an employer in the Local Governmental Employees’ Retirement System as defined in G.S. 128-21 for any and all employees hired on or after October 1, 2011. Johnston Memorial Hospital Authority’s Board of Trustees shall communicate their decision and provide to the Retirement Systems Division of the State Treasurer’s Office copies of any Board action relating to this election. Johnston Memorial Hospital Authority

will continue to report the payroll of employees and remit the employee and employer contributions on all employees employed as of September 30, 2011, until such time as none exist.”

At the direction of the Revisor of Statutes, subdivision (5a) as added by Session Laws 2012-185, was redesignated as subdivision (4a) to maintain alphabetical order.

Subdivision (8a) as added by Session Laws 2014-97, s. 4(b), was redesignated as subdivision (7b) at the direction of the Revisor of Statutes to maintain alphabetical order.

At the direction of the Revisor of Statutes, subdivisions (10a)-(10c), as enacted by Session Laws 2015-164, s. 8, were redesignated as subdivisions (18a), (22b) and (22a), respectively, and former subdivision (18a) was redesignated as subdivision (18b).

At the direction of the Revisor of Statutes, in subdivision (18a), “subdivision (22b)” and “subdivision (22a)” were substituted for “subdivision (10b)” and “subdivision (10c)” respectively.

Session Laws 2017-125, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

“Article 1 of Chapter 17C” has been substituted for “Chapter 17C” in this section at the direction of the Revisor of Statutes.

Effect of Amendments.

Session Laws 2017-125, s. 1(b), effective July 20, 2017, added the last sentence in subdivision (5).

Session Laws 2017-128, s. 1(e)-(g), effective July 20, 2017, added present subdivision (7b) and redesignated former subdivision (7b) as subdivision (7c); and inserted “records” in the first sentence of subdivision (11c).

Legal Periodicals.

For comment on the 1939 enactment, see 17 N.C.L. Rev. 369 (1939).

For comment on the 1941 amendment, see 19 N.C.L. Rev. 510 (1941).

CASE NOTES

This Article creates contractual rights and obligations. *Simpson v. North Carolina Local Gov’t Employees’ Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), *aff’d*, 323 N.C. 362, 372 S.E.2d 559 (1988).

Any cessation of employment, including retirement, constitutes a termination

from service as an employee. *Walker v. Board of Trustees*, 348 N.C. 63, 499 S.E.2d 429 (1998).

Discretionary Power to Participate in Retirement System. — Where a city has become an employer participating in the State Retirement System under authority conferred by this Article

and by an act amending its charter, the repeal of the charter provision leaves its governing authorities with discretionary power to participate in the Retirement System under authority conferred by this Article, and mandamus will not lie to compel it to withdraw from the State Retirement System. *Laughinghouse v. City of New Bern*, 232 N.C. 596, 61 S.E.2d 802 (1950).

Credit Denied to a Self-Insured City for Disability Retirement Payments. — North Carolina Industrial Commission's decision to deny a city credit for disability retirement payments that were made to an injured city employee from a public employee benefits program was not an abuse of discretion under G.S. 97-42 because the city and the employee jointly contributed to the plan, and competent evidence, in the form of testimony as to the funding of the disability benefits plan, existed to support the Commission's findings of fact and conclusions of law. *Cox v. City of Winston-Salem*, 171 N.C. App. 112, 613 S.E.2d 746, 2005 N.C. App. LEXIS 1161 (2005).

Interest Accrual and Compounding. — Consistent with the purposes of G.S. 135-1(19) and subdivision (18) of this section, underpayments were found to accrue interest from the date they became due. Furthermore, court found that statutes entitled beneficiaries to interest, not only on the principle due, but also on the accrued or earned interest. *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 133 N.C. App. 587, 515 S.E.2d 743, 1999 N.C. App. LEXIS 615, cert. denied, 351 N.C. 102, 540 S.E.2d 358 (1999).

Actuarial Equivalent to Include

Interest. — The actuarial value includes interest and there was no double recovery where the court was following the definition of actuarial equivalent as prescribed by this section and included interest in the underpayment award. *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

Postjudgment Interest Not Awardable Against State. — Retirees under the state and local government retirement system were not entitled to post-judgment interest on retroactive disability benefits, because the state retirement statutes contain no provision for the allowance of such interest. *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 132 N.C. App. 137, 510 S.E.2d 675, 1999 N.C. App. LEXIS 89, cert. denied, 350 N.C. 379, 536 S.E.2d 620 (1999).

Retirement Is Withdrawal Not Termination. — This statute explicitly defines retirement as a withdrawal from active service not as termination of employment. *Walker v. Board of Trustees*, 127 N.C. App. 156, 487 S.E.2d 839 (1997), aff'd, 348 N.C. 63, 499 S.E.2d 429 (1998).

Applied in *Pritchett v. Clapp*, 288 N.C. 329, 218 S.E.2d 406 (1975); *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Cited in *Wallace v. Bd. of Trs., Local Gov't Emples. Ret. Sys.*, 145 N.C. App. 264, 550 S.E.2d 552, 2001 N.C. App. LEXIS 650 (2001); *Walker v. Town of Stoneville*, 211 N.C. App. 24, 712 S.E.2d 239, 2011 N.C. App. LEXIS 709 (2011); *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

§ 128-22. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for employees of those counties, cities and towns or other eligible employers participating in the said Retirement System. Following the filing of the application as provided in G.S. 128-23(c), the Board shall set a date, effective the first day of a calendar quarter, not more than 90 days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the Board of Trustees an adequate number of persons

have indicated their intention to participate; otherwise at such later date as the Board of Trustees may set.

This Retirement System is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code. Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not apply. This System shall have the power and privileges of a corporation and shall be known as the “North Carolina Local Governmental Employees’ Retirement System,” and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held.

Consistent with Section 401(a)(1) of the Internal Revenue Code, all contributions from participating employers and participating employees to this Retirement System shall be made to funds held in trust through trust instruments that have the purposes of distributing trust principal and income to retired members and their beneficiaries and of paying other definitely determinable benefits under this Chapter, after meeting the necessary expenses of administering this Retirement System. Neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan document, consisting of Article V, Section 6(2) of the North Carolina Constitution, relevant statutory provisions in this Chapter, associated regulations in the North Carolina Administrative Code, substantive and procedural information on the official forms used by the Retirement System, and policies and minutes of the Board of Trustees.

History.

1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2; 1959, c. 491, s. 3; 2012-130, s. 7(b).

Retirement system was transferred to the Department of State Treasurer by G.S. 143A-35, enacted by Session Laws 1971, c. 864.

State Government Reorganization.

The Local Governmental Employees’

§ 128-23. Acceptance by cities, towns and counties.

(a) Pursuant to the favorable vote of a majority of the employees of any incorporated city or town, the governing body may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(b) Pursuant to the favorable vote of a majority of the employees of the county, the board of commissioners of any county may, by

resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System. Each county is authorized to make appropriations for these purposes and to fund them by levy of property taxes pursuant to G.S. 153-65 and by the allocation of other revenues whose use is not otherwise restricted by law.

(c) Any eligible employer desiring to participate in the Retirement System shall file with the Board of Trustees an application for participation under the conditions included in this Article on a form approved by the Board of Trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this Article, and to transmit such contributions to the Board of Trustees. It shall also agree to make the employer's contributions for the participation in the Retirement System of all employees entering the service of the employer, after its participation begins, who shall become members.

(d) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the Retirement System and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(e) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees.

Notwithstanding anything to the contrary, the Retirement System shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this Article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits.

(f) Effective January 1, 1955, there shall be three classes of employers to be designated Class A, Class B and Class C, respectively. Each employer whose date of participation occurs before July 1, 1951, shall be a Class A employer unless such an employer by written notice filed with the Board of Trustees on or before June 30, 1951, elected to be a Class B employer. Each employer whose date of participation occurs on or after July 1, 1951, but before January 1, 1955, shall be a Class A employer. Each employer whose date of participation occurs on or after January 1, 1955, shall be a Class C employer.

(g) Notwithstanding any other provisions of this Article, any employer who is not a participating employer and who employs law enforcement officers transferred from the Law Enforcement Officers' Retirement System to this Retirement System on January 1, 1986, or who employs law enforcement officers electing to become members of this Retirement System on and after January 1, 1986, shall be employers participating in this Retirement System as this participation pertains to their law enforcement officers. The election of membership in this Retirement System shall be at the sole discretion of law enforcement officers of participating employers described in this subsection.

History.

1939, c. 390, s. 3; 1951, c. 274, s. 1; 1955, c. 1153, s. 1; 1971, c. 325, s. 5; 1973, c. 803, s. 16; 1985, c. 479, s. 196(c); 1991, c. 585, s. 1.

Editor's Note.

G.S. 153-65, referred to in this section, was repealed by Session Laws 1973, c. 822.

§ 128-24. Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.
- (1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumu-

lated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

- (2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 30 days following the date of participation in the Retirement System by such county, city or town: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (3a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.
- (4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
 - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System,

shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.
- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.
 - 1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on

the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.

2. The actuarial equivalent of the retirement benefits he previously received.
 - d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance

shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the

Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b3. Deferred retirement allowance of members retiring on or after July 1, 1995. — In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- c. Should a beneficiary who retired on an early or service retirement allowance 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 fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of a percent ($\frac{1}{10}$ of 1%), provided that this percentage change is positive.

- c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported

reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice.

- d. Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 128-27(f).
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for

the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 128-27(f), or the member may allow this new account to remain inactive.

- e. 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 month 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 one-month separation required by G.S. 128-21(19).
 - 2. The member shall make a lump-sum payment to the Retirement System equal to three times the amount of compensation earned during the month immediately following the effective date of retirement.
- (5a) Notwithstanding the provisions of paragraphs c and d of the subdivision (5) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System on January 1, 1986, and who also was a contributing member of this Retirement System on January 1, 1986, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on an early or service retirement allowance as an employee of any partic-

icipating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee by an employer participating in the Retirement System after January 1, 1986, becomes subject to the provisions of G.S. 128-24(5)c. and G.S. 128-24(5)d. on and after January 1, 1989.

- (6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the System provided that the requirements of Article 10 of Chapter 126 are met; provided further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid.

History.

1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2; 1987, c. 513, s. 1; c. 738, s. 38(a); 1993

(Reg. Sess., 1994), c. 769, ss. 7.30(a), 7.31(a), (b); 1995, c. 507, s. 7.22(d); 2002-126, s. 28.13(b); 2007-431, s. 10; 2009-66, ss. 3(g), (h), 8(b), 12(e), (f); 2010-72, s. 4(b); 2011-294, s. 2(b); 2012-130, s. 1; 2014-97, s. 4(e); 2015-164, s. 11(b).

Local Modification.

Guilford: 1977, c. 278; city of Charlotte: 1949, c. 990; city of Raleigh: 1953, c. 1035; town of Troutman: 2005-279, s. 1.

CASE NOTES

Who Excluded from Membership.

— The exclusion from membership in the Retirement System will not be interpreted to apply only to those receiving retirement allowances from general funds in the State Treasury derived from general taxation, but is applicable to those entitled to benefits from any funds coming into the hands of the State Treasurer by virtue of a State law. *Gardner v. Board of Trustees*, 226 N.C. 465, 38

S.E.2d 314 (1946), decided prior to later amendments to this section.

Cited in *Miracle v. North Carolina Local Gov't Employees Retirement Sys.*, 124 N.C. App. 285, 477 S.E.2d 204 (1996); *Taylor v. City of Lenoir*, 129 N.C. App. 174, 497 S.E.2d 715 (1998); *Walker v. Town of Stoneville*, 211 N.C. App. 24, 712 S.E.2d 239, 2011 N.C. App. LEXIS 709 (2011).

§ 128-25. Repealed by Session Laws 2016-56, s. 2, effective June 30, 2016.

History.

1939, c. 390, s. 5; 1941, c. 357, s. 4;

repealed by 2016-56, s. 2, effective June 30, 2016.

Editor's Note.

Former G.S. 128-25 pertained to membership in the state retirement system.

Session Laws 2016-56, s. 10, is a severability clause.

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his or her employer's participation, if and only if that participation begins prior to November 1, 2015, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him or her to that employer prior to the date of participation for which he or she claims credit.

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

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

(a1) With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the Armed Forces of the United States if the person returned to the service of the person's employer within two years after having been not dishonorably discharged, or becoming entitled to be discharged, released, or separated from such the Armed Forces of the United States; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if the member submits satisfactory evidence of the military service claimed and the participating unit of which the member is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period of qualifying service

in the Armed Forces of the United States, as defined for purposes of reemployment rights under federal law, provided that the member was an employee as defined in G.S. 128-21(10) at the time the member entered military service, and either (i) the returning member is in service, with the employer by whom the member was employed when the member entered military service, for a period of not less than 10 years after the member is separated or released from that military service under other than dishonorable conditions or (ii) the following conditions are met, in the conjunctive:

- (1) The member did not, prior to leaving for military service, provide clear written notice of an intent not to return to work after military service.
- (2) The member was discharged from uniformed service and returned from the leave of absence for uniformed service to membership service in this system within the time limit mandated by federal law for reporting back to work.
- (3) The period of uniformed service, for which additional service credit is sought, has been verified by suitable documentation and is not eligible for receipt of benefits under any other retirement system or pension plan.
- (4) All service credit forfeited by a refund pursuant to the provisions of G.S. 128-27(f) has been purchased.

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

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

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of

Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the Board of Trustees may use for the purpose of this Article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection (o) of G.S. 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by the member since he or she last became a member, and also if the member has a prior service certificate which is in full force and effect, the amount of the service certified on the prior service certificate; and if the member has sick leave standing to the member's credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than 365 days prior to the effective date of the member's retirement. Days of sick leave standing to a member's credit at retirement shall be determined by dividing the member's total hours of sick leave at retirement by the hours per month such leave was awarded under the employer's duly adopted sick leave policy as the policy applied to the member when the leave was accrued.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3)

and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(f) Effective January 1, 1955, there shall be three classes of prior service certificates, to be designated as Class A, Class B and Class C respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate; each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate; and each such certificate issued on account of service rendered to a Class C employer shall be a Class C prior service certificate. Each Class C prior service certificate shall specify a prior service benefit percentage rate which shall be three per centum (3%) in the case of any member entitled to such certificate who is, at the date of participation of his employer, in a position covered by the Social Security Act under a federal-State agreement and which shall be five per centum (5%) in the case of a member entitled to such

certificate but who at the date of participation of his employer is in a position not so covered.

(g) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(h) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the fund and the transfer of the member's contributions plus accumulated interest from the fund to this System.

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for

the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained five years of prior and current membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(j) Repealed by Session Laws 1987, c. 617, s. 3.

(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

- (1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.
- (2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could

retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term “full liability” includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of “active duty”, as defined in 38 U.S. Code Section 101(21), in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of “active duty”, as defined in 38 U.S. Code Section 101(21), as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the National Guard or any reserve component of the Armed Forces of the United States, and shall not include periods of “active duty for training”, as defined in 38 U.S. Code Section 101(22), or periods of “inactive duty training”, as defined in 38 U.S. Code Section 101(23), rendered in any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24.

(j2) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of prior and current membership service, and retired members who completed 10 years of prior and current membership service prior to retirement, and whose membership began on or before January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

- (2) For members who complete five years of prior and current membership service, and retired members who complete five years of prior and current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Notwithstanding the requirement of five years of current membership service, a member whose membership began prior to the service the member desires to purchase shall be eligible to purchase creditable service under this subdivision upon returning to service as an employee upon completion of a total of five years of membership service and upon completion of one year of current membership service.

Current membership service shall mean membership service earned since the service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(k) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not

repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after January 1, 2003, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (i) of this section.

(l) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) **Leaves of Absence Terminated Prior to July 1, 1983.** —

The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) **Leaves of Absence Terminating On and After July 1, 1983.** — The cost to a member whose employer approved

leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 128-21(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

In the case of a law enforcement officer electing to purchase service under this section who is in receipt of benefits under the North Carolina Workers' Compensation Act due to serious bodily injury suffered in the line of duty as a result of an intentional or unlawful act of another, as certified by the head of the employing law enforcement agency, and whose approved leave of absence terminates on or before a return to service on and after August 1, 2006, the employer percentage rate of contribution payable under subdivision (2) of this subsection shall be made by the employer that granted the leave of absence. The cost to the law enforcement officer shall be reduced by the amount paid by the employer. For purposes of this subsection, "serious bodily injury" means bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Nothing in this subsection prevents an employer from voluntarily paying all or a part of the employee portion of the total cost of the service credit purchased, and the employer does not discriminate against any eligible law enforcement officer in this subsection employed by the employer by paying that portion of cost. To the extent paid by the employer, the employee portion paid by the

employer shall be credited to the Pension Accumulation Fund; to the extent paid by the member, the employee portion paid by the member shall be credited to the member's annuity savings account. A member shall pay any part of the employee portion of the total cost not paid by the employer.

(m) **Omitted Membership Service.** — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) after 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees; or
- (3) after three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service. In the event an employer pays all or a part of the full actuarial cost as determined

in subdivision (3) of this subsection, the employer may, at its option, pay such amount either in a lump sum or by increasing its “accrued liability contribution” for the remainder of its accrued liability period. In the event an employer has satisfied its accrued liability contribution, the employer may amortize its portion of the full actuarial cost over a period not to exceed ten years. The expense of making an actuarial valuation to determine the accrued liability contribution or the additional accrued liability contribution, required to amortize the portion of the full actuarial cost paid by the employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation.

(n) Repealed by Session Laws 2002-153, s. 3, effective January 1, 2003.

(o) **Credit at Full Cost for Federal Employment.** — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. “Public community service entities” as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms “full cost”, “full liability”, and “full actuarial cost” include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the

earliest age at which a member could retire on an unreduced service allowance.

(p) **Part-Time Service Credit.** —

- (1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in G.S. 128-21(11) or G.S. 135-1(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.
- (2) Under all requirements and conditions set forth in the preceding subdivision of this subsection, except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time employee, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time employee of an employer as defined in G.S. 128-21(11) if (i) the member terminates or has terminated employment in any capacity as an employee, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(q) **Credit at Full Cost for Probationary Employment.** —

Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with an employer as defined in this Article when considered to be in a probationary or employer imposed waiting period status and

thereby not regularly employed, between date of employment and date of membership service with the retirement system, provided that the employer or former employer of such a member has revoked this probationary employment or waiting period policy.

Provided, the member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms “full cost”, “full liability”, and “full actuarial cost” include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the probationary employment; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member’s annuity savings account; provided, however, an employer does not discriminate against any member or group of members in its current employ in paying all or any part of the cost of the probationary employment. In the event an employer pays all or a part of the full actuarial cost, the employer may, at its option, pay such amount either in a lump sum or by increasing its “accrued liability contribution” for the remainder of its accrued liability period. In the event an employer has satisfied its accrued liability contribution, the employer may amortize its portion of the full actuarial cost over a period not to exceed 10 years. The expense of making an actuarial valuation to determine the accrued liability contribution or the additional accrued liability contribution, required to amortize the portion of the full actuarial cost paid by the employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation.

(r) **Credit at Full Cost for Temporary Government Employment.** — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for government employ-

ment when classified as a temporary employee subject to the conditions that:

- (1) The member was employed by an employer as defined in G.S. 128-21(11) or G.S. 135-1(11);
- (2) The member's temporary employment met all other requirements of G.S. 128-21(10), or G.S. 135-1(10) or (25);
- (3) The member has completed five years or more of membership service;
- (4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) The member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(s) **Credit at Full Cost for Employment Not Otherwise Creditable.** — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in any other retirement system or plan, upon completion of five years of membership service by making a lump sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms

“full cost”, “full liability”, and “full actuarial cost” include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(t) **Purchase of Service Credits Through Rollover Contributions From Certain Other Plans.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u) **Purchase of Service Credits Through Plan-to-Plan Transfers.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S.

128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u1) Expired.

(v) **Retroactive Membership Service.** — A member who is reinstated to service as an employee as defined in G.S. 128-21(10) retroactively to the date of prior involuntary termination with back pay and associated benefits may be allowed membership service, after submitting clear and convincing evidence of the reinstatement, payment of back pay, and restoration of associated benefits, as follows:

- (1) When the reinstatement to service is by court order and is:
 - a. Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or
 - b. After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.
- (2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum amount equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, taking into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive

membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

In the event a member received a return of accumulated contributions subsequent to an involuntary termination as provided in G.S. 128-27(f), the member may redeposit, within 90 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity savings fund by single payment, an amount equal to the total amount he previously withdrew plus regular interest and restore the creditable service forfeited upon receiving his return of accumulated contributions.

(w) If a member who is an elected government official and has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is an elected government official and has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as an elected government official.

(x) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012.

(y) **Contribution-Based Benefit Cap Purchase Provision.** — If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's

death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan under one of the following two options:

- (1) **Option one.** — An installment payment plan ending no more than 15 months after the retirement of the member.
- (2) **Option two.** — An installment payment plan beginning no less than 90 days after the retirement of the member and ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.

Payment under both installment plans must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period.

History.

1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 28; 1991, c. 753, s. 1; 1991 (Reg. Sess., 1992), c. 1017, s. 1;

1995, c. 507, s. 7.23D(a); 1998-71, ss. 1, 2; 1998-214, s. 1; 1999-158, s. 1; 2001-487, s. 82; 2002-71, s. 3; 2002-153, ss. 1-3; 2003-359, ss. 17-19, 22; 2005-91, s. 8; 2006-29, s. 1; 2007-179, s. 2(b); 2007-304, s. 1; 2009-281, s. 1; 2009-392, s. 1; 2010-72, s. 5(b); 2011-183, ss. 97(a), (b); 2011-294, s. 5(b); 2012-130, s. 3(a); 2012-193, s. 4; 2013-288, ss. 2(a), 11; 2013-405, s. 6(b); 2014-88, s. 1(d); 2015-168, ss. 6, 7(b); 2016-56, s. 3; 2017-128, s. 2(b); 2017-129, s. 9(b).

Editor's Note.

Session Laws 1987, c. 617, s. 3 directed the deletion of the last paragraph of subsection (j). However, subsection (j) only contained one paragraph. Thus it would appear that the intent of the act was to delete all of subsection (j).

Session Laws 1987, c. 617, s. 5 provided, *inter alia*: “For the purposes of Section 3 of this act, members of the Retirement System who are members before January 1, 1988, shall retain all rights and privileges to purchase military and out-of-state service credits under the same conditions that existed prior to the effective date of that section.”

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, deleted the last paragraph of subsection (a), which, as amended by c. 617, ss. 1 and 4, read:

“Notwithstanding any other provision of this Chapter, members not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of prior and current membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.”

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, also deleted subsection (j), which, as amended by c. 617, ss. 2 and 4, read:

“(j) Notwithstanding any other provision of this Chapter, any member may,

upon completion of 10 years of prior and current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as the result of the service. Payment shall be permitted only on a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made.”

Session Laws 2002-71, which added subsections (t) and (u), in s. 9, provides, in part, that s. 3 of the act becomes effective January 1, 2003, except that G.S. 128-26(u), as enacted by s. 3, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection. The Revisor of Statutes is informed that a favorable letter of determination has been received.

Session Laws 2006-29, s. 1, which amended subdivision (l)(2), is effective August 1, 2006, and applicable to members who return to service from an approved leave of absence on or after that date.

Session Laws 2009-392 added subsection (u1) to this section, and in s. 2 provided: “This act becomes effective July 1, 2009, and applies to nonqualified employment with an economic development organization performed on or before December 31, 2009. This act expires December 31, 2009, provided that any inchoate rights that may accrue to a

member under this act shall not be diminished.”

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Effect of Amendments.

Session Laws 2016-56, s. 3, effective January 1, 2017, in subsection (a1), substituted “not dishonourably” for “honorably” in the first paragraph and, inserted “and employee” near the end of the last undesignated paragraph.

Session Laws 2017-128, s. 2(b), effective July 20, 2017, in subsection (y), substituted “under one of the following two options” for “beginning no less than 90 days after the retirement of the member and” in the introductory paragraph, added the subdivision (y)(1) designation and rewrote subdivision (y)(1), added subdivision (y)(2), and substituted “both installment plans” for “such an installment plan” in the last paragraph.

Session Laws 2017-129, s. 9(b), effective January 1, 2018, in the first paragraph of subsection (e), made gender-neutralizing changes, and added the present last sentence.

CASE NOTES

“Creditable Service.” — Superior court erred in granting partial summary judgment awarding a sheriff a special separation allowance for 36 years of creditable service through two North Carolina retirement systems, state and local, because the sheriff was not a member of the state system when he retired where, prior to his retirement from the sheriff’s department, he began receiving retirement benefits from that system,

and the sheriff was only entitled to credit for his 12 years of service under the local system where the county never issued the sheriff a prior service certificate, the sheriff never transferred membership of his state service to the local system, and the county never gave the sheriff credit for prior service. *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

OPINIONS OF ATTORNEY GENERAL

Effect of Purchase of Service Credits. — The purchase of prior credit service for the period of July 10, 1984 and the enrollment in November, 1984 of several public safety officers would not give those officers five years’ service standing to their credit as of August 12,

1989; therefore, they would not thereby have a right to receive their retirement benefits tax-free. See Opinion of Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Town of Chapel Hill, 2000 N.C. AG LEXIS 12 (10/2/2000).

§ 128-26A. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers’ and State Employees’ Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System’s benefit accrual rate in computing a

service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Teachers' and State Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits.

History.

1989 (Reg. Sess., 1990), c. 1066, s. 35(b).

§ 128-27. Benefits.

(a) **Service Retirement Benefits. —**

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a firefighter or rescue squad worker, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (5) **(Effective until July 1, 2019)** Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon electronic submission or written application to the Board of

Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

- (5) **(Effective July 1, 2019)** Any member who is a law enforcement officer and who (i) attains age 50 and completes 15 or more years of creditable service in this capacity, or (ii) attains age 55 and completes five or more years of creditable service in this capacity, or (iii) who has completed 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, the member desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(a1) **Early Service Retirement Benefits.** — Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(a2) **Discontinued Service Retirement Allowance.** — A member whose employment with a participating employer is involuntarily terminated as a result of a termination event as defined in this subsection may be allowed a discontinued service retirement allowance, provided that the discontinued service retirement allowance is approved by the terminated member's participating employer, and provided that reemployment with that participating employer is not available to the member at the time of the termination event. For purposes of this section, "termination event" means termination of employment as a result of (i) the participating employer's cessation of operations; (ii) the participating employer's dissolution; (iii) the merger of a participating employer with and into an unrelated entity, other than another participating employer; (iv) the acquisition of the participating employer by an unrelated entity, other than

another participating employer; or (v) the determination by the participating employer that a reduction in force will accomplish economies in the participating employer's budget resulting from either the elimination of a job and its responsibilities or from lack of funds to support the job. Final action approving the discontinued service retirement allowance for a terminated member by the member's participating employer shall be taken in an open meeting.

Upon the occurrence of a termination event, and subject to the provisions of this subsection, an unreduced discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 55 years of age. Alternatively, upon the occurrence of a termination event, a discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 50 years of age, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month that retirement precedes the member's fifty-fifth birthday.

In cases in which a discontinued service retirement allowance is approved, the terminated member's employer shall be responsible for making a lump-sum payment to the Retirement System's Board of Trustees equal to the actuarial present value of the additional liabilities imposed upon the Retirement System, to be determined by the Retirement System's consulting actuary, as a result of the discontinued service retirement allowance, plus an administrative fee to be determined by the Board of Trustees. An employer shall not discriminate against any member or group of members employed by the employer in the approval or disapproval of a discontinued service retirement allowance.

(a3) **Anti-Pension-Spiking Contribution-Based Benefit Cap.** — Notwithstanding any other provision of this section, every service retirement allowance provided under this section for members who retire on or after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under this subsection. The Board of Trustees shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon actual experience, such that no more than three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o).

Prior to establishing a service retirement allowance under this section, the Board shall:

- (1) Determine an amount equal to the member's accumulated contributions as required under G.S. 128-30(b)(1) for all years during which the member earned membership service, other than service earned through armed service

credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the retirement allowance that the member would receive under this section.

- (2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under subdivision (1) of this subsection, adjusted for the age of the member at the time of retirement or, when appropriate, the age at the time of the member's death.
- (3) Multiply the annuity amount determined under subdivision (2) of this subsection by the contribution-based benefit cap factor.
- (4) Determine the amount of the retirement allowance that results from the member's membership service.

The product of the multiplication in subdivision (3) of this subsection is the member's contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection exceeds the member's contribution-based benefit cap, the member's retirement allowance shall be reduced by an amount equal to the difference between the contribution-based benefit cap and the amount determined under subdivision (4) of this subsection.

Notwithstanding the foregoing, the retirement allowance of a member with an average final compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap. The minimum average final compensation necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be increased on January 1 each year by the percent change between the June Consumer Price Index in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is positive.

Notwithstanding the foregoing, the retirement allowance of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the Retirement System after January 1, 2015, shall not be reduced; however, the member's last employer shall be required to make an additional contribution as specified in G.S. 128-30(g)(2)b., if applicable.

(b) **Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965.** — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on

the basis of contributions made prior to such earlier age;
and

- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of
- a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) **Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967.** — Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965,

and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(b).

(b2) **Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969.** — Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of five thousand six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of five thousand six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provision, any member whose creditable service commenced prior to July 1, 1965, and policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b3) **Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973.** — Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.

- (2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.
- (3b) If the member's service retirement date occurs before his sixtieth birthday but on or after completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (3a) above.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b4) **Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1976.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1976, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and

prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b5) **Service Retirement Allowances of Members Retiring on or after July 1, 1976, but prior to July 1, 1978.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, but prior to July 1, 1978, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent ($1\frac{1}{2}\%$) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b6) **Service Retirement Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983.** — Upon

retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($1/4$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b7) **Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven one-hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($1/4$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b8) **Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988.** — Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) **Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) **Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) **Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b13) **Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1994.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b14) **Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1995 but before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent

(5%) times the difference between 30 years and his creditable service at retirement.

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.

- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997, but before July 1, 1998. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 1998, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b16)(1)a., reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final

compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b17) **Service Retirement Allowance of Member Retiring on or After July 1, 1998, but before July 1, 2000.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1998, but before July 1, 2000, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of his average final compensation, multiplied by the number of years of his creditable service.
- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b17)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 128-27(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b17)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday

and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b17)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b18) Service Retirement Allowance of Member Retiring on or After July 1, 2000, but Before July 1, 2001. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2001, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law

enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b18)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 2. The service retirement allowance as computed under G.S. 128-27(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b18)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter

of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b18)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b19) **Service Retirement Allowance of Member Retiring on or After July 1, 2001, But Before July 1, 2002.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2001, but before July 1, 2002, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b19)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 2. The service retirement allowance as computed under G.S. 128-27(b19)(1)a. reduced by five percent

(5%) times the difference between 30 years and his creditable service at retirement.

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b19)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b19)(2)b.

- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b20) Service Retirement Allowance of Member Retiring on or After July 1, 2002, but Before July 1, 2003. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, but before July 1, 2003, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b20)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 - 2. The service retirement allowance as computed under G.S. 128-27(b20)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of average final com-

pensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b20)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b20)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b21) **(Effective until July 1, 2019) Service Retirement Allowance of Member Retiring on or After July 1, 2003.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2003, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 128-27(b21)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 - 2. The service retirement allowance as computed under G.S. 128-27(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b21)(2) a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday

and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b21)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b21) (Effective July 1, 2019) Service Retirement Allowance of Member Retiring on or After July 1, 2003, but Before July 1, 2018. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2003, but before July 1, 2018, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday

with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b21)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;
 2. The service retirement allowance as computed under G.S. 128-27(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b21)(2) a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would

have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b21)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b22) (Effective July 1, 2019) Service Retirement Allowance of Member Retiring on or After July 1, 2018. — Upon retirement from service in accordance with subsection (a) or (a1) of this section, on or after July 1, 2018, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after the member's 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.
 - b. If the member's service retirement date occurs prior to the member's 50th birthday and after the completion of 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity but before the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 1. The service retirement allowance payable under G.S. 128-27(b22)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.

2. The service retirement allowance as computed under G.S. 128-27(b22)(1)a. reduced by five percent (5%) times the difference between 30 years and the member's creditable service at retirement plus four percent (4%) times the difference between 50 and the member's age at retirement.
- c. If the member's service retirement date occurs on or after the member's 50th birthday and before the member's 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 1. The service retirement allowance payable under G.S. 128-27(b22)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.
 2. The service retirement allowance as computed under G.S. 128-27(b22)(1)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after the member's 65th birthday upon the completion of five years of creditable service, or after the completion of 30 years of creditable service, or on or after the member's 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of the member's average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after the member's 60th birthday and before the member's 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 128-27(b22)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the member's 65th birthday.
 - c. If the member's early service retirement date occurs on or after the member's 50th birthday and before the member's 60th birthday and after completion of 20

years of creditable service but prior to the completion of 30 years of creditable service, the early service retirement allowance shall be equal to the greater of the following amounts:

1. The service retirement allowance as computed under G.S. 128-27(b22)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the month the member would have attained the member's 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the member's 60th birthday precedes the first day of the month coincident with or next following the member's 65th birthday.
 2. The service retirement allowance as computed under G.S. 128-27(b22)(2)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b22)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(c) **Disability Retirement Benefits.** — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer, an eligible firefighter as defined in G.S. 58-86-2, or an eligible rescue squad worker as defined in G.S. 58-86-2, and becomes incapacitated for duty as the natural and proximate result of injuries incurred while in the actual performance of his or her duties, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) **Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965.** — Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d2) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d3) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982.** — Upon

retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
 - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);
 - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and
 - c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982.** — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) **Reexamination of Beneficiaries Retired on Account of Disability.** — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination,

such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of a percent (1/10 of 1%), provided that this percentage change is positive. Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

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

- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than

his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.
 - a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3)

each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 120 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

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

- (5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retire-

ment shall be determined in accordance with subdivision (3a) of this section.

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

(f) **Return of Accumulated Contributions.** — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, the member shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, the member's contributions and the accumulated regular interest thereon, provided that the member has not in the meantime returned to service. Upon payment of such sum his or her membership in the System shall cease and, if he or she thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as the member or former member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his or her accumulated contributions unless the extension service employee is eligible to be paid his or her accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(f2) Expired.

(g) **Election of Optional Allowance.** — With the provision that until the first payment on account of any benefit becomes normally due, or the member's first retirement check has been cashed, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or the member may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option 2, 3, or 6 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or the member's first retirement check has been cashed. Provided, however, in the event a member has elected Option 2, 3, or 5 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall

provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Option 2, 3, 5, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option. Except as provided in this section, the member may not change the member's retirement benefit option or the member's designated beneficiary for survivor benefits, if any, after the member has cashed the first retirement check or after the 25th day of the month following the month in which the first check is mailed, whichever comes first.

Option one.

- (a) In the Case of a Member Who Retires prior to July 1, 1965.
— If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.
- (b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit

becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, effective as of the first of the month following the month of initial entitlement, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E) but prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is eligible to receive the return of accumulated contributions. If more than one beneficiary is eligible to receive the return of accumulated contributions, or if no beneficiary has been designated, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed

with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the

beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize

such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. This subsection does not affect the right of the Retirement System to recoup overpaid benefits as provided in G.S. 128-31.

(j) **Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967.** — From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars (\$5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) **Post-Retirement Increases in Allowances.** — As of December 31, 1969, the ratio of the Consumer Price Index to such index

one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

<i>Increase In Index</i>	<i>Increase In Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum (1/10 of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing sufficient investment gains to cover the additional actuarial liabilities on account of such increase. The determination of whether there are sufficient investment gains to cover the possible postretirement increase in allowance shall reside exclusively within the discretion of the Board of Trustees and shall be informed by the findings within the annual actuarial valuation reports. In considering whether to grant a postretirement increase, the Board of Trustees shall take into account both the rate of inflation as determined by the Consumer Price Index and the record of investment gains or losses during the preceding three-year period.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

Notwithstanding the foregoing linkage between increases in the Consumer Price Index and correlative contingent increases in

retirement benefits determined by the availability of sufficient investment gains to cover the additional actuarial liabilities arising from those increased benefits, the Board of Trustees, may in any year, considering an increase, if any, in the Consumer Price Index, fund a cost-of-living increase in a percentage amount, measured in tenths of one percent (1/10 of 1%), of up to four percent (4%), provided that the Board may use only investment gains to fund such an increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

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

Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member’s death, otherwise to the member’s legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a minimum of twenty-five thousand dollars (\$25,000) and a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69;
or
- (3) After December 31, 1970 and after he has attained age 68;
or
- (4) After December 31, 1971 and after he has attained age 67;
or
- (5) After December 31, 1972 and after he has attained age 66;
or
- (6) After December 31, 1973 and after he has attained age 65;
or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or

contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection “calendar year” shall mean any period of 12 consecutive months. For all other purposes in this subsection “calendar year” shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member’s sick and annual leave expire.
 - c. When a participant’s employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
- (4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to be less than

twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(11) **Death Benefit Plan for Law Enforcement Officers.** — Under all requirements and conditions as otherwise provided for in subsection (1), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(12) **Death Benefit for Retired Members.** — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(13) **Death Benefit for Retired Members.** — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by

System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(14) **Death Benefit for Retired Members.** — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(15) Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should

death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(l6) Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 2015, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

The death benefit payable under this subsection shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if not survived by a designated beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) **(Effective until July 1, 2019) Survivor's Alternate Benefit.** — Upon the death of a member in service, the beneficiary

designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all four of the following conditions apply:

- (1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
 - b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b. or G.S. 128-27(b21)(2)c., notwithstanding the requirement of obtaining age 50, or
 - b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, or the member was a firefighter or a rescue squad worker who had obtained 15 years of service as a firefighter or a rescue squad worker and was killed in the line of duty, in which cases the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b., notwithstanding the requirement of obtaining age 50.
 - c. Repealed by Session Laws 2010-72, s. 2(b), effective July 1, 2010.
- (2) At the time of the member's death, one and only one beneficiary is eligible to receive a return of his accumulated contributions.
 - (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.
 - (4) The member had not commenced to receive a retirement allowance as provided under this Chapter.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

For the purpose of calculating this benefit, any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death.

(m) **(Effective July 1, 2019) Survivor's Alternate Benefit.** — Upon the death of a member in service, the beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of the member's death, provided that all four of the following conditions apply:

- (1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b22)(1)c. or G.S. 128-27(b22)(2)c., notwithstanding the requirement of obtaining age 50, or
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, or the member was a firefighter or a rescue squad worker who had obtained 15 years of service as a firefighter or a rescue squad worker and was killed in the line of duty, in which cases the retirement allowance shall be computed in accordance with G.S. 128-27(b22)(1)c., notwithstanding the requirement of obtaining age 50.
- c. Repealed by Session Laws 2010-72, s. 2(b), effective July 1, 2010.
- (2) At the time of the member's death, one and only one beneficiary is eligible to receive a return of his accumulated contributions.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.
- (4) The member had not commenced to receive a retirement allowance as provided under this Chapter.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

For the purpose of calculating this benefit, any terminal payouts made after the date of death that meet the definition of compensa-

tion shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death.

(m1) **Special Retirement Allowance for Law Enforcement Officers.** — Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

(m2) **(Effective until July 1, 2019) Special Retirement Allowance.** — At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement

ment Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code.

Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 128-38.2(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain the relationship between the transferred balance and the monthly benefit and how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers the member's eligible accumulated contributions from an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 128-27(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.
- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers. An eligible plan shall not assess a fee specifically relating to a transfer of accumulated contributions authorized under this subsection. This provision shall not prohibit other fees that may be assessable under the plan. Each plan, contract, account, or annuity shall fully disclose to any member participating in a transfer under this subsection any surrender charges or other fees, and that disclosure shall be made contemporaneous with the initiation of the transfer by the member.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection.

(m2) (Effective July 1, 2019) Special Retirement Allowance. — At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of

the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code. In addition, any transfer under this subsection may be paid in whole or in part with employer contributions paid directly to this Retirement System at the time of transfer.

Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 128-38.2(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain the relationship between the transferred balance and the monthly benefit and how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the

basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers the member's eligible accumulated contributions from an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 128-27(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.
- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not

to exceed the actual cost of the administrative expenses relating to these transfers. An eligible plan shall not assess a fee specifically relating to a transfer of accumulated contributions authorized under this subsection. This provision shall not prohibit other fees that may be assessable under the plan. Each plan, contract, account, or annuity shall fully disclose to any member participating in a transfer under this subsection any surrender charges or other fees, and that disclosure shall be made contemporaneous with the initiation of the transfer by the member.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection.

(m3) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 128-27(b21) shall be paid his contributions in a lump sum as provided in G.S. 128-27(f) by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be an employee except by death. If such member fails, following reasonable notification, to complete a refund application by such required date, the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld. For purposes of this subsection, a member shall not be considered to have ceased to be an employee if the member is actively contributing to the Teachers' and State Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System. A lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 128-27(21) [G.S. 128-27(b21)] shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be an employee except by death. If such member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 128 of the General Statutes by such required beginning date, the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 128-27(b21). For purposes of this subsection, a member shall not be considered to have ceased to be an employee if the member is actively contributing to the Teachers' and State

Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System. A retirement benefit shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Consolidated Judicial Retirement System, or Legislative Retirement System.

(n) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.** — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) **Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969.** — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Year(s) in Which Benefits Commenced</i>	<i>Percentage</i>
1959 through 1968	10
1946 through 1958	25

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(p) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (k).

(q) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection

shall apply also to the allowance of a surviving annuitant of a beneficiary.

(r) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(s) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 128-27(k) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(t) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(u) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2 ½%) for the year beginning July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(v) **Increases in Allowances Paid Beneficiaries Retired prior to July 1, 1976.** — From and after July 1, 1978, the monthly allowances paid to or on account of beneficiaries who commenced receiving such allowances prior to July 1, 1976, shall be increased by seven percent (7%) thereof. This increase shall be calculated before

monthly allowances, as of July 1, 1978, have been increased to the extent provided for in the preceding subsections (k) and (u). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 128-27(k), shall be five percent (5%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x) **Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978.** — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1959	10%
July 1, 1959, to June 30, 1968	7%
July 1, 1968, to June 30, 1978	2%

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the beneficiary.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of

four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985.

(bb) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(ee) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988.** — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and

two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(gg) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989.** — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(hh) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.** — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(jj) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992.** — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(kk) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(ll) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(mm) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994.** — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries

whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(pp) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995.** — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly.

(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ss) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(tt) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997.** — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(uu) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(vv) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1998.** — From and after July 1, 1998, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1998, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1998. This allowance shall be calculated on the allowance payable and in effect on June 30, 1998, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(ww) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by one percent (1.0%) of the allowance payable on June 1, 1999, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall

be increased by a prorated amount of one percent (1.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(xx) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000.** — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1999 General Assembly, 2000 Regular Session.

(yy) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on June 1, 2000, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(zz) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(aaa) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2001.** — From and after July 1, 2001, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2001, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2001. This allowance shall be calculated on the allowance payable and in effect on June 30, 2001, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2001 General Assembly.

(bbb) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or

before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(ccc) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002.** — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2002 Regular Session of the 2001 General Assembly.

(ddd) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by two percent (2.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of two percent (2.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(eee) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before June 1, 1982, shall be increased by six percent (6.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or after July 1, 1982, but before July 1, 1993, shall be increased by one and one-tenth percent (1.1%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 Regular Session of the 2003 General Assembly.

(fff) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2003.** — From and after July 1, 2003, the retirement allowance to or on account of beneficiaries on the

retirement rolls as of June 1, 2003, shall be increased by one and one-half percent (1.5%) of the allowance payable on June 1, 2003. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 General Assembly.

(ggg) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 2005, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

History.

1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s. 2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6; 1989 (Reg. Sess., 1990), c. 1077, ss. 13-16; c. 1080; 1991, c. 636, s. 20(a); 1991 (Reg. Sess., 1992), c. 766, s. 1; c. 900, ss. 52(e)-(g), 53(a); c. 929, s. 1; c. 1030, s. 51.1; 1993, c. 321, ss. 74(b), 74.1(c), (d); c. 531, s. 3; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(b)-(d), (l); 1995, c. 507, ss. 7.22(e), (f), 7.23(c), (d), 7.23A(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(d); 1997-443, s. 33.22(g)-(j); 1998-153, s. 21(d)-(h); 1998-212, ss. 28.26(b),

28.27(e), (f); 1999-237, s. 28.23(d); 2000-67, ss. 26.20(g)-(j); 2001-424, ss. 32.22(d), 32.23(a)-(d); 2001-435, s. 1; 2002-126, ss. 28.8(b), 28.9(e)-(h); 2003-319, ss. 1-4; 2003-359, ss. 15, 16, 21; 2004-136, s. 1; 2004-147, ss. 2, 3; 2005-91, ss. 9, 10; 2005-276, s. 29.25(d); 2007-384, ss. 10.1, 10.2; 2007-431, ss. 2, 6; 2007-496, s. 2; 2009-66, ss. 3(i)-(k), 5(d)-(f), 6(b), 11(h)-(j), 12(g), (h); 2009-109, s. 2; 2010-72, ss. 1(b), 2(b), 9(b), 10(b); 2010-96, s. 40.7; 2010-124, ss. 4-6, 6.1(a), (b); 2011-92, s. 2; 2011-294, s. 3(b); 2011-371, s. 1; 2012-82, s. 1; 2012-178, s. 2; 2014-88, ss. 1(b), 2(b); 2014-97, ss. 3(b), 4(g), 5(b); 2014-112, ss. 1(b), 3(e), 3(f), 7; 2015-164, s. 10(b); 2016-56, ss. 4(b), 5(b); 2017-129, ss. 1(c), 2(r), 2(s), 3(d), 3(e); 2018-22, ss. 2(b), 3(e)-(h); 2018-85, ss. 2, 3(b), 11(b).

Subdivision (a)(5) and Subsections (b21), (m) and (m2) Set Out Twice.

The first versions of subdivision (a)(5) and subsections (b21), (m) and (m2) set out above are effective until July 1, 2019. The second versions of subdivision (a)(5) and subsections (b21), (m) and (m2) set out above are effective July 1, 2019.

Editor's Note.

Session Laws 2018-22, s. 4, provides: "Notwithstanding any other provision of law to the contrary, in order to administer the changes to the special retirement allowance, as well as the change in creditable service required for law enforcement officers to retire with a reduced benefit, as provided for in Sections 2 and

3 of this act, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of these changes directly from the retirement assets.”

The designation of subsection (aaa) is as directed by the Revisor of Statutes, the designation in Session Laws 2001-424, s. 32.23(d), having been (zz).

The bracketed reference “[G.S. 128-27(b21)]” was inserted in the first sentence of the second paragraph of subsection (m3) at the direction of the Revisor of Statutes.

The changes to the death benefit amounts in subsection (l), as amended by Session Laws 2004-136, s. 1, effective July 1, 2004, are applicable to persons dying on or after that date.

Subsections (l3) and (l4), as amended by Session Laws 2004-147, ss. 2 and 3, effective July 1, 2004, are applicable to persons dying on or after that date.

Session Laws 2007-384, s. 11(b), provides: “The Board of Trustees of the Teachers’ and State Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees.”

Session Laws 2009-109, s. 2, which, in subsection (m), added subdivision (1)b1., and made a minor punctuation change, was effective June 16, 2009, and applicable to beneficiaries of law enforcement

officers killed in the line of duty on and after January 1, 2007.

Session Laws 2010-72, s. 10(b), effective July 1, 2010, amended the first sentence of subsection (m1) by inserting “any portion of” preceding “his eligible accumulated contributions.” Section 10(b) was subsequently repealed by Session Laws 2010-124, s. 6.1, effective January 1, 2011. Session Laws 2010-96, s. 40.7, amended Session Laws 2010-124, s. 6.1, by adding s. 6.1(b), which provided, in part, that s. 10(b) of Session Laws 2010-72 was repealed effective July 1, 2010. The result is that the amendment to subsection (m1) by Session Laws 2010-72, s. 10(b) never took effect.

Session Laws 2010-96, s. 40.7 was contingent upon House Bill 2066, 2009 Regular Session, becoming law. House Bill 2066 was enacted as Session Laws 2010-124.

Session Laws 2010-124, s. 7, provides in part: “Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. Any administrative fees accessed by the Boards of Trustees may be used to hire additional personnel to administer this act.”

Session Laws 2011-92, s. 2, which amended subdivision (m)(1)b1, is applicable to beneficiaries of firefighters and rescue squad workers killed in the line of duty on or after July 1, 2011.

Session Laws 2011-208, s. 1, provides: “Notwithstanding any other provision of law, a retired member of the Teachers’ and State Employees’ Retirement System or the Local Governmental Employees’ Retirement System (i) who designated a spouse as survivor under Option 5 as set forth in G.S. 135-5(g) or G.S. 128-27(g), (ii) whose designated spouse predeceased him or her, and (iii) who remarried prior to the enactment of S.L. 2010-72 may nominate the new spouse to receive the survivor retirement benefits in accordance with G.S. 135-5(g) or G.S. 128-27(g), provided that nomination is made within 90 days of the effective date of this act [June 23, 2011].”

Session Laws 2014-112, s. 6(b), effective October 1, 2014, added a subsection (u) to this section. It was recodified as subsection (u) of G.S. 128-28 at the direction of the Revisor of Statutes.

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Effect of Amendments.

Session Laws 2016-56, ss. 4(b), 5(b),

effective June 30, 2016, in subsection (g), in the first paragraph, substituted “the member’s” for “his” twice and substituted “the member” for “he,” and inserted “or her,” and “or if no beneficiary has been designated”; and, in subsection (m2), substituted “one-time, irrevocable” for “one-time” near the beginning of the first and second paragraph.

Session Laws 2017-129, s. 1(c), effective July 20, 2017, added the second sentence in subsection (i).

Session Laws 2017-129, ss. 2(r) and 2(s), effective June 30, 2017, in subsection (l), added the third through seventh sentences in the first paragraph, and substituted “the member shall have nominated” for “he shall have nominated” in the first sentence of the second paragraph; and, in subsection (l6), in the first paragraph, substituted “the member’s death required contributions” for “his death required contributions” and inserted “the North Carolina Teachers’ and State Employees’ Benefit Trust,” in the first sentence, and added the last three sentences, and substituted “The death benefit payable under this subsection” for “This death benefit” in the first sentence of the second paragraph.

Session Laws 2017-129, ss. 3(d) and 3(e), effective January 1, 2018, in the first paragraph of subsection (f), made gender-neutralizing changes throughout, and deleted “prior to completing 10 years of service” following “electronic submission” near the beginning of the second sentence and in the first sentence of the second paragraph of subsection (l).

Session Laws 2018-22, ss. 2(b), 3(e)-(h), effective July 1, 2019, in subdivision

(a)(5), inserted “(i),” substituted “or (ii)” for “or who,” inserted “or (iii) who has completed 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity,” substituted “the member desires” for “he desires” and made a minor punctuation change; in subsection (b21), in the heading, and in the introductory paragraph, added “but before July 1, 2018”; added subsection (b22); in subsection (m), in the introductory paragraph, substituted “the member’s death” for “his death,” in sub-subdivision (m)(1)b., substituted “G.S. 128-27(b22)(1)c. or G.S. 128-27(b22)(2)c.” for “G.S. 128-27(b21)(1)b. or G.S. 128-27(b21)(2)c.,” and in sub-subdivision (m)(1)b1., substituted “G.S. 128-27(b22)(1)c.” for “G.S. 128-27(b22)(1)b.”; and added the last sentence in the second paragraph of subsection (m2).

Session Laws 2018-85, ss. 2, 3(b), 11(b), effective June 25, 2018, in subsection (a3), inserted “other than service earned through armed service credit under G.S. 135-4(f) or G.S. 135-4(g),” in subdivision (a3)(1), substituted “June” for “December” twice, and inserted “fiscal” preceding “year most recently ended” in the penultimate paragraph; in subdivision (e)(4), substituted “120 days” for “60 days,” and “180 days” for “240 days”; and, in subsection (m2), deleted the penultimate paragraph which formerly read “The Board of Trustees shall report annually to the Joint Legislative Commission on Governmental Operations on the number of persons who made an election in the previous calendar year, with any recommendations it might make on amendment or repeal based on any identified problems.”

CASE NOTES

The relationship between public employees and the retirement system is one of contract. *Simpson v. North Carolina Local Gov’t Employees’ Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff’d, 323 N.C. 362, 372 S.E.2d 559 (1988).

Right of Employee to Rely on Retirement Plan. — A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, continually promised him over many years, will not be removed or diminished. *Simpson v. North Carolina Local Gov’t Employees’ Retirement Sys.*, 88 N.C. App. 218, 363

S.E.2d 90 (1987), aff’d, 323 N.C. 362, 372 S.E.2d 559 (1988).

Plaintiffs, as members of the North Carolina Local Governmental Employees’ Retirement System, had a contractual right to rely on the terms of the retirement plan as these terms existed at the moment their retirement rights became vested. *Simpson v. North Carolina Local Gov’t Employees’ Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff’d, 323 N.C. 362, 372 S.E.2d 559 (1988).

Where plaintiff had attained more than five years of creditable service before his injury, and before the date he

submitted his application for disability retirement, he had contractual rights in pension fund. *Hogan v. City of Winston-Salem*, 121 N.C. App. 414, 466 S.E.2d 303 (1996).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as plaintiff employees stood to suffer significant reductions in their retirement allowances as a result of the 1981 legislative amendment of this section adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and necessary to serve an important state interest, the case would be remanded for further proceedings. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), *aff'd*, 323 N.C. 362, 372 S.E.2d 559 (1988).

Decedent terminated her employment within the meaning and intent of subsection (l) on the date that she went on disability retirement. *Walker v. Board of Trustees*, 348 N.C. 63, 499 S.E.2d 429 (1998).

Where over 180 days expired between the last day decedent actually worked and the date she died, her spouse was not entitled to a death benefit under subsection (l). *Walker v. Board of Trustees*, 348 N.C. 63, 499 S.E.2d 429 (1998).

Disability Benefits Classified as Separate Property. — The amount of plaintiff's "disability retirement benefits" attributable to his physical disability was plaintiff's separate property, under G.S. 50-20. *Johnson v. Johnson*, 117 N.C. App. 410, 450 S.E.2d 923 (1994).

The statute of limitations in subsection (i) applied and allowed plaintiffs to pursue claims for underpayment of disability retirement benefits for three years before they commenced actions. *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

Part-Time Status Did Not Equate to Retirement. — An employee of a local government employer who went to a part-time status did not "retire" when she changed jobs and lessened her hours and was not eligible to receive disability retirement benefits under G.S. 128-27. *Wallace v. Bd. of Trs., Local Gov't Emples. Ret. Sys.*, 145 N.C. App. 264, 550 S.E.2d 552, 2001 N.C. App. LEXIS

650 (2001), cert. denied, 354 N.C. 580, 559 S.E.2d 553 (2001).

Last Day of Service. — When decedent retired on disability, she was not terminated within the meaning of the death benefit statute; therefore, the last day of the decedent's actual service was the date on which her sick and annual leave expired. *Walker v. Board of Trustees*, 127 N.C. App. 156, 487 S.E.2d 839 (1997), *aff'd*, 348 N.C. 63, 499 S.E.2d 429 (1998).

Spouse Not Entitled to Death Benefit. — Where decedent died more than 180 days after she last earned a salary surviving spouse was not entitled to the death benefit. *Walker v. Board of Trustees*, 127 N.C. App. 156, 487 S.E.2d 839 (1997), *aff'd*, 348 N.C. 63, 499 S.E.2d 429 (1998).

Beneficiary of Government Employee Who Died After Retirement Was Not Entitled to Survivor's Alternate Benefit. — The Supreme Court of North Carolina, in a per curiam opinion, reversed the decision of the Court of Appeals in *Grooms v. Dep't of State Treasurer*, 144 N.C. App. 160, 550 S.E.2d 204 (2001), which held that the beneficiary of a county employee who died within 180 days of retirement was entitled to select the survivor's alternate benefit set forth in G.S. 128-27(m). In reversing, the Supreme Court noted its agreement with the reasoning of the dissenting opinion below, holding that the General Assembly did not intend for the alternate benefit provided by G.S. 128-27(m) to apply to the beneficiary of a government employee whose death occurred after his retirement. *Grooms v. State Dep't of Treasurer, Ret. Sys. Div.*, 354 N.C. 562, 556 S.E.2d 293, 2001 N.C. LEXIS 1223 (2001).

Reemployment By Local Government. — Retired city police officer lost his right to receive a separation allowance pursuant to G.S. 143-166.42 when he became reemployed by a county sheriff's office, which was a local government as defined by G.S. 143-166.41. *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Credit Denied to a Self-Insured City for Disability Retirement Payments. — North Carolina Industrial Commission's decision to deny a city credit for disability retirement payments that were made to an injured city employee from a public employee benefits program was not an abuse of discretion under G.S. 97-42 because the city and

the employee jointly contributed to the plan, and competent evidence, in the form of testimony as to the funding of the disability benefits plan, existed to support the Commission's findings of fact and conclusions of law. *Cox v. City of Winston-Salem*, 171 N.C. App. 112, 613 S.E.2d 746, 2005 N.C. App. LEXIS 1161 (2005).

Cited in *Woodard v. North Carolina Local Governmental Employees' Retirement Sys.*, 108 N.C. App. 378, 424 S.E.2d 431 (1993); *Liptrap v. City of High Point*, 128 N.C. App. 353, 496 S.E.2d 817 (1998).

§ 128-28. Administration and responsibility for operation of System.

(a) **Vested in Board of Trustees.** — The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this Article are hereby vested in the Board of Trustees: Provided, that all expenses in connection with the administration of the North Carolina Local Governmental Employees' Retirement System shall be charged against and paid from the expense fund as provided in subsection (f) of G.S. 128-30.

(b) **Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation.** — The Board of Trustees shall be a body politic and corporate under the name Board of Trustees of the North Carolina Local Governmental Employees' Retirement System, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(c) **Members of Board.** — The Board shall consist of (i) five members of the Board of Trustees of the Teachers' and State Employees' Retirement System appointed under G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members appointed by the General Assembly; and one of the two members appointed by the Governor who are not members of the teaching profession or State employees; and (ii) eight members designated by the Governor:

- (1) One member shall be a mayor or a member of the governing body of a city or town participating in the Retirement System;
- (2) One member shall be a county commissioner of a county participating in the Retirement System;
- (3) One member shall be a law-enforcement officer employed by an employer participating in the Retirement System;

- (4) One member shall be a county manager of a county participating in the Retirement System;
- (5) One member shall be a city or town manager of a city or town participating in the Retirement System;
- (6) One member shall be an active, Fair Labor Standards Act nonexempt, local governmental employee of an employer;
- (7) One member shall be a retired, Fair Labor Standards Act nonexempt, local governmental employee of an employer; and
- (8) One member shall be an active or retired member of the Firemen's and Rescue Squad Workers' Pension Fund.

The Governor shall designate eight members on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the eight members designated by the Governor shall serve on the Board in addition to the regular duties of their city, town, or county office: Provided, that if for any reason any member appointed pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county office or employment which the member held at the time of this designation, the Governor shall designate another member to serve until the next regular date for the designation of members to serve on the Board.

(d) **Compensation of Trustees.** — The trustees shall be paid during sessions of the Board at the prevailing rate established for members of State boards and commissions, and they shall be reimbursed for all necessary expenses that they incur through service on the Board.

(e) **Oath.** — Each trustee other than the ex officio members shall, within 10 days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State: Provided, that where a local governmental official designated by the Governor has taken an oath of office in connection with the local governmental office that he holds, the oath for his local governmental office shall be deemed to be sufficient, and he shall not be required to take the oath hereinabove provided.

(f) **Voting Rights.** — Each trustee shall be entitled to one vote in the Board. A majority of affirmative votes in attendance shall be necessary for a decision by the trustees at any meeting of said Board. A vote may only be taken if at least seven members of the Board are in attendance, in person or by telephone, for the meeting at which a vote on a decision is taken.

(g) **Rules and Regulations.** — Subject to the limitations of this Article, the Board of Trustees shall, from time to time, establish

rules and regulations for the administration of the funds created by this Article and for the transaction of its business. The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Article.

(h) **Officers and Other Employees, Salaries and Expenses.** — The State Treasurer shall be ex officio chair of the Board of Trustees and shall appoint a director. The Board of Trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the Board of Trustees shall approve.

(i) **Actuarial Data.** — The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(j) **Record of Proceedings; Annual Report.** — The Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System. It shall also publish annually a report on supplemental insurance offerings that are made available to retirees and the extent to which retirees participate in those offerings.

(k) **Legal Adviser.** — The Attorney General shall be the legal adviser of the Board of Trustees.

(l) **Medical Board.** — The Board of Trustees shall designate a Medical Board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board members. If required, other physicians may be employed to report on special cases. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A person serving on the medical board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

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

(m) **Duties of Actuary.** — The Board of Trustees shall designate an actuary who shall be the technical adviser of the Board of Trustees on matters regarding the operation of the funds created by the provisions of this Chapter and shall perform such other duties as are required in connection therewith. For purposes of the annual valuation of System assets, the experience studies, and all other actuarial calculations required by this Chapter, all the assumptions used by the System's actuary, including mortality tables, interest rates, annuity factors, and employer contribution rates, shall be set out in the actuary's periodic reports or other materials provided to the Board of Trustees. These materials, once accepted by the Board, shall be considered part of the Plan documentation governing this Retirement System; similarly, the Board's minutes relative to all actuarial assumptions used by the System shall also be considered part of the Plan documentation governing this Retirement System, with the result of precluding any employer discretion in the determination of benefits payable hereunder, consistent with Section 401(a)(25) of the Internal Revenue Code.

(n) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the Board of Trustees such tables and such rates as are required in subsection (o), paragraphs (1) and (2), of this section. The Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this Chapter.

(o) In the year 1945, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the Board of Trustees shall:

- (1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and

- (2) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

(p) On the basis of such tables and interest assumption rate as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Chapter. The annual valuation shall include a supplementary section that provides an analysis of assets on a market basis using the 30-year treasury rate as of December 31 of the year of the valuation as the discount rate.

(q) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a Class 1 misdemeanor; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter.

(r) **Fraud Investigations and Compliance Investigations. — Access to Persons and Records.** — In the course of conducting a fraud investigation or compliance investigation, the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall:

- (1) Have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employer. The review of State tax returns shall be limited to matters of official business, and the Division's report shall not violate the confidentiality provisions of tax laws.
- (2) Have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to the following:

- a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State.
- (3) Have the authority, and shall be provided with ready access, to examine and inspect all property, equipment, and facilities in the possession of any employer agency or any individual, private corporation, institution, association, board, or other organization that were furnished or otherwise provided through grant, contract, or any other type of funding by the employer agency.

With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to a beneficiary available to the Retirement Systems Division, or to the authorized representatives who are assisting the Retirement Systems Division staff. Copies of the records of social and medical services provided to a beneficiary will permit verification of the health or other status of a beneficiary as required for the payment of benefits under Article 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall request records in writing by providing the name of each beneficiary for whom records are sought, the purpose of the request, the statutory authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge, and the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided in accordance with this subsection.

(s) **Fraud Investigative Reports and Work Papers or Compliance Investigative Reports and Work Papers.** — The Director of the Retirement Systems Division shall maintain for 10 years a complete file of all fraud investigative reports, compliance investigative reports, and reports of other examinations, investigations, surveys, and reviews issued under the Director's authority. Fraud investigation work papers, compliance investigation work papers, and other evidence or related supportive material directly pertaining to the work of the Retirement Systems Division of the Department of State Treasurer shall be retained according to an agreement between the Director of Retirement and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of fraud or compliance investigative effort, and notwithstanding local unit personnel policies to the contrary, pertinent work papers and other supportive material relating to issued fraud investigation reports or compliance investigative reports may be, at the discretion

of the Director of Retirement and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud or compliance investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

(t) **Fraud Reports May Be Anonymous.** — The identity of any person reporting fraud, waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be maintained as a public record within the meaning of G.S. 132-1.

(u) **Immunity.** — A person serving on the Local Governmental Employees' Retirement System Board of Trustees shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

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

History.

1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 1987, c. 539, s. 1; 1993, c. 539, s. 944; 1994, Ex. Sess., c. 24, s. 14(c); 2006-64, ss. 1.1, 1.2; 2012-130, ss. 2(a), 9(a); 2012-185, ss. 2(c), 4(a); 2013-287, s. 4(b); 2014-112, ss. 4(b), 6(b); 2016-108, s. 6(d), (e); 2017-128, s. 1(h); 2018-85, s. 12.

Editor's Note.

Session Laws 2006-64, s. 2, provides: "This act is effective when it becomes law [July 9, 2006], and the additional members shall be designated by the Governor to serve until April 1, 2008, when their successors shall be designated."

Session Laws 2014-112, s. 6(b), effective October 1, 2014, added a subsection (u) to G.S. 128-27. It was recodified as subsection (u) of this section at the direction of the Revisor of Statutes.

Session Laws 2016-108, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 6(d), (e), effective July 22, 2016, substituted the present first sentence of subsection (h) for the former, which read: "The Board of Trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members"; and added the last sentence in subsection (p).

Session Laws 2017-128, s. 1(h), effective July 20, 2017, in subsection (l), added the last sentence in the introductory paragraph, and added subdivisions (l)(1) through (l)(5); in subsection (r), added "and Compliance Investigations" in the subsection heading and inserted

“investigation or compliance” in the introductory paragraph; and in subsection (s), inserted “Investigative Reports and Work Papers or Compliance” in the subsection heading, inserted “compliance investigative reports” in the first sentence, inserted “compliance investigation work papers” in the second sentence, and, in

the third sentence, inserted “or compliance” and “or compliance investigative reports” and inserted “or compliance” in the last sentence.

Session Laws 2018-85, s. 12, effective June 25, 2018, substituted “Article” for “Chapter” throughout subsection (g).

§ 128-29. Management of funds.

(a) **Vested in Board of Trustees.** — The Board of Trustees shall be the trustee of the several funds created by this Article as provided in G.S. 128-30.

(b) **Annual Allowance of Regular Interest.** — The Board of Trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the Board of Trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum (4%) per annum with respect to all calculations and allowances on account of members’ contributions and at the rate of three per centum (3%) per annum with respect to employers’ contributions, with the right reserved to the Board of Trustees to set a different rate or rates from time to time.

(c) **Custodian of Funds.** — The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the Board of Trustees. The secretary of the Board of Trustees shall furnish said Board a surety bond in a company authorized to do business in North Carolina in such amount as shall be required by the Board, the premium to be paid from the expense fund.

(d) **Cash Deposits for Meeting Disbursements.** — For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum (10%) of the total amount in the several funds of the Retirement System, on deposit in one or more banks or trust companies of the State of North Carolina, organized under the laws of the State of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum (25%) of the paid up capital and surplus of such bank or trust company.

(e) **Selection of Depositories.** — The Board of Trustees shall select a bank or banks for the deposits of the funds and securities of the Retirement System in the same manner as such banks are selected by the Treasurer of the State of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the State. The funds and properties of the North Carolina Governmental Employees' Retirement System held in any bank of the State shall be safeguarded by a fidelity and surety bond, the amount to be determined by the Board of Trustees.

(f) **Immunity of Funds.** — Except as otherwise herein provided, no trustee and no employee of the Board of Trustees shall have any direct interest in the gains or profits of any investment made by the Board of Trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the Board of Trustees; nor shall any trustee or employee of the Board of Trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the Board of Trustees.

(g) **Legislative Enactment Implementation Arrangement.** — The Legislative Enactment Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under the management of the Board of Trustees. The purpose of the LEIA is to provide for timely administrative implementation of legislative provisions regarding the retirement of, or payment of retirement benefits to, public officers or public employees. The LEIA shall have the following parameters:

- (1) **Administration.** — The LEIA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the LEIA and to adopt such rules and regulations as may be necessary or desirable to implement the provisions of the LEIA.
- (2) **Funding of the LEIA.** — In the event that the General Assembly creates or modifies any provision for the retirement of, or payment of retirement benefits to, public officers or public employees that has a cost savings as measured by actuarial note required by Article 15 of Chapter 120 of the General Statutes, the Board of Trustees may direct up to one hundredth percent (0.01%) of the required contributions to fund the LEIA. These funds must be deposited in a separate fund from the fund into which regular employer contributions are deposited for the Retirement System. The Board of Trustees shall not direct any employer contributions into the LEIA after November 1, 2021.

- (3) **Allocation of LEIA funds.** — The Board of Trustees may allocate LEIA funds to the implementation of legislative provisions regarding the retirement of, or payment for retirement benefits to, public officers or public employees, subject to the following restrictions:
- a. The Board of Trustees must identify individual implementation projects that will be paid for with LEIA funds. These implementation projects must be necessitated by a specific statute or session law that was enacted within five years of the allocation of the funds. The Board of Trustees must also identify the number of years for which each individual implementation project will be paid for with LEIA funds.
 - b. For implementation projects that will be paid for with LEIA funds for a period of one year or less, the Board of Trustees must determine that the cost savings from implementing the project is projected to be no less than half of the amount of LEIA funds utilized to pay for implementation.
 - c. For implementation projects that will be paid for with LEIA funds for a period of greater than one year, but not more than four years, the Board of Trustees must determine that the long-term cost savings from implementing the project is projected to be at least three times greater than the cost of implementation.
 - d. No implementation project shall be paid for with LEIA funds for a period of more than four years.
- (4) **Treatment of unused assets.** — Any assets of the LEIA not used to pay allowed administrative expenses for timely administrative implementation of legislative provisions shall be transferred to the Retirement System as an additional employer contribution.
- (5) **Reporting.** — The Department of State Treasurer shall report to the Board of Trustees, the Joint Legislative Commission on Government Operations, and the Fiscal Research Division on or before August 1 of each year on the (i) amounts and sources of funds collected by year pursuant to this section and (ii) the amounts expended, the projects for which those funds were expended, and the current status of the projects. The Board of Trustees shall also post this report on its public Web site.

History.

1939, c. 390, s. 9; 1941, c. 357, s. 7; 1945, c. 526, s. 5; 1957, c. 846, s. 1; 1959, c. 1181, s. 1; 1961, c. 397; 1967, c. 978, s. 8; 1971, c. 386, s. 3; 1973, c. 243, s. 10; 1979, c. 467, ss. 12, 13; 2017-129, s. 5(b).

Editor's Note.

Session Laws 2017-129, s. 12, is a severability clause.

Effect of Amendments.

Session Laws 2017-129, s. 5(b), effec-

tive October 1, 2017, added subsection (g).

§ **128-29.1.** Repealed by Session Laws 2015-67, s. 4, effective July 1, 2015.

History.

1961, c. 626; 1965, c. 415, s. 2; 1973, c. 243, s. 10; repealed by 2015-67, s. 4, effective July 1, 2015.

authority of the Board of Trustees to invest in certain common and preferred stocks.

Editor's Note.

Former G.S. 128-29.1 pertained to the

§ **128-30. Method of financing.**

(a) **Funds to Which Assets of Retirement System Credited.** — All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of three funds, namely, the annuity savings fund, the pension accumulation fund, and the expense fund.

(b) **Annuity Savings Fund.** — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) With respect to compensation paid on and after July 1, 1976, each participating employer shall deduct from the salary of each member on every payroll of the employer for every payroll period, six per centum (6%) of the compensation received by the member. Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.
- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Article. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the

member from whose compensation said deduction was made.

- (3) The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this Article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.
- (4) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer only for the purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer, subject to the provisions of this subdivision. A leave of absence or interrupted service may be approved for purchase under this subdivision for a period of employment as a teacher in a charter school. Any other leave of absence or interrupted service shall qualify for purchase under this subdivision only if (i) during the time of the leave or interrupted service the member is enrolled and participates in a full-time degree program at an accredited institution of higher education, (ii) the member is not paid compensation, other than a stipend resulting from participation in a full-time degree program, for the activity in which he or she is acquiring knowledge, talents, or abilities, and (iii) the service is not purchased for any month in which the member performed any services for any of the organizations listed in G.S. 135-27(a) or G.S. 135-27(f), or a successor to any of those organizations. Approval by the Board under this subdivision shall be made prior to the purchase of the creditable service, is limited to a career total of four years for each member, and may be obtained in the following manner:
 - a. **Approved leave of absence.** — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
 - b. **No educational leave policy.** — Where the employer has a policy of not granting educational leaves of

absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

- c. **Educational program prior to July 1, 1981.** — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary, plus a fee to be determined by the board of trustees.

Payments required to be made by the member and/or the employer under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

(b1) **Pick Up of Employee Contributions.** — Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, may elect to pick up and pay the contributions which would be payable by the employees as

members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 128-21. Picked-up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Local Governmental Employees' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions the provisions of subsection (g)(3) of this section shall apply.

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

- (1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days of the denial of the promotion or the error in reporting, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

For members or beneficiaries electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's or beneficiary's employer, which granted the retroactive promotion or erred in

underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or beneficiary or group of members or beneficiaries in his employ in paying all or any part of the interest assessed on the employee contributions due.

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

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

(c) Repealed by Session Laws 2017-129, s. 2(g), effective June 30, 2017.

(d) **Pension Accumulation Fund.** — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the Board of Trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of the member's actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation and duly approved by the Board of Trustees, which shall be called the "actuarially determined employer contribution rate."
- (2) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.

- (2a) The actuarially determined employer contribution rate shall be calculated annually by the actuary using assumptions and a cost method approved by the Actuarial Standards Board of the American Academy of Actuaries and selected by the Board of Trustees.
- (3) The “past service liability contribution” shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately 30 years, provided that the length of the period of payment for each employer after contributions begin shall be determined by the Board of Trustees as the result of actuarial valuations.
- (4) Upon the date of participation for each employer, the past service liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the “past service liability contribution rate” for such employer shall be the per centum of the total annual compensation of all members employed by the employer which is estimated to extinguish the liability in 24 years.
- (5) Notwithstanding Chapter 150B of the General Statutes, the total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the actuarially determined employer contribution rate and the past service liability contribution rate of the total earned compensation of all members during the preceding year as adjusted under a contribution rate policy adopted by the Board of Trustees and known as the “required employer contribution rate.” The Board of Trustees shall not adopt a contribution rate policy that results in a rate less than the normal contribution rate.
- (6) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.
- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
- (8) Repealed by Session Laws 2017-129, s. 2(i), effective June 30, 2017.
- (9) Notwithstanding Chapter 150B of the General Statutes and the foregoing provisions of this subsection, the actuary shall determine an additional “accrued liability contribu-

tion rate” and a “normal contribution rate” on account of the total earned compensation of each employer’s law enforcement officers each year, known as the “required employer contribution for law enforcement officers rate.” The required employer contribution for law enforcement officers rate may be adjusted under a contribution rate policy adopted by the Board of Trustees and added to the employers’ past service liability rate. The Board of Trustees shall not adopt a contribution rate policy that results in a rate less than the normal contribution rate.

- (10) For fiscal years beginning subsequent to January 1, 2017, the sum of the “normal contribution” and the “accrued liability contribution” shall not be less than the employee contribution required under subsection (b) of this section.

(e) Repealed by Session Laws 2017-129, s. 2(k), effective June 30, 2017.

(f) **Expense Fund.** — The expense fund shall be the fund from which the expenses of the administration of the Retirement System shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

- (1) The Board of Trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.
- (2) For the purpose of organizing the Retirement System and establishing an office, the Board of Trustees may provide as a prerequisite to participation in the Retirement System that each participating employer or employee or both shall pay an additional contribution to the Retirement System for the expense fund not to exceed two dollars (\$2.00) for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the Board of Trustees shall determine, and/or the Board of Trustees may borrow such amounts as may be necessary to organize and establish the Retirement System.

(g) **Collection of Contributions.** —

- (1) The collection of members’ contributions shall be as follows:
 - a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this Article. Each employer shall certify to the treasurer of said employer on each and

every payroll a statement as vouchers for the amount so deducted.

- b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this Article and shall transmit monthly, or at such time as the Board of Trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the Board of Trustees. The secretary-treasurer of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said Board of Trustees for use according to the provisions of this Article.
- (2) The collections of employers' contributions shall be made as follows:
- a. Upon the basis of each actuarial valuation provided herein the Board of Trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section. Such employer contributions shall be transmitted to the secretary-treasurer of the Board of Trustees together with the employee deductions as provided under sub-subdivision b. of subdivision (1) of this subsection.
 - b. Each employer shall transmit to the Retirement System on account of each member who retires on or after January 1, 2015, having earned his or her last month of membership service as an employee of that employer the lump sum payment, as calculated under G.S. 128-26(y) for inclusion in the Pension Accumulation Fund, that would have been necessary in order for the retirement system to restore the member's retirement allowance to the pre-cap amount. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hun-

dred thousand dollars (\$100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000), as provided and indexed under G.S. 128-27(a3).

Under such rules as the Board of Trustees shall adopt, the Retirement System shall report monthly to each employer a list of those members for whom the employer made a contribution to the Retirement System in the preceding month that are most likely to require an additional employer contribution should they elect to retire in the following 12 months, if applicable.

- (3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances, the Board shall assess the employer with a penalty, in lieu of interest, of 1% per month with a minimum penalty of twenty-five dollars (\$25.00). The Board may waive one penalty per employer every five years if the Board finds that the employer has consistently demonstrated good-faith efforts to comply with the set deadline. If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer, or the municipality or county of which such employer is an integral part, from any funds of the State or any funds collected by the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

In the event that an employer fails to submit payment of any required contributions or payments to the Retirement Systems Division, other than the one percent (1%) payment provided for in the first paragraph of this subdivision, within 90 days after the date set by the Board of Trustees,

the Board shall notify the State Treasurer of its intent to collect the delinquent contributions and other payments due to the Retirement Systems Division and request an interception of State appropriations due to the participating employer. Upon such notification by the Board of Trustees to the State Treasurer and the Office of State Budget and Management as to the default of the employer, the Office of State Budget and Management shall withhold from any State appropriation due to that employer an amount equal to the sum of all delinquent contributions and other debts due to the Retirement Systems Division and shall transmit that amount to the Retirement Systems Division.

- (4) In conjunction with the employee and employer contributions required under this section, the Board of Trustees shall direct employers to submit such information on a monthly basis as is necessary for proper administration of the Retirement System, actuarial valuation, and reporting under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. Submission of such information by an employer to the Retirement System constitutes a certification of its accuracy.

(h) **Merger of Annuity Reserve Fund, and Pension Reserve Fund into Pension Accumulation Fund.** — Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees shall determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(i) **Procedure and Payment to Cease Participation.** — Any employing unit that is allowed to cease participation in the Retirement System by the General Assembly shall do the following:

- (1) The employer shall notify its employees and the Board of Trustees, in writing, of its action. A withdrawing employer shall be required to make a lump-sum withdrawal liability payment to the Board of Trustees as provided by this section.
- (2) Complete withdrawal by an employer shall be the first day of the month following the date the Board of Trustees receives the employer's written notification. However, the complete withdrawal date shall not occur before the with-

drawal liability is determined, as provided in subdivision (5) of this subsection.

- (3) After complete withdrawal, all employees of the withdrawing employer shall be ineligible to accrue future benefits with the Retirement System due to employment with the withdrawing employer.
- (4) All active or inactive members of the employer shall be eligible for benefits accrued with the Retirement System up to the complete withdrawal date. However, no retirement allowance or return of accumulated contributions shall be paid until the member actually terminates employment and completely separates from active service with the withdrawing employer, and there is no intent or agreement, express or implied, to return to service with the withdrawing employer.
- (5) On the date of complete withdrawal, the withdrawal liability of an employer is the greater of one thousand dollars (\$1,000) or the amount determined by a. multiplied by the ratio of b. to c., as follows:
 - a. The excess of the actuarial present value of the vested accrued benefits of the Retirement System's members over the market value of its assets, both as of the date of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date based on the plan provisions and actuarial assumptions used in the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date, except the interest rate assumption shall be reduced by an amount determined by the consulting actuary to reflect the increased investment, mortality, and other actuarial risk for the exiting agency's participants.
 - b. The total present value of accrued benefits of all active members of the withdrawing employer as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
 - c. The total present value of accrued benefits of all active members of the Retirement System as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
- (6) The actuarial costs to determine the amount described in subdivision (5) of this subsection shall be paid by the withdrawing employer. An employer that does not pay the lump-sum withdrawal liability payment described in subdivision (5) of this subsection and the actuarial costs to determine this withdrawal liability within 90 days of the complete withdrawal date will continue to be a participating employer.

- (7) Upon the complete withdrawal of the employer, the Retirement System shall have no further legal obligation to the employer or its employees, nor shall the Retirement System be held accountable for the continued future accrual of any retirement benefit rights to which the employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the employer's complete withdrawal from the Retirement System shall be the sole legal responsibility of the withdrawing employer, and the withdrawing employer shall indemnify and hold harmless the Retirement System, its Board of Trustees, its employees, and the State of North Carolina from any claims, losses, costs, damages, expenses, and liabilities, including, without limitation, court costs, and reasonable attorneys' fees asserted by any person or entity as a result of the employer's withdrawal from the Retirement System.

(j) **Pension Spiking Report.** — Upon receipt of a report from the Retirement System generated pursuant to G.S. 128-30(g)(2)b., containing a list of employees for whom the employer made a contribution to the North Carolina Local Governmental Employees' Retirement System that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the employer's chief financial officer shall transmit a copy of the report to the governing body of the employer, if applicable.

History.

1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9; 1965, c. 781; 1967, c. 978, ss. 9, 10; 1971, c. 325, ss. 17-19; 1975, 2nd Sess., c. 983, ss. 129, 130; 1981, c. 1000, ss. 1, 3; 1981 (Reg. Sess., 1982), c. 1282, s. 9; 1985, c. 479, s. 196(p)-(r); c. 539, ss. 1, 2; 1991, c. 585, s. 2; 1995, c. 509, s. 68; 2003-359, s. 20; 2009-66, s. 7(b); 2010-72, s. 8(b); 2012-178, s. 3; 2014-88, s. 1(f); 2014-112, s. 2(b); 2015-164, ss. 5(b), 6(b); 2015-168, s. 3(b); 2016-56, ss. 6(b), 7(b); 2017-125, s. 2(b); 2017-128, ss. 4(c), 8(b); 2017-129, s. 2(c), (d), (g), (i), (k); 2018-52, s. 9(b); 2018-85, s. 13.

Editor's Note.

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2017-125, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an

intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Effect of Amendments.

Session Laws 2015-168, s. 3(b), effec-

tive January 1, 2016, added subsection (i).

Session Laws 2016-56, s. 6(b), effective January 1, 2017, rewrote the introductory paragraph of subdivision (b)(4).

Session Laws 2016-56, s. 7(b), effective June 30, 2016, in subdivision (g)(2)b., inserted “or her”, and substituted “G.S. 128-26(y) for inclusion in the Pension Accumulation Fund” for “G.S. 128-26(y)”; and substituted “Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances” for “Trustees” in the first paragraph of subdivision (g)(3).

Session Laws 2017-125, s. 2(a), effective July 20, 2017, inserted “compensation, other than a stipend resulting from participation in a full-time degree program” in the third sentence in subdivision (b)(4).

Session Laws 2017-128, ss. 4(c) and 8(b), effective July 20, 2017, added subsection (j) and subdivision (d)(10).

Session Laws 2017-129, ss. 2(c), 2(d), 2(g), 2(i), and 2(k), effective June 30, 2017, in subsection (a), substituted “three funds” for “five funds” and “the pension accumulation fund” for “the annuity reserve fund, the pension accumulation fund, the pension reserve fund”; rewrote subdivision (b)(1), deleting provisions relating to contributions to the annuity fund prior to July 1, 1976; deleted subsection (c), relating to the annuity reserve fund; rewrote subsection (d); and deleted subsection (e), relating to the pension reserve fund.

Session Laws 2018-52, s. 9(b), effective June 25, 2018, added the last two sentences in the first paragraph of subdivision (g)(2)b.

Session Laws 2018-85, s. 13, effective June 25, 2018, substituted “G.S. 128-30(g)(2)b.” for “G.S. 135-8(f)(2)f.” in subsection (j).

§ 128-31. Exemptions from execution; employing unit to offset amount owed by member or beneficiary.

(a) Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Application for System approval of a domestic relations order dividing a person’s interest under the Retirement System shall be accompanied by an order consistent with the system-designed template order provided on the System’s Web site. For orders entered on or after January 1, 2015, payment to a member’s former spouse pursuant to any such domestic relations order shall be limited to the lifetime of that former spouse and, upon the death of that former spouse, the former spouse’s share shall revert to the member.

(b) Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payments to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be

offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary.

(c) Notwithstanding any provisions to the contrary, if the member or beneficiary is an employee of an employing unit of the State or any political subdivision of the State, then any overpayment of benefits or erroneous payments to, or on behalf of, the member or beneficiary shall be offset against the net wages of the employee. If a member or beneficiary owes an amount to the Retirement System, has been notified of this amount in writing, and has not entered into a payment plan acceptable to the Retirement System, then the Retirement System shall notify the member or beneficiary's employer of the amount owed. Upon receipt of this notice from the Retirement System, the employer shall offset the amount owed against not less than ten percent (10%) of the net wages of the member or beneficiary until the Retirement System notifies the employer that the amount owed has been paid in full. The Retirement System's notice shall be prima facie evidence that the amount owed is valid and, notwithstanding any other provision of law to the contrary, the employer has no obligation to verify the amount owed. The employer shall provide no more than 30 days' but not less than 14 days' written notice to the member or beneficiary prior to beginning the offset. The employer shall remit all amounts offset under this subsection to the Retirement System in intervals corresponding with its regular pay periods. If an employer fails to adhere to the provisions of this section, then the Retirement System shall, after notice to the employer of its failure to cooperate, be entitled to seek recovery of any amounts due directly from the employer.

(d) Nothing in this section shall be construed to limit the Retirement System's ability to pursue alternative judicial remedies against a member or a beneficiary, including the pursuit of a judgment and lien against real property.

History.

1939, c. 390, s. 11; 1985, c. 402; c. 649, s. 5; 1989, c. 665, s. 3; c. 792, s. 2.4; 2005-91, s. 11; 2013-405, s. 4(b); 2014-112, s. 5(b); 2017-135, s. 9(b); 2018-52, s. 2(c).

Editor's Note.

Session Laws 2018-52, s. 2(d), made subsections (c) and (d) of this section, as added by Session Laws 2018-52, s. 2(c), effective June 25, 2018, and applicable to all amounts owed by a member or beneficiary to the applicable retirement system for which notice is sent on and after that date, regardless of the date the overpayment of benefits or the erroneous payment was made.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee bene-

fit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

“Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,”

Session Laws 2018-52, s. 1, provides: “This act shall be known and cited as the ‘Financial Accountability, Integrity, and Recovery Act of 2018’.”

Effect of Amendments.

Session Laws 2017-135, s. 9(b), effective July 20, 2017, in the last sentence, inserted “or erroneous payments,” inserted “or claims,” inserted “or unenti-

tled to those amounts,” and made a stylistic change.

Session Laws 2018-52, s. 2(c), added “employing unit to offset amount owed by member or beneficiary” to the section heading; designated the existing text as subsections (a) and (b); and added subsections (c) and (d). For effective date and applicability, see editor’s note.

Legal Periodicals.

For article analyzing North Carolina’s exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

§ 128-32. Protection against fraud.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a Class 1 misdemeanor. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had their records been correct, the Board of Trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

History.

1939, c. 390, s. 12; 1993, c. 539, s. 945; 1994, Ex. Sess., c. 24, s. 14(c).

CASE NOTES

Legislative Intent. — This section shows the intent of the General Assembly to allow the courts to require that compensation paid for underpayment of a pension compensation be paid at the actuarial value. *Faulkenbury v. Teachers’ & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

Calculation of Additional Benefit. — The re-calculation of additional bene-

fits owed to retirees did not mandate the use of a mortality factor, where the right to payments was not forfeited upon the death of a retiree but was passed to the retiree’s survivors. *Faulkenbury v. Teachers’ & State Employees’ Retirement Sys.*, 132 N.C. App. 137, 510 S.E.2d 675, 1999 N.C. App. LEXIS 89, cert. denied, 350 N.C. 379, 536 S.E.2d 620 (1999).

§ 128-32.1. Failure to respond.

If a member fails to respond within 120 days after preliminary option figures and the Form 6-E or Form 7-E are transmitted to the member, or if a member fails to respond within 120 days after the effective date of retirement, whichever is later, the Form 6 or Form 7 shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of

retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved. The Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 120-day limitation provided for in this section when a member has suffered incapacitation such that a reasonable person would not have expected the member to be able to complete the required paperwork within the regular deadline, or when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline.

History.

2005-91, s. 12; 2009-66, s. 4(a); 2010-72, s. 6(b); 2016-108, s. 3(b).

Editor's Note.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 3(b), effective July 22, 2016, substituted "transmitted to the member" for "mailed" in the first sentence.

§ 128-33. Certain laws not applicable to members.

Subject to the provisions of Article 2 of Chapter 135 of Volume 17 of the General Statutes, as amended, no other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this Article.

History.

1939, c. 390, s. 13; 1955, c. 1153, s. 8.

§ 128-33.1. Public records held by the Retirement System.

(a) The following definitions apply in this section:

- (1) Employment-related information. — As defined in G.S. 126-22(b)(3).
- (2) Personal information. — As defined in G.S. 126-22(b)(3).
- (3) Retirement file. — Any employment-related, retirement-related, or personal information of members in a State-administered retirement plan gathered by the Retirement Systems Division of the Department of State Treasurer.
- (4) Retirement-related information. — Information including membership and service details, benefit payment information, and other information the Retirement Systems Divi-

sion of the Department of State Treasurer deems necessary to administer a retirement plan.

(b) Member retirement files are not subject to inspection and examination as authorized by G.S. 132-6 except as provided in G.S. 135-6(p), G.S. 128-28(q), and subsections (c), (d), and (e) of this section.

(c) The following information regarding members and individuals in receipt of a recurring monthly benefit, if held by the Retirement System, is public subject to subsection (d) of this section:

- (1) Name.
- (2) Age.
- (3) Date of membership in the applicable Retirement System, first service earned date, date of first enrollment, date of first employment, and date of retirement.
- (4) The terms of any contract by which the member is employed whether written or oral, past and current, to the extent that the Retirement System has the written contract or a record of the oral contract in its possession.
- (5) Current or most recently held position or title.
- (6) Compensation and other relevant remuneration history and benefits paid.
- (7) Date, general description, and type of each change and the corresponding employing agency.
- (8) The office or station to which the member is currently assigned, if any.
- (9) The record of benefit payments made by one of the Retirement Systems or Disability Benefits Programs administered by the Department of State Treasurer to a member or to the survivor, beneficiary, or alternate payee of a member.
- (10) Purchases of educational leave.

(d) Subject only to rules and policies for the safekeeping of member retirement files adopted by the Board of Trustees, every person having custody of the retirement file information outlined in subsection (b) of this section shall permit the information to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any retirement file for the purpose of inspecting, examining, or copying the file has a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(e) The Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former State and local government employees, former public school employees, or former community college employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees.

(f) All information other than the information listed in subsection (c) of this section contained in a retirement file is confidential and

not open for inspection and examination except to the following persons:

- (1) The member, or the member's authorized agent, who may examine his or her own retirement file, except for any information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. A member's medical record may be disclosed to a licensed physician in writing by the member.
- (2) A member of the General Assembly who may inspect and examine records under the authority of G.S. 120-19.
- (3) A party by authority of a proper court order may inspect and examine a particular confidential portion of a member's retirement file.

(g) Any public official or employee who knowingly and willfully permits any person to have access to or custody or possession of any portion of a retirement file designated as confidential by this section, unless the person is one specifically authorized by this section to have access thereto for inspection and examination, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

(h) Any person not specifically authorized by this section to have access to a retirement file designated as confidential by this section, who knowingly and willfully examines, removes, or copies any portion of a confidential retirement file, is guilty of a Class 3 misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

History.

2016-108, s. 2(c); 2018-85, s. 8(b).

Editor's Note.

Session Laws 2016-108, s. 10, made this section effective July 22, 2016.

Session Laws 2016-108, s. 2(a), provides: "The February 5, 2008, Attorney General's advisory opinion entitled 'Advisory Opinion: Confidentiality of Retirement Benefit Information; Session Law 2007-508' concluded that information about retirement benefits was intended to be included among those records required to be maintained for public inspection by each department, agency, institution, commission, and bureau of the State and that as a result the Retirement

Systems Division of the Department of the State Treasurer makes that information available for public inspection and examination. The General Assembly finds that the interests of clarity require statutory language providing guidance to the Retirement Systems Division in determining and maintaining consistency as to what information should be made available about the retirement accounts of State and local employees."

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2018-85, s. 8(b), effective July 22, 2018, inserted "and local government" in subsection (e).

§ 128-34. Transfer of members.

(a) Any member of the North Carolina Governmental Employees' Retirement System who leaves the service of his employer and enters the service of another employer participating in the North

Carolina Governmental Employees' Retirement System shall maintain his status as a member of the Retirement System and shall be credited with all of the amounts previously credited to his account in any of the funds under this Article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of the transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer.

(b) Any member of the Local Governmental Employees' Retirement System shall be entitled prior to his retirement to transfer to this Retirement System his credits for membership and prior service in the Teachers' and State Employees' Retirement System: Provided, the actual transfer of employment is made while he has an active account in the State System and such person shall request the State System to transfer his accumulated contributions, interest, and service credits to this Retirement System; provided further, the State System agrees to transfer to this Retirement System the amount of reserve held in the State System as the result of previous contributions of the employer on behalf of the transferring employee.

(c) Any member whose services are terminated for any reason other than retirement or death who becomes employed by an employer participating in the Teachers' and State Employees' Retirement System shall be entitled to transfer to the State System his credits for membership and prior service in this Retirement System in accordance with G.S. 135-18.1: Provided, the actual transfer of employment is made while he has an active account in this Retirement System and such persons shall request this Retirement System to transfer his accumulated contributions, interest, and service credits to the State System. When such request is made by a member who is entitled to make it and who becomes a member of the State System after July 1, 1969, this Retirement System will also transfer to the State System the amount of reserve held by this System as a result of previous contributions of the employer on behalf of the transferring employee.

(d) The accumulated contributions and creditable service of any member whose service as an employee has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-53(11), of the Consolidated Judicial Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System, there shall be transferred from the Local Governmental

Employees' Retirement System to the Consolidated Judicial Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Local Governmental Employees' Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

History.

1939, c. 390, s. 14; 1971, c. 325, s. 20;
1973, c. 242, s. 11; 1999-237, s. 28.24(a).

CASE NOTES

“Creditable Service.” — Superior court erred in granting partial summary judgment awarding a sheriff a special separation allowance for 36 years of creditable service through two North Carolina retirement systems, state and local, because the sheriff was not a member of the state system when he retired where, prior to his retirement from the sheriff's department, he began receiving retirement benefits from that system,

and the sheriff was only entitled to credit for his 12 years of service under the local system where the county never issued the sheriff a prior service certificate, the sheriff never transferred membership of his state service to the local system, and the county never gave the sheriff credit for prior service. *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

§ 128-35. Obligations of pension accumulation fund.

The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in G.S. 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this Article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this Article shall be used for the payment of said obligations of the said fund.

History.

1939, c. 390, s. 15.

§ 128-36. Local laws unaffected; when benefits begin to accrue.

Nothing in this Article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of G.S. 128-27, subsections (a) to (d) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during that period. The provisions of this Article shall apply only to those

counties, cities or towns whose governing authorities voluntarily elect to be bound by same.

History.

1939, c. 390, s. 16; 1941, c. 357, s. 9B;
1945, c. 526, s. 7A.

§ 128-36.1. Repealed by Session Laws 1977, c. 318.

§ 128-37. Membership of employees of district health departments or public health authorities.

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the governing board of any public health authority, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department.

History.

1949, c. 1012; 1951, c. 700; 1997-502, s.
4.

§ 128-37.1. Membership of employees of county social services department.

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the board of county commissioners of any county may elect that employees of the county social services department may be members of the North Carolina Local Governmental Employees' Retirement System; provided, that such membership may be elected jointly with such county health department employees as provided under G.S. 128-37.

History.

1959, c. 1179; 1969, c. 982.

§ 128-37.2. Continued membership for certain fire departments.

(a) In order to participate in the Local Governmental Employees' Retirement System after October 1, 2015, the charter or articles of incorporation of fire departments must include a provision that provides that the governing body of the local government entity that holds the contract with the highest dollar value to the fire department for provision of fire services shall have the authority to remove

from office up to fifty percent (50%) plus one member of the Board of Trustees or Board of Directors of the fire department. Before exercising this authority, the local government entity shall notify the affected fire department and give the fire department the opportunity to be heard in a public meeting. When any fire department board member is removed, the resulting vacancy shall be filled pursuant to the bylaws of the fire department.

(b) This section only applies to fire departments that commenced participation in the Local Governmental Employees' Retirement System between 1977 and 1992 pursuant to Chapter 316 of the Session Laws of 1977 and have contracts to provide fire protection to a city, county, or instrumentality of the State.

History.

2015-88, s. 10(a), (b).

Editor's Note.

Session Laws 2015-88, s. 10(a), (b), was codified as this section at the direction of the Revisor of Statutes.

Chapter 316 of the 1977 Session Laws added certain firemen and fire departments to the definitions of "employee"

and "employer" in G.S. 128-21(10) and (11), respectively. The sentences that added those firemen and fire departments to the definitions were deleted by Chapter 762 of the 1991 Session Laws (Reg. Sess. 1992). The current sentence regarding paid firemen in G.S. 128-21(10), which is substantially similar, was added in 1999.

§ 128-38. Reservation of power to change.

The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes in the benefit and other provisions of the Social Security Act made after January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the North Carolina Local Governmental Employees' Retirement System.

History.

1955, c. 1153, s. 9.

CASE NOTES

Relationship between public employees and retirement system is one of contract. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Right of Employee to Rely on Retirement Plan. — A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, and continually promised him over many years, will not be removed or diminished. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App.

218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Plaintiffs, as members of the North Carolina Local Governmental Employees' Retirement System, had a contractual right to rely on the terms of the retirement plan as these terms existed at the moment their retirement rights became vested. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as

plaintiff employees stood to suffer significant reductions in their retirement allowances as a result of the 1981 legislative amendment of G.S. 128-27 adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and neces-

sary to serve an important state interest, the case would be remanded for further proceedings. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Cited in *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

§ 128-38.1. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested.

History.

1987, c. 177, s. 1(a), (b).

Editor's Note.

Session Laws 1987, c. 177, s. 1(c) made this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determina-

tion or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended. A favorable letter was received prior to the enactment of Session Laws 1987, c. 177.

§ 128-38.2. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars (\$150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensa-

tion which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited

traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an “eligible retirement plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee’s eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the exclusion of any after-tax portion from such a rollover distribution in the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic

relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code.

History. 1995, c. 361, s. 3; 2002-71, s. 4; 2009-66, 1989, c. 276, s. 2; 1993, c. 531, s. 4; s. 1(d); 2012-130, s. 4(b).

§ 128-38.3. Deduction for payments allowed.

(a) Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of employers as defined in G.S. 128-21(11), may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(b) Any beneficiary eligible for coverage under the State Health Plan may also authorize, in writing, the monthly deduction from the beneficiary's retirement benefits of a designated lump sum to be paid to the State Health Plan for any dependent whom the beneficiary wishes to cover under the State Health Plan. In the event that the beneficiary's own State Health Plan coverage is contributory, in whole or in part, the beneficiary may also authorize a designated lump sum to be paid to the State Health Plan on behalf of the beneficiary. In addition, a beneficiary may similarly authorize the deduction for supplemental voluntary insurance benefits, provided that the deduction is authorized by the Department of State Treasurer and is payable to a company with which the Department of State Treasurer has or had an exclusive contractual relationship. Any such authorization shall remain in effect until revoked by the beneficiary.

(c) For local employers who made arrangements with the Retirement System prior to January 1, 2017, any beneficiary who is a retiree from an employer in the Retirement System under this Article may authorize the periodic deduction from the beneficiary's retirement benefits as designated lump sum to be paid to the beneficiary's former employer for the purpose of providing health

benefits. The authorization shall remain in effect until revoked by the beneficiary, and proof of the authorization must be available on request of the Department of the State Treasurer. The Department of State Treasurer is prohibited from making any arrangements to deduct from a beneficiary's retirement benefits an amount to be paid to the beneficiary's former employer for the purpose of providing health benefits.

History.

2001-424, s. 32.31; 2002-126, s. 6.4(b);
2012-178, s. 4(b); 2017-128, s. 3.

Effect of Amendments.

Session Laws 2017-128, s. 3, effective
July 20, 2017, added subsection (c).

Editor's Note.

Session Laws 2017-128, s. 9, is a severability clause.

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

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

- (1) The federal or State offense is committed while serving as an elected government official.
 - (2) The conduct on which the federal or State offense is based is directly related to the member's service as an elected government official.
- (b) The federal offenses covered by this section are as follows:
- (1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Interference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C. § 1962 (Pro-

hibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).

(2) Reserved for future codification purposes.

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

(1) A felony violation of any of the following provisions of the General Statutes:

- a. Article 29 of Chapter 14, Bribery.
- b. Article 30 of Chapter 14, Obstructing Justice.
- c. Article 30A of Chapter 14, Secret Listening.
- d. G.S. 14-228, Buying and selling offices.
- e. Part 1 of Article 14 of Chapter 120, Code of Legislative Ethics.
- f. Part 1 of Article 21 of Chapter 163A, Absentee Ballot.
- g. Article 22 of Chapter 163A, Regulation of Election Campaigns — Corrupt Practices and Other Offenses Against the Elective Franchise.
- h. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
- i. G.S. 14-91, Embezzlement of State property by public officers and employees.
- j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
- k. G.S. 14-99, Embezzlement of taxes by officers.
- l. G.S. Subsection (a) of G.S. 14-454.1, Accessing government computers.
- m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources.
- n. G.S. 14-456.1, Denial of government computer services to an authorized user.

(2) Perjury or false information as follows:

- a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
- b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.
- c. Perjury under Article 22 of Chapter 163A of the General Statutes.

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

History.

2007-179, s. 2(a); 2017-6, s. 3; 2018-84, s. 2(b).

Recodification; Technical and Conforming Changes.

Session Laws 2017-6, s. 3, provides, in

part: “The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 163A of the General Statutes to be entitled ‘Elections and Ethics Enforcement Act,’ as enacted by Section 4 of this act. The Revisor may also recodify into the new Chapter 163A of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate.” The Revisor was further authorized to make additional technical and conforming changes to catchlines, internal citations, and other references throughout the General Statutes to effectuate this recodification. Pursuant to this authority, the Revisor of Statutes conformed references in subdivision subdivision (c)(1) and sub-subdivision (c)(2)c.

Editor’s Note.

Session Laws 2007-179, s. 5, made this

section effective July 1, 2007, and applicable to offenses committed on or after that date.

Session Laws 2007-179, s. 2(a), enacted this section with a subdivision (b)(1), but no subdivision (b)(2). Subsection (b) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2018-84, s. 2(e), made the amendment to this section by Session Laws 2018-84, s. 2(b), effective June 25, 2018, and applicable to offenses committed on or after that date.

Effect of Amendments.

Session Laws 2018-84, s. 2(b), effective June 25, 2018, rewrote and redesignated former subdivision (c)(1) as the introductory paragraph and sub-subdivisions a. through g., and added sub-subdivisions h. through n. For applicability, see editor’s note.

§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

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

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member’s conviction is directly related to the member’s office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member’s conduct is directly related to the member’s office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of

this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited.

History.

2012-193, s. 3.

Cross References.

As to forfeiture of retirement benefits in the Legislative Retirement System for certain felonies related to employment or holding office, see G.S. 120-4.33A. As to forfeiture of retirement benefits in the Retirement System for Teachers and State Employees for certain felonies related to employment or holding office, see G.S. 135-18.10A. As to forfeiture of retirement benefits under the Judicial Retirement Act for certain felonies related to employment or holding office, see G.S. 135-75.1A.

Editor's Note.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

Session Laws 2012-193, s. 18, made this section effective December 1, 2012, and applicable to offenses committed on or after that date.

§ 128-38.4B. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 128-38.4 or G.S. 128-38.4A is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits.

History.

2018-52, s. 6(b).

Editor's Note.

The preamble and s. 1 of Session Laws 2018-52 provide: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State

Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,

"Section 1. This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 11, made this section effective June 25, 2018.

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

A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud, receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's retirement allowance

and the person (i) knows that he or she is not entitled to the decedent's retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the retiree's or beneficiary's death.

History.

2011-232, s. 10(b); 2013-288, s. 9(c).

this section effective December 1, 2011,
and applicable to acts committed on or
after that date.

Editor's Note.

Session Laws 2011-232, s. 11, made

§ 128-38.6. Employee protection and remedies against unlawful retaliation for furnishing information to the Retirement Systems Division.

(a) In the absence of fraud or malice, no person who furnishes information to the staff of the Retirement Systems Division relating to the investigation of possible violations of retirement law shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply such information to the Division.

(b) Any employee of a participating local employer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee in furtherance of the Retirement Systems Division's receipt of information concerning possible violations of retirement law, including cooperation with the Division's investigation of possible violations, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination or retaliation by the employing unit, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section.

History.

2012-185, s. 1.

§ 128-38.10. Qualified Excess Benefit Arrangement.

(a) The following words and phrases as used in this section, unless a different meaning is plainly required by the context, have the following meanings:

- (1) "Board of Trustees" means the Board of Trustees established by G.S. 128-28.

- (2) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time.
- (3) “Payee” means a retired member, or the survivor beneficiary of a member or retired member.
- (4) “Qualified Excess Benefit Arrangement” means the qualified excess benefit arrangement under section 415(m) of the Internal Revenue Code established under this Article.
- (5) “Retirement System” means the North Carolina Local Governmental Employees’ Retirement System.

(b) The Qualified Excess Benefit Arrangement (QEBA) is established effective January 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA is solely to provide the part of a retirement allowance or benefit that would otherwise have been payable by the North Carolina Local Governmental Employees’ Retirement System except for the limitations under section 415(b) of the Internal Revenue Code. The QEBA, as set forth in this section, is intended to constitute a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

(c) **Eligibility to Participate in the QEBA.** — Effective as of January 1, 2014, a payee shall participate in the QEBA for any calendar year, or portion of the calendar year, during which he or she receives a retirement allowance or benefit payment on and after January 1, 2014, from the North Carolina Local Governmental Employees’ Retirement System that is reduced due to the application of the maximum benefit provisions of section 415(b) of the Internal Revenue Code. For purposes of the QEBA, a payee is a retired member or survivor beneficiary of a member or retired member who is receiving monthly retirement benefit payments from a Retirement System.

(d) **Supplemental Benefit Payable Under the QEBA.** — Effective January 1, 2014, a payee shall receive each month, commencing on and after January 1, 2014, a monthly supplemental benefit equal to the difference between the amount of that payee’s monthly retirement benefit paid under the North Carolina Local Governmental Employees’ Retirement System on and after January 1, 2014, and the amount that would have been payable to that payee from the North Carolina Local Governmental Employees’ Retirement System in that month if not for the reduction due to the application of section 415(b) of the Internal Revenue Code. That supplemental benefit shall be computed and payable under the same terms, at the same time, and to the same person as the related benefit payable under the Retirement System. A payee cannot elect to defer the receipt of all or any part of the supplemental payments due under the QEBA. The supplemental benefit paid under this section shall be taxable under North Carolina law in the same manner as the benefit paid under the North Carolina Local Governmental Employees’ Retirement System.

(d1) The last employer of a payee who retires on or after August 1, 2016, and who receives any supplemental benefit payment under this section shall be required to reimburse the QEBA in the amount of any supplemental benefit payment made to that payee. The reimbursement amount shall be calculated on an annual basis every calendar year. For purposes of calculating the reimbursement amount, the Board of Trustees may include a pro rata share of direct costs attributable to administration of the QEBA. The Fiscal Research Division of the General Assembly shall be required to review all reimbursement amounts prior to notifying an employer of the reimbursement amount owed.

The employer shall have 60 calendar days from the date of notification of the reimbursement amount owed to pay the amount in full or the employer shall be assessed a penalty, in lieu of interest, of one percent (1%) per month, or fraction thereof, that the payment is made beyond the due date.

(e) **Funding of the QEBA.** — The QEBA shall be unfunded within the meaning of federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary engaged by the Board of Trustees, shall determine the employer contributions required to pay the benefits due under the QEBA for each fiscal year. The required contributions shall be paid by all participating employers. The required contributions shall be deposited in a separate fund from the fund into which regular employer contributions are deposited for the underlying Retirement System. The benefit liability for the QEBA shall be determined each fiscal year and assets shall not be accumulated to pay benefits in future fiscal years.

(f) **Treatment of Unused Assets.** — Any assets of the QEBA plan not used to pay benefits in the current calendar year shall be used for payment of the administrative expenses of the QEBA for the current or future calendar years or shall be paid to the Retirement System as an additional employer contribution.

(g) **Assets Subject to Claims of Creditors.** — A payee, or a payee's beneficiary or heirs, shall have no right to, and shall have no property interest in, any assets held to support the liabilities created under this section. To the extent that any person acquires the right to receive benefits under the QEBA, that right shall be no greater than the right of any unsecured general creditor of the State of North Carolina or such other applicable employer under this section.

(h) **Administration.** — The QEBA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the QEBA and to adopt such rules and regulations as

may be necessary or desirable to implement the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

(i) **No Assignment.** — Except for the application of the provisions of G.S. 110-136 and G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under G.S. 50-20, any supplemental benefit under this section shall be exempt from levy and sale, garnishment, attachment, or any other process, and shall be unassignable except as specifically otherwise provided in this section.

(j) **Reservation of Power to Change.** — The General Assembly reserves the right at any time and, from time to time, to modify or amend, in whole or in part, any or all of the provisions of the QEBA. No member of the Retirement System and no beneficiary of such a member shall be deemed to have acquired any vested right to a supplemental payment under this section.

(k) **Sunset of Eligibility to Participate in the QEBA.** — No member of the North Carolina Local Governmental Employees' Retirement System who became a member of the Retirement System on or after January 1, 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any new member more retirement benefits than allowed under the limitations of section 415(b) of the Internal Revenue Code.

History.

2013-405, s. 3(b); 2015-67, s. 3(b); 2015-241, s. 30.30A(b); 2016-94, s. 36.23(b), (d).

Editor's Note.

Session Laws 2016-94, s. 36.23(e), provides: "Notwithstanding Chapter 150B of the General Statutes, the Board of Trustees of the Teachers' and State Employees' Retirement System may develop procedures to implement subsection (a) of this section [amending G.S. 135-151]. Notwithstanding Chapter 150B of the General Statutes, the Board of Trustees of the North Carolina Local Government Employees' Retirement System may develop procedures to implement subsection (b) of this section [amending G.S. 128-38.10]."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current

Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year."

Session Laws 2016-94, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-94, s. 36.23(b), (d), effective July 1, 2016, added subsection (d1); and, in subsection (k), substituted "who became a member of the Retirement System on or after January 1, 2015" for "retiring on or after August 1, 2016" near the beginning and substituted "any new member" for "any new retiree" near the end.

STATE RETIREMENT SYSTEM

CHAPTER 135.

**RETIREMENT SYSTEM FOR TEACHERS AND
STATE EMPLOYEES; SOCIAL SECURITY; STATE
HEALTH PLAN FOR TEACHERS AND STATE
EMPLOYEES.**

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- 135-1. Definitions.
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- 135-3.1, 135-3.2. [Repealed.]
- 135-4. Creditable service.
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- 135-4.1. Reciprocity of creditable service with other State-administered retirement systems.
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- 135-5. (Effective July 1, 2019) Benefits.
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- 135-18.5. Provision for emergency expenses of integration of System.
- 135-18.6. Termination or partial termination; discontinuance of contributions.
- 135-18.7. Internal Revenue Code compliance.
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- 135-18.9. Transfer of members from the Legislative Retirement System or the Consolidated Judicial Retirement System.
- 135-18.10. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.

STATE RETIREMENT SYSTEM

Section

- 135-18.10A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.
- 135-18.10B. Prohibition on purchase of forfeited service.
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Article 2. Coverage of Governmental Employees under Title II of the Social Security Act.

- 135-19. Declaration of policy.
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- 135-32 through 135-36. [Repealed.]
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- 135-48. [Reserved.]

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STATE RETIREMENT SYSTEM

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- 135-48.26. [Reserved.]
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- 135-48.30. Powers and duties of the State Treasurer.
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- 135-48.37. Liability of third person; right of subrogation; right of first recovery.
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- 135-48.50. Coverage mandates.
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- 135-48.59. [Reserved.]

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- 135-48.60 through 135-48.62. [Repealed.]
- 135-49. [Reserved.]

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- 135-50. Short title and purpose.
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- 135-54. Name and date of establishment.
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- 135-56.01. Reciprocity of creditable service with other State-administered retirement systems.
- 135-56.1. [Repealed.]
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- 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.
- 135-75.1B. Prohibition on purchase of forfeited service.
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- 135-76. [Reserved.]

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- 135-103. Eligible participants.
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Article 7. Qualified Excess Benefit Arrangement.

- 135-150. Definitions.
- 135-151. Qualified Excess Benefit Arrangement.

ARTICLE 1.**RETIREMENT SYSTEM FOR TEACHERS AND
STATE EMPLOYEES.****§ 135-1. Definitions.**

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (4a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

- (5) “Average final compensation” shall mean the average annual compensation of a member during the four consecutive calendar years of membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Payout of vacation leave shall be included in “average final compensation” only if the payout is received by the member during the four consecutive calendar years of membership service producing the highest average annual compensation of the member. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calculation of “average final compensation” shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.
- (6) “Beneficiary” shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.
- (7) “Board of Trustees” shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.
- (7a)a. “Compensation” shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, “compensation” shall include:
 - 1. Performance-based compensation (regardless of whether paid in a lump sum, in periodic installments, or on a monthly basis);
 - 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
 - 3. Payment of tax consequences for benefits provided by the employer, so long as they constitute an adjustment or increase in salary and not a “reimbursement of expenses”;
 - 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation;
 - 5. Employee contributions to eligible deferred compensation plans; and

6. Effective July 1, 2009, payment of military differential wages.
 - b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:
 1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);
 3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
 5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 - 10a. Local supplementation as authorized under G.S. 7A-300.1 for Judicial Department employees;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
 - c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.
- (7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.
- (7c) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average,

all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

- (8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 135-4. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Chapter.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.
- (10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the North Carolina National Guard who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that

the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the North Carolina National Guard: Provided, further, that the Adjutant General, in the Adjutant General's discretion, may terminate the Retirement System coverage of the above-described North Carolina National Guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the North Carolina National Guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a North Carolina National Guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if the employee had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis must work at least 30 hours per week for nine or more months per calendar year in order to be covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

- (11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid. For purposes of

reporting under the pronouncements by the Governmental Accounting Standards Board, the Retirement System is a multi-employer plan.

- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (11b) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds.
- (11c) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. "Law-Enforcement Officer" also means a probation/parole officer as defined in this section with respect to any service rendered on or after July 1, 2017.
- (12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.
- (13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.
- (14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System or membership service in a North Carolina Retirement System that has been transferred into this system.
- (15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.
- (17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of Transportation shall be entitled

to credit for employment in road maintenance by the various counties and road districts prior to 1931.

- (17a) "Probation/Parole Officer" shall mean a full-time paid employee of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety whose duties include supervising, evaluating, or otherwise instructing offenders who have been placed on probation, parole, or post-release supervision or have been assigned to any other community-based program operated by the Division of Adult Correction and Juvenile Justice.
- (18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.
- (19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).
- (20) "Retirement" under this Chapter, except as otherwise provided, means the commencement of monthly retirement benefits along with termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for an employer, including part-time, temporary, substitute, or contractor work, at any time during the six months immediately following the effective date of retirement. A member who is a full-time faculty member of The University of North Carolina may effect a retirement allowance under this Chapter, notwithstanding the six-month requirement above, provided the member immediately enters the University's Phased Retirement Program for Tenured Faculty as that program existed on May 25, 2011. For purposes of this subdivision, all of the following shall not be considered service or work:
- a. Serving as an unpaid bona fide volunteer in a local school administrative unit.
 - b. Serving as an unpaid bona fide volunteer guardian ad litem in the guardian ad litem program.
 - c. Serving on an authority, board, commission, committee, council, or other body of the State or of one or more counties, cities, local school administrative units, community colleges, constituent institutions of The University of North Carolina, or other political subdivi-

sions or public corporations in the State, that is authorized to function as legislative, policy-making, quasi-judicial, administrative, or advisory body in a position that does not require membership in the Retirement System.

d. Volunteering in a position normally designated as an unpaid bona fide volunteer position.

- (21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.
- (22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.
- (23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.
- (24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.
- (25) "Teacher" shall mean (i) any teacher, helping teacher, teacher in a job-sharing position under G.S. 115C-326.5 except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of the Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State; (ii) who works at least 30 or more hours per week for at least nine or more months per calendar year: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee except for a teacher in a job-sharing position, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board of Trustees, hereinbefore defined, shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher" shall not include any nonimmigrant alien employed in elementary or secondary public schools (whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position) and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

- (26) “Year” as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees.

History.

1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 81/2; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3; 1987, c. 738, ss. 29(a), 36(a); 1991, c. 51, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 7.31(c); 1998-1, s. 4(g); 2001-424, s. 32.24(b); 2001-426, ss. 2, 3; 2001-513, s. 24; 2002-110, s. 1; 2002-126, ss. 28.6(b), 28.12(a); 2002-174, s. 2; 2003-359, ss. 1, 2; 2004-81, s. 1; 2004-199, s. 34(a); 2005-276, s. 29.28(e); 2006-66, s. 22.21; 2007-143, s. 1; 2009-11, s. 1; 2009-66, s. 6(e), (i); 2009-281, s. 1; 2009-451, s. 26.22; 2010-31, s. 29.7(d); 2011-145, s. 29.24(b); 2011-183, s. 100; 2012-130, s. 6; 2012-185, s. 2(b); 2013-288, ss. 3(a), 4(a); 2013-291, s. 1; 2014-97, s. 4(a); 2015-67, s. 1; 2015-164, s. 4; 2017-57, s. 35.19B(a); 2017-125, s. 1(a); 2017-128, s. 1(a)-(c); 2017-129, s. 4(a); 2017-186, s. 3(a); 2018-85, s. 10.

Cross References.

For the Retirement Systems Actuarial Note Act, see G.S. 120-112 et seq.

As to source of payment of employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for public employees, see G.S. 143-34.1.

Open Enrollment — Contributory Death Benefit.

Session Laws 2007-388, s. 1, provides: “Notwithstanding any section of law or any rules and regulations adopted by the Boards of Trustees to the contrary, the Retirement Systems Division of the Department of State Treasurer shall allow for an open enrollment period in the Contributory Death Benefit for Retired Members of the Teachers’ and State Employees’ Retirement System, the Local Governmental Employees’ Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System. This open enrollment period shall begin February 1, 2008, and

end May 31, 2008. The Retirement Systems Division shall send notice by U.S. mail of the open enrollment period to all retirees who elected not to be covered under this benefit or who failed to make any election at the time of their retirement and shall send a second notice by U.S. mail to any such retiree who fails to make an election within 60 days of the notification of the open enrollment period. Notice, at minimum, shall consist of notification of the open enrollment period and the consequences of failure to respond within the specified time frames, informational materials explaining the benefit program and the associated costs, and a preprinted personalized enrollment application to facilitate the enrollment process indicating each individual retiree’s contribution rate. The contribution rate for retirees electing coverage during the open enrollment period shall be increased by eleven and one-tenth percent (11.1%) the rate established for retirees who elected coverage when first eligible, at retirement. For retirees electing coverage during this open enrollment period, coverage shall become effective the first of the month following the month in which the election of coverage is received by the Retirement Systems Division but not before February 1, 2008. Contribution rates for coverage shall be based upon the retiree’s nearest age as of the effective date of coverage and shall begin by deduction from the retiree’s net monthly retirement allowance in the month in which coverage becomes effective. Coverage elected by retirees during this open enrollment period shall be subject to all other laws and rules and regulations adopted by the Board of Trustees governing the Contributory Death Benefit for Retired Members.”

Third Grade Read to Achieve Teacher Bonus Program.

Session Laws 2016-94, s. 9.7(a)-(e), as amended by Session Laws 2017-57, s. 8.8B(c), provides: “(a) The State Board of Education shall establish the Third Grade Read to Achieve Teacher Bonus Program (program) to reward teacher performance and encourage student learning and improvement. To attain

this goal, the Department of Public Instruction shall administer bonus pay to teachers who have an Education Value-Added Assessment System (EVAAS) student growth index score for third grade reading from the previous school year, beginning with the data from the 2015-2016 school year, as follows:

“(1) Of the funds appropriated for the program, five million dollars (\$5,000,000) shall be allocated for bonuses to teachers who are in the top twenty-five percent (25%) of teachers in the State according to the EVAAS student growth index score for third grade reading from the previous year. These funds shall be allocated equally among qualifying teachers.

“(2) Of the funds appropriated for the program, five million dollars (\$5,000,000) shall be allocated to pay bonuses to teachers who are in the top twenty-five percent (25%) of teachers in their respective local school administrative units according to the EVAAS student growth index score for third grade reading from the previous year. These funds shall be split proportionally based on average daily membership for each local school administrative unit and then distributed equally among qualifying teachers in each local school administrative unit, subject to the following conditions:

“a. Teachers employed in charter schools and regional schools are not eligible to receive a bonus under this subdivision.

“b. Any teacher working in a local school administrative unit that employs three or fewer third grade teachers shall receive a bonus under this subdivision if that teacher has an EVAAS student growth index score for third grade reading from the previous school year that exceeds expected growth.

“(3) For EVAAS student growth index score data collected during the 2015-2016 school year and the 2016-2017 school year, bonuses awarded pursuant to subdivisions (1) and (2) of this subsection are payable in January of 2017 and January of 2018, respectively, to qualifying teachers who remain employed teaching in the same local school administrative unit at least from the school year the data is collected until the corresponding school year that the bonus is paid.

“(4) A teacher who is eligible to receive a bonus under both subdivisions (1) and (2) of this subsection shall receive both bonuses. The bonus or bonuses awarded

to a teacher pursuant to this subsection shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(b) Notwithstanding G.S. 135-1(7a), the compensation bonuses awarded by this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(c) The State Board of Education shall study the effect of the program on teacher performance and retention. The State Board shall report the results of its findings, the distribution of statewide bonuses as among local school administrative units, and the distribution of bonuses within local school administrative units as among individual schools to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division on March 15 of each year.

“(d) For the 2017-2018 fiscal year only, the Director of the Budget shall also include in the Base Budget, as defined by G.S. 143C-1-1(d)(1c), the amount of non-recurring funds needed to support the program.

“(e) This section expires June 30, 2018.”

Session Laws 2017-57, s. 8.8C(a)-(d), as amended by Session Laws 2017-197, s. 2.10(b), and as amended by Session Laws 2018-5, s. 8.10(d), provides: “(a) It is the intent of the State to reward teacher performance and encourage student learning and improvement. To attain this goal, the Department of Public Instruction shall administer the Third Grade Read to Achieve Teacher Bonus Program (program) to qualifying teachers who have an Education Value-Added Assessment System (EVAAS) student growth index score for third grade reading from the previous school year, as follows:

“(1) For purposes of this section, the following definitions shall apply:

“a. Eligible Teacher. — A teacher who meets one or both of the following criteria:

“1. Is in the top twenty-five percent (25%) of teachers in the State according to the EVAAS student growth index score for third grade reading from the previous school year.

“2. Is in the top twenty-five percent (25%) of teachers in the teacher’s respective local school administrative unit according to the EVAAS student growth

index score for third grade reading from the previous school year.

“b. Qualifying Teacher. — An eligible teacher who remains teaching in the same local school administrative unit or, if the teacher is not employed in a local school administrative unit, remains teaching in the same school at least from the school year the data for the EVAAS student growth index score for third grade reading is collected until January 1 of the school year a bonus provided under this subsection is paid.

“(2) Of the funds appropriated for this program, the sum of five million dollars (\$5,000,000) shall be allocated for bonuses to eligible teachers under sub-subdivision (1)a.1. of this subsection. Funds appropriated for this purpose shall be distributed equally among qualifying teachers.

“(3) Of the funds appropriated for this program, the sum of five million dollars (\$5,000,000) shall be allocated for bonuses to eligible teachers under sub-subdivision (1)a.2. of this subsection. Funds allocated for this bonus shall be divided proportionally based on average daily membership in third grade for each local school administrative unit and then distributed equally among qualifying teachers in each local school administrative unit, subject to the following conditions:

“a. Teachers employed in charter schools, regional schools, and University of North Carolina laboratory schools are not eligible to receive a bonus under this subdivision.

“b. Any qualifying teacher who taught in a local school administrative unit that employed in the previous school year three or fewer total third grade teachers shall receive a bonus under this subdivision if that teacher has an EVAAS student growth index score for third grade reading from the previous school year of exceeded expected growth.

“(4) Bonuses awarded pursuant to subdivisions (2) and (3) of this subsection are payable in January to qualifying teachers based on EVAAS student growth index score data from the previous school year.

“(5) A qualifying teacher may receive a bonus under both subdivisions (2) and (3) of this subsection.

“(6) The bonus or bonuses awarded to a qualifying teacher pursuant to this section shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(7) A bonus awarded pursuant to ei-

ther subdivision (2) or subdivision (3) of this subsection shall not exceed three thousand five hundred dollars (\$3,500) in any given school year. No teacher shall receive more than seven thousand dollars (\$7,000) in total bonus compensation for any given school year.

“(b) Notwithstanding G.S. 135-1(7a), the bonuses awarded by this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(c) The State Board of Education shall study the effect of the bonuses awarded pursuant to this section and Section 9.7 of S.L. 2016-94, as amended by Section 8.8B of this act, on teacher performance and retention. The State Board shall report the results of its findings, the distribution of statewide bonuses as among local school administrative units, and the distribution of bonuses within local school administrative units as among individual schools to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by March 15 of each year.

“(d) This section applies for bonuses awarded in January 2019 and 2020, based on data from the 2017-2018 and 2018-2019 school years, respectively.”

Study State Employee Compensation and Benefits/Reduce Long-Term Unfunded Health Care Potential Liabilities.

Session Laws 2017-57, s. 35.21(a), (b), as amended by Session Laws 2017-197, s. 8, provides: “(a) The State Employee Compensation and Benefits Committee (Committee) is established to study the compensation and benefits of State employees. Benefits include the value of health care, retirement, leave, and other flexible benefits. The Committee shall do the following:

“(1) Assess the strength of the compensation and benefits of State employees with regards to recruitment and retention of State employees, including a specific evaluation of the retirement benefits available under the Teachers’ and State Employees’ Retirement System.

“(2) Compare the compensation and benefits of State employees with the compensation and benefits provided to other states’ employees, as well as large North Carolina employers that may recruit employees with similar skills.

“(3) Evaluate the current financial condition and the sustainability of the State pension system.

“(4) By February 1, 2019, submit a report to the General Assembly containing the information considered under subdivisions (1) through (3) of this subsection and any findings and recommendations, including any suggested legislation, to the General Assembly.

“(b) The Committee shall consist of nine members as follows:

“(1) The State Treasurer, who shall serve as chair of the Committee.

“(2) The Executive Administrator of the State Health Plan.

“(3) The Director of the Office of State Budget and Management.

“(4) The Director of Office of State Human Resources.

“(5) One member appointed by the Board of Governors of the University of North Carolina.

“(6) One member appointed by the State Board of Education.

“(7) One member appointed by the State Board of Community Colleges.

“(8) One member appointed by the President Pro Tempore of the Senate.

“(9) One member appointed by the Speaker of the House of Representatives.

“Members serve at the pleasure of the appointing officer and continue to serve until a successor is appointed. Vacancies on the Committee shall be filled by the same appointing authority making the initial appointment. The Committee shall meet upon the joint call of the chair. A quorum of the Committee is five members. The Office of the State Treasurer shall provide support to the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Advanced Placement/International Baccalaureate/Cambridge AICE Teacher Bonus Program.

Session Laws 2016-94, s. 8.8, as amended by Session Laws 2017-57, s. 8.8B(a), as amended by Session Laws 2017-197, s. 2.10(a), and as amended by Session Laws 2018-5, s. 8.10(a), (b), provides: “(a) The State Board of Education shall establish the Advanced Placement/International Baccalaureate/Cambridge AICE Program (program) to reward advanced course teacher performance and to encourage student learning and improvement. To attain this goal, the Department of Public Instruction shall administer bonus pay to teachers of

advanced courses in public schools, including charter schools, beginning with data from the 2015-2016 school year, in accordance with the following:

“(1) A bonus in the amount of fifty dollars (\$50.00) for each student taught by an advanced course teacher in each advanced course who receives the following score:

“a. For Advanced Placement courses, a score of three or higher on the College Board Advanced Placement Examination.

“b. For International Baccalaureate Diploma Programme courses, a score of four or higher on the International Baccalaureate course examination.

“c. For the Cambridge Advanced International Certificate of Education (AICE) program, a score of ‘C’ or higher on the Cambridge AICE program examinations.

“(2) No teacher shall be awarded a bonus pursuant to this subsection that exceeds three thousand five hundred dollars (\$3,500) in any given school year. The bonus awarded to a teacher pursuant to this subsection shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(3) A bonus awarded pursuant to this subsection is payable in January, based on data from the previous school year, to a qualifying teacher who remains employed teaching in the same local school administrative unit or, if the teacher is not employed in a local school administrative unit, remains teaching in the same charter school at least from the school year the data is collected until January 1 of the corresponding school year that the bonus is paid.

“(b) For the purposes of this section, an ‘advanced course’ shall mean an Advanced Placement course, an International Baccalaureate Diploma Programme course, or a Cambridge AICE course.

“(c) Notwithstanding G.S. 135-1(7a), the compensation bonuses awarded under this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(d) Subsections (a) and (b) of this section apply for bonuses awarded in January 2018, 2019, and 2020, based on data from the 2016-2017, 2017-2018, and 2018-2019 school years, respectively. Subsection (c) of this section applies only for bonuses awarded in January 2018, based on data from the 2016-2017 school year.

“(e) For the 2017-2018 fiscal year only, the Director of the Budget shall also include in the base budget, as defined by G.S. 143C-1-1(d)(1c), the amount of non-recurring funds needed to support the program.

“(f) Repealed by Session Laws 2017-57, s. 8.8B(a), effective July 1, 2017.”

Fourth and Fifth Grade Reading Teacher Bonus Program for 2017-2018.

Session Laws 2017-57, s. 8.8D(a)-(d), as amended by Session Laws 2018-5, s. 8.11(a), provides: “(a) It is the intent of the State to reward teacher performance and encourage student learning and improvement. To attain this goal, the Department of Public Instruction shall administer the Fourth and Fifth Grade Reading Teacher Bonus Program (program) to qualifying teachers who have an Education Value-Added Assessment System (EVAAS) student growth index score for fourth or fifth grade reading from the previous school year, as follows:

“(1) For purposes of this section, the following definitions shall apply:

“a. Eligible Teacher. — A teacher who meets one or both of the following criteria:

“1. Is in the top twenty-five percent (25%) of teachers in the State according to the EVAAS student growth index score for fourth or fifth grade reading from the previous school year.

“2. Is in the top twenty-five percent (25%) of teachers in the teacher’s respective local school administrative unit according to the EVAAS student growth index score for fourth or fifth grade reading from the previous school year.

“b. Qualifying Teacher. — An eligible teacher who remains teaching in the same local school administrative unit or, if the teacher is not employed in a local school administrative unit, remains teaching in the same school at least from the school year the data for the EVAAS student growth index score is collected until January 1 of the school year a bonus provided under this subsection is paid.

“(2) Of the funds appropriated for this program, the Department of Public Instruction shall allocate the sum of four million two hundred ninety-eight thousand seven hundred thirty-eight dollars (\$4,298,738) to award a bonus in the amount of two thousand dollars (\$2,000) to each qualifying teacher who is an eligible teacher under sub-sub-subdivision (1)a.1. of this subsection.

“(3) Of the funds appropriated for this program, the Department of Public Instruction shall allocate the sum of four million two hundred ninety-eight thousand seven hundred thirty-eight dollars (\$4,298,738) to award a bonus in the amount of two thousand dollars (\$2,000) to each qualifying teacher who is an eligible teacher under sub-sub-subdivision (1)a.2. of this subsection, subject to the following conditions:

“a. Teachers employed in charter schools, regional schools, and University of North Carolina laboratory schools are not eligible to receive a bonus under this subdivision.

“b. Any qualifying teacher who taught in a local school administrative unit that employed in the previous school year three or fewer total teachers in the qualifying teacher’s grade level shall receive a bonus under this subdivision if that teacher has an EVAAS student growth index score for fourth or fifth grade reading from the previous school year of exceeded expected growth.

“(4) Bonuses awarded pursuant to subdivisions (2) and (3) of this subsection are payable in January to qualifying teachers based on EVAAS student growth index score data from the previous school year.

“(5) A qualifying teacher may receive a bonus under both subdivisions (2) and (3) of this subsection.

“(6) The bonus or bonuses awarded to a qualifying teacher pursuant to this section shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(7) No teacher shall receive more than two bonuses pursuant to this section.

“(b) Notwithstanding G.S. 135-1(7a), the bonuses awarded by this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(c) The State Board of Education shall study the effect of the bonuses awarded pursuant to this section on teacher performance and retention. The State Board shall report the results of its findings, the distribution of statewide bonuses as among local school administrative units, and the distribution of bonuses within local school administrative units as among individual schools to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Education Oversight Committee, and the Fiscal Re-

search Division by March 15 of each year bonuses are awarded.”

Fourth to Eighth Grade Math Teacher Bonus Program for 2017-2018.

Session Laws 2017-57, s. 8.8E(a)-(c), as amended by Session Laws 2018-5, s. 8.12(a), provides: “(a) It is the intent of the State to reward teacher performance and encourage student learning and improvement. To attain this goal, the Department of Public Instruction shall administer the Fourth to Eighth Grade Mathematics Teacher Bonus Program (program) to qualifying teachers who have an Education Value-Added Assessment System (EVAAS) student growth index score for fourth, fifth, sixth, seventh, or eighth grade mathematics from the previous school year, as follows:

“(1) For purposes of this section, the following definitions shall apply:

“a. Eligible Teacher. — A teacher who meets one or both of the following criteria:

“1. Is in the top twenty-five percent (25%) of teachers in the State according to the EVAAS student growth index score for fourth, fifth, sixth, seventh, or eighth grade mathematics from the previous school year.

“2. Is in the top twenty-five percent (25%) of teachers in the teacher’s respective local school administrative unit according to the EVAAS student growth index score for fourth, fifth, sixth, seventh, or eighth grade mathematics from the previous school year.

“b. Qualifying Teacher. — An eligible teacher who remains teaching in the same local school administrative unit or, if the teacher is not employed in a local school administrative unit, remains teaching in the same school at least from the school year the data for the EVAAS student growth index score is collected until January 1 of the school year a bonus provided under this subsection is paid.

“(2) Of the funds appropriated for this program, the Department of Public Instruction shall allocate the sum of seven million one hundred fifty-one thousand two hundred sixty-two dollars (\$7,151,262) to award a bonus in the amount of two thousand dollars (\$2,000) to each qualifying teacher who is an eligible teacher under sub-sub-division (1)a.1. of this subsection.

“(3) Of the funds appropriated for this program, the Department of Public Instruction shall allocate the sum of seven

million one hundred fifty-one thousand two hundred sixty-two dollars (\$7,151,262) to award a bonus in the amount of two thousand dollars (\$2,000) to each qualifying teacher who is an eligible teacher under sub-sub-division (1)a.2. of this subsection, subject to the following conditions:

“a. Teachers employed in charter schools, regional schools, and University of North Carolina laboratory schools are not eligible to receive a bonus under this subdivision.

“b. Any qualifying teacher who taught in a local school administrative unit that employed in the previous school year three or fewer total teachers in the qualifying teacher’s grade level shall receive a bonus under this subdivision if that teacher has an EVAAS student growth index score for fourth, fifth, sixth, seventh, or eighth grade mathematics from the previous school year of exceeded expected growth.

(4) Bonuses awarded pursuant to subdivisions (2) and (3) of this subsection are payable in January to qualifying teachers based on EVAAS student growth index score data from the previous school year.

“(5) A qualifying teacher may receive a bonus under both subdivisions (2) and (3) of this subsection.

“(6) The bonus or bonuses awarded to a qualifying teacher pursuant to this section shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(7) No teacher shall receive more than two bonuses pursuant to this section.

“(b) Notwithstanding G.S. 135-1(7a), the bonuses awarded by this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(c) The State Board of Education shall study the effect of the bonuses awarded pursuant to this section on teacher performance and retention. The State Board shall report the results of its findings, the distribution of statewide bonuses as among local school administrative units, and the distribution of bonuses within local school administrative units as among individual schools to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by March 15 of each year bonuses are awarded.”

Editor's Note.

The 1998 amendment, effective May 7, 1998, added "Health Insurance Program for Children" to the chapter title.

Subdivision designations in subdivision (7a) were set out at the direction of the Revisor of Statutes.

Session Laws 2006-77, s. 1, provides: "Notwithstanding any other provision of law, a member of the Teachers' and State Employees' Retirement System who was employed by a community college, who filed for retirement before August 31, 2005, for an effective retirement date of November 1, 2005, and who was provided with incorrect information about the period of time a retired member must wait before returning to employment in order to continue receiving retirement benefits, may be reemployed by the State under the reemployment law that existed at the time the member filed for retirement."

At the direction of the Revisor of Statutes, in subdivision (10), "Army" and "Air" were substituted for "army" and "air" when either preceded "National Guard" to conform with Session Laws 2009-281, s. 1.

Session Laws 2009-451, s. 26.14E(a)-(f), provides: "(a) The following definitions apply in this section:

"(1) Furlough. — A temporary period of leave from employment without pay that (i) is ordered or authorized by the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board and (ii) is not in connection with a demotion or any other disciplinary action.

"(2) Public agency. — A State agency, department, or institution in the executive, legislative, or judicial branches of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

"(3) Public employee. — An employee employed by a public agency.

"(b) Notwithstanding any law to the contrary, if necessary economies in public agency expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

"(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer, or an Optional Retirement Program (ORP) administered under G.S.

135-5.1 or G.S. 135-5.4, shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

"(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

"(c) This section holds harmless employees who are subject to furloughs to accomplish economies required by this act as to their retirement and other benefits that normally accrue as a result of employment. This section does not apply to a furlough within a public agency that is designed:

"(1) To solely and selectively provide benefits to a public employee or a subset of public employees, or to extend or enhance benefits beyond those that normally accrue to a public employee as a result of employment.

"(2) To allow the public agency to settle any claim against the public agency or to gain additional economies not specifically required by this act.

"(d) This section shall not be construed as authorizing furloughs.

"(e) Whenever the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board authorizes a furlough of public agency employees, the respective authorizing officer or entity shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

"(1) The specifics of the authorized furlough including the applicable reduction in salary and the date the reduction in salary will occur. Examples of other

furlough specifics include one-day furlough per month for the next three months, five furlough days during the remainder of the fiscal year, etc.

“(2) The positions affected, i.e. all full-time, part-time, temporary and contractual positions, all nonessential personnel, all nonteaching positions, etc.

“(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

“(4) Certification that the furlough is not in connection with a demotion or any other disciplinary action.

“(5) Certification that the furlough is to accomplish economies specifically required by this act, including the specific budget provision or reduction the furlough is intended to address.

“(6) Certification that the furlough is not related to the settlement of any claim against a public agency.

“(f) This section is effective when it becomes law.”

Session Laws 2009-451, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2009’.”

Session Laws 2009-451, s. 28.5 is a severability clause.

Session Laws 2011-145, s. 29.18(a)-(e), provides: “(a) The following definitions apply in this section:

“(1) Furlough. — A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

“(2) Public agency. — A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

“(3) Public employee. — An employee employed by the legislative or judicial branches or by a public agency.

“(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services Officer, respectively, to balance the judicial branch or legislative branch budget.

“The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough

its respective employees in order to balance the respective budgets.

“(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

“(1) The specifics of the authorized furlough.

“(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

“(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

“(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

“(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

“(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

“(e) The benefits protections provided by this section shall also apply to public

employees in the judicial and legislative branches.” For prior similar provisions, see Session Laws 2010-31, ss. 29.1 and 29.4.

Session Laws 2011-145, s. 1.1, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2011.’”

Session Laws 2011-145, s. 32.2, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium.”

Session Laws 2011-145, s. 32.5 is a severability clause.

At the direction of the Revisor of Statutes, subdivision (5a), as added by Session Laws 2012-185, s. 2(b), was redesignated as subdivision (4a) to maintain alphabetical order.

Subdivision (7b) was originally enacted as subdivision (8a) by Session Laws 2014-97, s. 4(a). It has been renumbered as subdivision (7b) to maintain alphabetical order at the direction of the Revisor of Statutes.

Session Laws 2015-241, s. 30.18A(b), provides: “Notwithstanding G.S. 135-1(7a), the compensation bonus awarded by this section [one-time, lump-sum bonus of \$750 per employee for the 2015-2016 fiscal year] is not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.”

Session Laws 2015-241, s. 1.1, provides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 2015.’”

Session Laws 2015-241, s. 33.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2015-2017 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2015-2017 fiscal biennium.”

Session Laws 2015-241, s. 33.6, is a severability clause.

Session Laws 2016-94, s. 8.9, as amended by Session Laws 2017-57, s. 8.8B(b), and as amended by Session Laws 2018-5, s. 8.10(c), provides: “(a) The State Board of Education, in collaboration with the Department of Commerce, shall establish the Industry Certifications and Credentials Teacher Bonus Program (program) to reward the performance of teachers in public

schools, including charter schools, who teach students earning approved industry certifications or credentials consistent with G.S. 115C-156.2 and to encourage student learning and improvement. To attain this goal, the Department of Public Instruction shall administer bonus pay to teachers in public schools, including charter schools, who teach students earning approved industry certifications or credentials, beginning with data from the 2015-2016 school year, in accordance with the following:

“(1) For teachers who provide direct instruction to students, bonuses shall be provided in the following amounts:

“a. A bonus in the amount of twenty-five dollars (\$25.00) for each student taught by a teacher who provided instruction in a course that led to the attainment of an industry certification or credential with a twenty-five-dollar (\$25.00) value ranking as determined under subdivision (3) of this subsection.

“b. A bonus in the amount of fifty dollars (\$50.00) for each student taught by a teacher who provided instruction in a course that led to the attainment of an industry certification or credential with a fifty-dollar (\$50.00) value ranking as determined under subdivision (3) of this subsection.

“(2) No teacher shall be awarded a bonus pursuant to this subsection that exceeds three thousand five hundred dollars (\$3,500) in any given school year. The bonus awarded to a teacher pursuant to this subsection shall be in addition to any regular wage or other bonus the teacher receives or is scheduled to receive.

“(3) The Department of Commerce, in consultation with the State Board, shall assign a value ranking for each industry certification and credential based on academic rigor and employment value in accordance with this subdivision. Fifty percent (50%) of the ranking shall be based on academic rigor and the remaining fifty percent (50%) on employment value. Academic rigor and employment value shall be based on the following elements:

“a. Academic rigor shall be based on the number of instructional hours, including work experience or internship hours, required to earn the industry certification or credential, with extra weight given for coursework that also provides community college credit.

“b. Employment value shall be based on the entry wage, growth rate in employment for each occupational category,

and average annual openings for the primary occupation linked with the industry certification or credential.

“(4) A bonus awarded pursuant to this subsection is payable in January to a qualifying teacher who remains employed teaching in the same local school administrative unit or, if the teacher is not employed in a local school administrative unit, remains teaching in the same charter school at least from the school year the data is collected until January 1 of the corresponding school year that the bonus is paid.

“(b) Notwithstanding G.S. 135-1(7a), the compensation bonuses awarded under this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.

“(c) The State Board of Education shall study the effect of the program on teacher performance and retention. The State Board shall report the results of its findings, the amount of bonuses awarded to teachers who teach students earning approved industry certifications or credentials, and the type of industry certifications and credentials earned by their students to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by March 15 of each year.

“(d) For the 2017-2018 fiscal year only, the Director of the Budget shall also include in the base budget, as defined by G.S. 143C-1-1(d)(1c), the amount of non-recurring funds needed to support the program.

“(e) Repealed by Session Laws 2017-57, s. 8.8B(b), effective July 1, 2017.”

Session Laws 2016-94, s. 36.1A(a), provides: “Funds for Merit-Based Bonuses. — Of the funds appropriated in this act from the General Fund and Highway Fund to the Compensation Bonus Reserves, nonrecurring funds for the 2016-2017 fiscal year are authorized generally to provide employing agencies with funds to award one-time merit-based bonuses to State-funded personnel in accordance with eligibility policies adopted by the employing agencies. The eligibility policy shall not provide an across-the-board bonus for this purpose. Notwithstanding G.S. 135-1(7a) and G.S. 135-53(5), merit-based bonuses awarded under this Part are not compensation under Chapter 135 of the General Statutes.”

Session Laws 2016-94, s. 36.16(b), pro-

vides: “Notwithstanding G.S. 135-1(7a), the compensation bonus awarded by this section is not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.”

Session Laws 2016-94, s. 36.16(a)-(e) provides for a one-time lump sum compensation bonus for employees in State-funded positions as of September 1, 2016, except for teachers paid on a Salary Schedule.

Session Laws 2016-94, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2016.’”

Session Laws 2016-94, s. 39.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year.”

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 35.19B(c), made the last sentence of subdivision (11c), and subdivision (17a) as added by Session Laws 2017-57, s. 35.19B(a), effective July 1, 2017, and applicable to persons retiring on or after that date.

Session Laws 2017-57, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2017.’”

Session Laws 2017-57, s. 39.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2017-2019 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2017-2019 fiscal biennium.”

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2017-125, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Session Laws 2017-186, s. 3(a), provides: “The Revisor of Statutes shall change any additional references in the General Statutes to the ‘Division of Adult Correction’ to the ‘Division of Adult Correction and Juvenile Justice.’”

Session Laws 2018-5, s. 8.3(c), provides: “Notwithstanding G.S. 135-1(7a), the bonus awarded pursuant to this section is not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Re-

tirement System.” For prior similar provisions, see Session Laws 2017-57, s. 8.4(d).

Session Laws 2018-5, s. 8.9(d), provides: “Notwithstanding G.S. 135-1(7a), the bonuses awarded pursuant to this section are not compensation under Article 1 of Chapter 135 of the General Statutes, the Teachers’ and State Employees’ Retirement System.” For prior similar provisions, see Session Laws 2017-57, s. 8.8A(c).

Session Laws 2018-5, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2018.’”

Session Laws 2018-5, s. 39.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year.”

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2017-57, s. 35.19B(a), added the last sentence in subdivision

(11c); and added subdivision (17a). For effective date and applicability, see editor’s note.

Session Laws 2017-125, s. 1(a), effective July 20, 2017, added second sentence in subdivision (5).

Session Laws 2017-128, s. 1(a)-(c), effective July 20, 2017, added subdivision (7b) and redesignated former subdivision (7b) as subdivision (7c); and inserted “records” in the first sentence of subdivision (11b).

Session Laws 2017-129, s. 4(a), effective June 30, 2017, added the second sentence in subdivision (11).

Session Laws 2017-186, s. 3(a), effective December 1, 2017, substituted “Division of Adult Correction and Juvenile Justice” for “Division of Adult Correction” twice in subdivision (17a).

Session Laws 2018-85, s. 10, effective June 25, 2018, in subdivision (20), rewrote and transferred the former fourth sentence as the last sentence, including subdivisions (20)a. through d.

Legal Periodicals.

For comment on this section, see 19 N.C.L. Rev. 508 (1941).

CASE NOTES

Actuarial Equivalent. — The actuarial value includes interest and there was no double recovery where the court was following the definition of actuarial equivalent as prescribed by this section and included interest in the underpayment award. *Faulkenbury v. Teachers’ & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

Retirement Law Is Valid. — It is the verdict of the General Assembly, embodied and expressed in this and the following sections, that the retirement plan has a definite relation to the just and efficient administration of the public school system which brings it within the scope of constitutional authority. Under the mandatory provisions of the retirement law, the public policy thus expressed is applied to the entire public school system and its administration at the hands of every administrative unit within it. *Bridges v. City of Charlotte*, 221 N.C. 472, 20 S.E.2d 825 (1942).

The retirement law is sufficiently invested with a public purpose and is a constitutional and valid expression of the legislative will, both generally and in its application to the local administrative units with which it deals. *Bridges v.*

City of Charlotte, 221 N.C. 472, 20 S.E.2d 825 (1942).

Allowances to which a member of the Teachers’ and State Employees’ Retirement System is entitled upon retirement constitute compensation for public services previously rendered and do not violate former N.C. Const., Art. I, § 32 (now N.C. Const., Art. I, § 16). *Harrill v. Teachers’ & State Employees’ Retirement Sys.*, 271 N.C. 357, 156 S.E.2d 702 (1967).

The purpose of this and the following sections is to provide benefits on retirement for the teachers in the public school system of the State and for State employees. It is based not only upon the principle of justice to poorly paid State employees, but also upon the philosophy that a measure of freedom from apprehension of old age and disability will add to the immediate efficiency of those engaged in carrying on a work of first importance to society and the State. *Bridges v. City of Charlotte*, 221 N.C. 472, 20 S.E.2d 825 (1942); *Powell v. Board of Trustees*, 3 N.C. App. 39, 164 S.E.2d 80 (1968).

Under G.S. 135-2, the Retirement System for Teachers and State Employees

was established for the purpose of providing retirement allowances and other benefits under the provisions of G.S. 135-1 et seq., for teachers and State employees of the State of North Carolina. *State Emples. Ass'n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

The intent of this Chapter is not to exclude, but to include, State employees under an umbrella of protections designed to provide maximum security in their work environment and to afford a measure of freedom from apprehension of old age and disability. *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643, cert. denied, 305 N.C. 587, 292 S.E.2d 571 (1982).

The Teachers' and State Employees' Retirement System of North Carolina is an agency or instrumentality of the State. *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637, cert. denied and appeal dismissed, 310 N.C. 626, 315 S.E.2d 692 (1984).

Employee Status When Job Sharing. — Petitioner remained an "employee" under subsection (10) during the period of time when she participated in a job sharing program and was working full time and thus was entitled to credit for those years of service as reflected in her retirement records. *Wiebenson v. Board of Trustees*, 345 N.C. 734, 483 S.E.2d 153 (1997).

Transfer of Local Creditable Service to State System. — In determining the date of eligibility of state employee petitioner to purchase retirement credits under Teachers' and State Employees' Retirement System for time spent in the military service under repealed G.S. 135-4(f)(6), petitioner could not include service in the Local Governmental Employees' Retirement System. *Worrell v. North Carolina Dep't of State Treas.*, 333 N.C. 528, 427 S.E.2d 871 (1993).

Interest Accrual and Compounding. — Consistent with the purposes of subdivision (19) of this section and G.S. 128-21(18), underpayments were found to accrue interest from the date they became due. Furthermore, court found that statutes entitled beneficiaries to interest, not only on the principle due, but also on the accrued or earned interest. *Faulkenbury v. Teachers' & State Emples. Retirement Sys.*, 133 N.C. App.

587, 515 S.E.2d 743, 1999 N.C. App. LEXIS 615, cert. denied, 351 N.C. 102, 540 S.E.2d 358 (1999).

Postjudgment Interest Not Awardable Against State. — Retirees under the state and local government retirement system were not entitled to postjudgment interest on retroactive disability benefits, because the state retirement statutes contain no provision for the allowance of such interest. *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 132 N.C. App. 137, 510 S.E.2d 675, 1999 N.C. App. LEXIS 89, cert. denied, 350 N.C. 379, 536 S.E.2d 620 (1999).

Retiree Not Entitled to Tax-Free Pension. — Retiree was not entitled to a tax free pension because he withdrew his contributions to the Consolidated Judicial Retirement System and the Teachers' and State Employees Retirement System and left public employment before August 12, 1989, and thus he was not vested on that date; although the retiree later returned to public employment, became vested, and repaid the money he had previously withdrawn, when read together, G.S. 135-4 and G.S. 135-5 made clear that a member who left state service and withdrew contributions in the retirement system had no rights to any benefits within the system except for the right to repay previously withdrawn contributions as provided in G.S. 135-4. The repayment served only to increase the retiree's years of service creditable. *Cashwell v. Dep't of State Treasurer, Ret. Sys. Div.*, 196 N.C. App. 80, 675 S.E.2d 73, 2009 N.C. App. LEXIS 452 (2009).

Applied in *Faulkenbury v. Teachers' & State Emples. Retirement Sys.*, 133 N.C. App. 587, 515 S.E.2d 743, 1999 N.C. App. LEXIS 615.

Cited in *Bradshaw v. Administrative Office of Courts*, 83 N.C. App. 122, 349 S.E.2d 621 (1986); *Wells v. Consolidated Judicial Retirement Sys.*, 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000); *Wiebenson v. Board of Trustees*, 138 N.C. App. 489, 531 S.E.2d 500, 2000 N.C. App. LEXIS 627 (2000); *Cochran v. Cochran*, 198 N.C. App. 224, 679 S.E.2d 469, 2009 N.C. App. LEXIS 1161 (2009); *McCaskill v. Dep't of State Treasurer, Ret. Sys. Div.*, 204 N.C. App. 373, 695 S.E.2d 108, 2010 N.C. App. LEXIS 1062 (2010); *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

OPINIONS OF ATTORNEY GENERAL

Current benefits includes accumulated leave time. — “Current benefits” includes the amount of accumulated leave time that a university employee has available for use at the time the inspection is requested. As such, G.S. 126-23 requires the university system to provide the accumulated leave time for employees. See opinion of Attorney General to Laura B. Luger, Vice President and General Counsel, The University of North Carolina, 2009 N.C.A.G. 1 (06/15/09).

Current benefits includes accumu-

lated leave time. — Leave time is a benefit required to be kept open for public inspection in accordance with G.S. 126-23. Sick leave balances, vacation leave balances, bonus leave balances, and compensatory time accrued are therefore current benefits to university employees which should be made available for inspection and copying upon request. See opinion of Attorney General to Laura B. Luger, Vice President and General Counsel, The University of North Carolina, 2009 N.C.A.G. 1 (06/15/09).

§ 135-1.1. Licensing and examining boards.

(a) Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause its employees so employed prior to July 1, 1983 to become members of the Teachers’ and State Employees’ Retirement System. Such Retirement System coverage shall be conditioned on such board’s paying all of the employer’s contributions or matching funds from funds of the board and on such board’s collecting from its employees the employees’ contributions, at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer’s contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees’ contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds.

(b) Notwithstanding any other provision of this Chapter, any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and who is subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes, may make an irrevocable election by appropriate resolution of the board, on or before October 1, 2000, to become an employer in the Teachers’ and State Employees’ Retirement System. Retirement System coverage shall be conditioned on the board’s payment of all of the employer’s contributions or matching funds from funds of the

board and on the board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Any person who is an employee of the board on the date the board makes an irrevocable election to participate in the Retirement System may purchase creditable service for periods of employment with the board prior to the election by making a lump-sum payment equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

History.

1959, c. 1012; 1983, c. 412, s. 3; 2000-187, s. 1; 2006-203, s. 72.

Editor's Note.

Session Laws 2006-203, s. 126, pro-

vides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

OPINIONS OF ATTORNEY GENERAL

Occupational Licensing Boards. —

Those occupational licensing boards subject to the Personnel Act [North Carolina Human Resources Act], G.S. 126-1 et seq., and the Budget Act, G.S. 143-1 et seq., are also subject to G.S. 135-1.1, just as are the occupational licensing boards not subject to the Personnel and Budget Acts [North Carolina Human Resources and Budget Acts]. See opinion of Attorney General to Vicky Goudie, Executive Secretary, State Board of Cosmetology, 60 N.C.A.G. 54 (1990).

An occupational licensing board, even one such as the Cosmetic Arts Board and several others subject to the Personnel and Budget Acts [North Carolina Human Resources and Budget Acts], is not entitled to have any of its employees, who were employed on or after July 1, 1983, covered by and participating in the Retirement System. See opinion of Attorney General to Vicky Goudie, Executive Secretary, State Board of Cosmetology, 60 N.C.A.G. 54 (1990).

§ 135-2. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Chapter for teachers and State employees of the State of North

Carolina. The Retirement System so created shall be established as of the first day of July, 1941.

This Retirement System is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code. Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not apply. This System shall have the power and privileges of a corporation and shall be known as the “Teachers’ and State Employees’ Retirement System of North Carolina,” and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held.

Consistent with Section 401(a)(1) of the Internal Revenue Code, all contributions from participating employers and participating employees to this Retirement System shall be made to funds held in trust through trust instruments that have the purposes of distributing trust principal and income to retired members and their beneficiaries and of paying other definitely determinable benefits under this Chapter, after meeting the necessary expenses of administering this Retirement System. Neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan document, consisting of Article V, Section 6(2) of the North Carolina Constitution, relevant statutory provisions in this Chapter; associated regulations in the North Carolina Administrative Code, substantive and procedural information on the official forms used by the Retirement System, and policies and minutes of the Board of Trustees.

History.

1941, c. 25, s. 2; 2012-130, s. 7(c).

Retirement System was transferred to the Department of State Treasurer by G.S. 143A-34, enacted by Session Laws 1971, c. 864.

State Government Reorganization.

The Teachers’ and State Employees’

CASE NOTES

Teachers’ and State Employees’ Retirement System of North Carolina is an agency or instrumentality of the State. Stanley v. Retirement & Health Benefits Div., 66 N.C. App. 122, 310 S.E.2d 637, cert. denied and appeal dismissed, 310 N.C. 626, 315 S.E.2d 692 (1984).

Cited in Powell v. Board of Trustees, 3 N.C. App. 39, 164 S.E.2d 80 (1968); Faulkenbury v. Teachers’ & State Employees’ Retirement Sys., 108 N.C. App. 357, 424 S.E.2d 420 (1993).

§ 135-3. Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90 days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this Chapter. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees excluded from coverage under Title II of the Social Security Act may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal civil service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System; provided further, that effective July 1, 1985, an extension service employee excluded from coverage under Title II of the Social Security Act who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System. At

such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

- (2) Repealed by Session Laws 2012-130, s. 8, effective July 1, 2012.
- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon electronic submission or written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired.

- (4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the Pres-

ident of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

- (5) Repealed by Session Laws 2012-130, s. 8, effective July 1, 2012.
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.
- (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.
 - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.
 - 1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on

the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.

2. The actuarial equivalent of the retirement benefits he previously received.
 - e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).
- (8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be

reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement

provisions of this Article pertaining to law-enforcement officers.

- b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. — In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- b4, b5. Repealed by Session Laws 2014-88, s. 3(a), effective July 30, 2014.
- c. 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, and if such beneficiary earns an amount during the 12 month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of

each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of a percent (1/10 of 1%), provided that this percentage change is positive.

- c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice.
- d. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service,

creditable service earned while in receipt of disability benefits under Article 6 of this Chapter shall count as membership service for this purpose only, and the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 135-5(f).

2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the period of service after restoration to service in accordance with G.S. 135-5(f), or the member may allow this new account to remain inactive.
- e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.

- 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.
- (8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.
- (9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided by this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit if he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefits shall be paid.

History.

1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 91/2; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 396; c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(b); 1989, c. 791; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(e), (f), 7.31(d), (e); 1995, c. 509, s. 73.1; 1998-212, s. 28.24(a); 1998-217, s. 67; 2000-67, s. 8.24(a); 2001-424, s. 32.25(a); 2002-126, ss. 28.10(a), (b), (d), 28.13(a); 2004-124, s. 31.18A(a), (b); 2004-199, s. 57(a); 2005-144, ss. 7A.1, 7A.2, 7A.4; 2005-276, ss. 29.28(a)-(d); 2005-345, s. 43; 2006-226, s. 25(a); 2007-145, s. 7(a), (b), (d)-(f); 2007-326, ss. 1, 3(a), (b), (d)-(f); 2007-431, s. 9; 2009-66, ss. 8(a), 12(a), (b); 2009-137, s. 1; 2010-72, s. 4(a); 2011-232, s. 1; 2011-294, s. 2(a); 2012-130, s. 8; 2013-405, s. 5; 2014-88, s. 3(a); 2014-97, s. 4(d); 2015-164, s. 11(a).

Cross References.

As to exemption of temporary employees of the General Assembly from the provisions of G.S. 135-3(8)c. as to compensation earned in that status, see G.S. 120-32(1).

Editor's Note.

Session Laws 1953, c. 792, authorizes the Board of Trustees of the Teachers' and State Employees' Retirement System, in its discretion, to contract with the Fort Bragg School Board, the United States Office of Education, or the United States Commissioner of Education or his officers and agents, whereby teachers in the schools controlled and operated by the Fort Bragg School Board, who have previously taught in State public schools and accumulated creditable service of some type under the Teachers' and State Employees' Retirement Act, shall be covered under the provisions of the Act.

Session Laws 2002-126, s. 28.13(d), provides: "The State Treasurer shall seek a private letter ruling from the Internal Revenue Service relating to what constitutes a 'bona fide termination of employment' and the period of time that a member of the Teachers' and State

Employees' Retirement System must be separated from service before they can be reemployed either on a full-time or contract basis while continuing to receive retirement benefits."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capital Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2004-124, s. 31.18A(f), as amended by Session Laws 2004-161, s. 53.2, provides: "(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling may be obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2006-226, s. 25(a), as amended by Session Laws 2007-145, s. 7(e), and as amended by Session Laws 2007-326, s. 3(f), effective October 1, 2007, deleted "in full time capacity that exceeds fifty percent (50%) of the applicable workweek" from the end of subdivision (8)c.

Session Laws 2007-326, s. 5, provides that if the Internal Revenue Service determines that the provisions of G.S. 135-3(8)c. relating to the computation of postretirement earnings of retired teachers jeopardize the status of the Teachers' and

State Employees' Retirement System of North Carolina under the Internal Revenue Code, then the final three paragraphs of G.S. 135-3(8)c. are repealed.

Session Laws 2013-405, s. 8, made the amendment to sub-subdivision (8)d by

Session Laws 2013-405, s. 5, applicable to persons retiring on or after January 1, 2012.

Session Laws 2013-405, s. 7, is a severability clause.

CASE NOTES

Constitutionality of Sub-Subdivision (8)d. — Because all retired officers and employees are subject to the provisions of sub-subdivision (8)d of this section, plaintiff retired judge was not treated differently than similarly situated persons, and the Retirement System's interpretation of sub-subdivision (8)d did not violate the Equal Protection Clause of either the United States or the North Carolina Constitution. *Wells v. Consolidated Judicial Retirement Sys.*, 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000), aff'd, 354 N.C. 313, 553 S.E.2d 877 (2001).

Suspension of Benefits. — In case involving suspension of plaintiff retired judge's retirement benefits after he was appointed to another state office, where the prohibition contained in sub-subdivision (8)d of this section existed as former (8)c when plaintiff's rights vested in the Retirement System, the prohibition applied to plaintiff, and plaintiff's contract under Chapter 135 provided that his benefits would cease if he returned to employment with the State of North Carolina following his retirement from the

court. *Wells v. Consolidated Judicial Retirement Sys.*, 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000), aff'd, 354 N.C. 313, 553 S.E.2d 877 (2001).

Suspension of the retirement benefits of a retired judge who was appointed to state utilities commission, while he served on that commission, was proper even though the statute authorizing the suspension of a retired judge's pension only spoke of suspending the benefits of a retired judge who returned to judicial service, because the broader provisions of G.S. 135-3(8)(c), disallowing continued receipt of benefits by a contributor to the Teachers' and State Employees' Retirement System of North Carolina, applied to the judge. *Wells v. Consol. Judicial Ret. Sys.*, 354 N.C. 313, 553 S.E.2d 877, 2001 N.C. LEXIS 1098 (2001).

Cited in *Harrill v. Teachers' & State Employees' Retirement Sys.*, 271 N.C. 357, 156 S.E.2d 702 (1967); *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008); *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

OPINIONS OF ATTORNEY GENERAL

Membership Compulsory; No Exemption for Member of Religious Order. — See opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' and State Employees' Retirement System, 40 N.C.A.G. 625 (1970).

Employee Reentering State Employment After Retirement. — When an employee, age 62, retires on July 1, 1959, and receives retirement benefits until July 1, 1964, at which time he reenters State employment, when that employee subsequently retires on July 1,

1969, he is entitled to the resumption of payment of his retirement benefits suspended while he was reemployed, plus additional benefits based on a salary over the most recent 5 years' employment figured at the current formula rate. He is not entitled to benefits using the current formula and his total service recently plus that prior to his first retirement. Opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' and State Employees' Retirement System, 40 N.C.A.G. 623 (1969).

§§ 135-3.1, 135-3.2. Repealed by Session Laws 1961, c. 516, s. 9.

§ 135-4. Creditable service.

(a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at

any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965, who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service.

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Service rendered by a school employee in a job-sharing position shall be credited at the rate of one-half year for each regular school year of employment.

(c) Repealed by Session Laws 2018-85, s. 7, effective June 25, 2018.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by the member since he or she last became a member, and also if the member has a prior service certificate which is in full force and effect, the amount of service certified on the prior service certificate; and if the member has sick leave standing to the member's credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than five years prior to the effective

date of the member's retirement. Further, any agency with a sick leave policy that is more generous than that of all State agencies subject to the rules of the Office of State Human Resources shall proportionately adjust each of its retiring employees' sick leave balance to the balance that employee would have had under the rules of the Office of State Human Resources. Days of sick leave standing to a member's credit at retirement shall be determined by dividing the member's total hours of sick leave at retirement by the hours per month such leave was awarded under the employer's duly adopted sick leave policy as the policy applied to the member when the leave was accrued.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained 60 months of aggregate service, or five years of membership service, as an employee of the North Carolina General Assembly, except legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

On and after January 1, 1985, the creditable service of a member who was a member of the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by the State from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, shall include service that was creditable in the Law-Enforcement Officers' Retirement System; and membership service with that System shall be membership service with this Retirement System; provided, notwithstanding any provision of this Article to the contrary, any inchoate or accrued

rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law-Enforcement Officers' Retirement System shall not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would have otherwise applied.

(f) **Armed Service Credit.** —

- (1) Teachers and other State employees who entered the Armed Forces of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from the Armed Forces of the United States under other than dishonorable conditions shall be entitled to full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subdivision, then the member's employer must remit to the System all the employer contributions for the full period of that member's military service.
- (2) Teachers and other State employees who entered the Armed Forces of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from the Armed Forces of the United States under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in the Armed Forces of the United States up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.
- (3) Teachers and other State employees who enter the Armed Forces of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the Armed Forces of the United States.
- (4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he or she would have been paid during such service in the Armed Forces of the United States on the

basis of his or her earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon the member's retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to the member or on the member's account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

- (5) The provisions of this subsection shall also apply to members of the North Carolina National Guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the North Carolina National Guard.
- (6) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below.
- (7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:
 - a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose membership began on or prior to July 1, 1981, and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.
 - b. For members who complete five years of membership service, and retired members who complete five years

of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of "active duty", as defined in 38 U.S. Code Section 101(21), in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of "active duty", as defined in 38 U.S. Code Section 101(21), as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the National Guard or any reserve component of the Armed Forces of the United States, and shall not include periods of "active duty for training", as defined in 38 U.S. Code Section 101(22), or periods of "inactive duty training", as defined in 38 U.S. Code Section 101(23), rendered in any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 135-18.1.

(g) Teachers and other State employees who served in the uniformed services as defined in the Uniformed Services Employment

and Reemployment Rights Act of 1994, 38 U.S.C. § 4303, who were not dishonorably discharged, and who returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the uniformed services for the maximum period that they are entitled to reemployment under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq., or other federal law, and the salary or compensation of such a teacher or State employee during that period of service is deemed to be that salary or compensation the employee would have received but for the period of service had the employee remained continuously employed, if the determination of that salary or compensation is reasonably certain. If the determination of the salary or compensation is not reasonably certain, then it is deemed to be that employee's average rate of compensation during the 12-month period immediately preceding the period of service. When a member who has served in the uniformed services returns to work in compliance with the conditions of this subsection, that member's employer shall remit to the System all employer and employee contributions for the full period of that member's military service.

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

(i) Any person who became a member after June 30, 1947, and before July 1, 1955, and did not subsequently withdraw his contributions may, prior to his retirement, increase his creditable service to the extent of the period of time from the date he became a "teacher or employee" as the terms are defined in this Chapter to the date he became a member, but not exceeding three months immediately preceding membership, provided that he makes an additional contribution in one lump sum equal to five per centum (5%) of the compensation he received for the aforesaid period of time plus regular interest thereon from the date he became a member to the date of payment.

(j) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the Fund and the transfer of the member's contributions plus accumulated interest from the Fund to this System.

(j1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under

this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(j2) The creditable service of a member who was a member of the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Legislative Retirement System, and whose accumulated contributions and reserves are transferred from that System to this System, includes service that was creditable in the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Legislative Retirement System, and membership service with those Retirement Systems is membership service with this Retirement System.

(k) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) or the rules and regulations of the Law-Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal. These provisions shall apply equally to retired members who had attained five years of membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the

time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

Notwithstanding any provision to the contrary, a law enforcement officer who was transferred from the Law Enforcement Officers' Retirement System to this Retirement System pursuant to Article 12C of Chapter 143 of the General Statutes and withdrew his accumulated contributions prior to January 1, 1985, in accordance with G.S. 128-27(f) or G.S. 135-5(f) for non-law enforcement service and who has five years or more of membership service standing to his credit may repay in a total lump sum the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(l) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below.

(l1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of current membership service, and retired members who completed 10 years of current membership service prior to retirement, whose membership began on or before July 1, 1981, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered membership service, times the employee contribution rate

at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

- (2) For members who complete five years of current membership service, and retired members who complete five years of current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose membership began on or before July 1, 1981, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Notwithstanding the requirement of five years of current membership service, a member whose membership began prior to the service the member desires to purchase shall be eligible to purchase creditable service under this subdivision upon returning to service as a teacher or employee upon completion of a total of five years of membership service and upon completion of one year of current membership service.

Current membership service shall mean membership service earned since the service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of membership service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(m) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the

provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after July 1, 2001, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (k) of this section.

(n) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below.

(o) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below.

(p) **Credit for prior temporary State employment.** — Notwithstanding any other provision of this Chapter, a member may purchase service credit for temporary State employment upon completion of 10 years of membership service and subject to the condition that the member had been classified as a temporary employee for more than three years. Each employer shall certify to the Board of Trustees that an employee is eligible to purchase this service credit prior to the member making payment. Payment for the service credit shall be in a single lump sum based upon the amount the member would have contributed if he had been properly classified as a permanent employee and been a member of this retirement system.

(p1) **Part-Time Service Credit.** —

- (1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time teacher or employee of an employer as defined in G.S. 135-1(11) or G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Pay-

ment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

- (2) Under all requirements and conditions set forth in the preceding subdivision of this subsection (p1), except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time teacher or employee of the State, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time teacher or employee of the State if (i) the member terminates or has terminated employment in any capacity as a teacher or employee of the State, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.
- (3) Under all the requirements and conditions set forth in subdivision (1) of this subsection, except for the condition that part-time service rendered when a full-time student in pursuit of a degree or diploma in a degree-granting program is not eligible for purchase, any member with five or more years of membership service standing to the member's credit may purchase creditable service for service rendered as a part-time teacher or employee of the State if that service was rendered on a permanent part-time basis and required at least 20 hours of service per week.
- (q) Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on

account of having attained the age of 62 years, in accordance with former G.S. 135-3(6), may purchase membership service credits of such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 135-8(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum.

(r) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) **Leaves of Absence Terminated Prior to July 1, 1983.** —

The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) **Leaves of Absence Terminating On and After July 1, 1983, but before January 1, 1988.** —

The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, but before January 1, 1988, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or

fraction thereof the payment is made beyond the six-month period.

- (3) **Leaves of Absence Terminating On and After January 1, 1988.** — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon or before a return to service on and after January 1, 1988, shall be due and payable to the Annuity Savings Fund within six months from return to service and shall be a lump sum amount equal to the employee percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. For members electing to make this payment, the member's employer which granted the leave of absence, or the member's employer upon a return to service, or both, shall make a matching lump sum payment to the Pension Accumulation Fund within six months from return to service equal to the employer percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. Such purchases of creditable service are applicable only when members have membership service credits within 30 days prior to the leave of absence and within 12 months following the leave of absence and such membership service is creditable service at the time of purchase. Notwithstanding any other provision of this subdivision, the cost to a member and to a member's employer or former employer or both employers whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof that the payment is made after the six-month period.

Notwithstanding the requirement of this provision that a member return to service, a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits as provided in G.S. 135-105 and who subsequently becomes a beneficiary in receipt of a benefit as provided in G.S. 135-106 may purchase creditable service for any period of employer approved leave of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. The cost to purchase such creditable service shall be as determined above provided the amount due if not paid within six months from the beginning of the long-term disability period as determined in G.S. 135-106 shall be the amount due plus one percent (1%) per month

penalty for each month or fraction thereof that the payment is made after the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

(s) **Credit at Full Cost for Temporary Employment.** — In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

- (1) Member was employed by an employer as defined in G.S. 135-1(11) or G.S. 128-21(11);
- (2) Member's temporary employment met all other requirements of G.S. 135-1(10) or (25), or G.S. 128-21(10);
- (3) Member has completed five years or more of membership service;
- (4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4).

(t) **Credit at Full Cost for Local Government Employment.**

— Any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in the North Carolina Local Governmental Employees' Retirement System upon completion of five years of membership service by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(u) Any member who was a wildlife protector who elected to become a member of the Law Enforcement Officers' Retirement System pursuant to Chapter 837 of the 1971 Session Laws by the transfer of accumulated contributions from this Retirement System to the Law Enforcement Officers' Retirement System and who has not subsequently applied for and received a return of accumulated contributions shall be entitled to creditable service for the service as a non-law enforcement officer forfeited as a result of the transfer pursuant to Chapter 837 of the 1971 Session Laws.

(v) **Omitted Membership Service.** — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) Within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees; or
- (3) After three years of the omission, by the payment of an amount equal to the full cost of the service credits calcu-

lated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(w) **Credit at Full Cost for Federal Employment.** — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt.

(x) Repealed by Session Laws 2001-424, s. 32.32(c), effective July 1, 2001.

(y) A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be granted creditable service for each month that the member is eligible for and for which a benefit is paid under the provisions of G.S. 135-105 and G.S. 135-106; provided, however, that in no instance shall a member be granted creditable service under this subsection if creditable service is earned or credited for the same month in this retirement system or any other retirement system administered by the State.

(z) **Credit at Full Cost for Leave Due to Extended Illness.** — Any member in service with five or more years of membership service standing to his credit may purchase creditable service for periods of interrupted service while on leave without pay status due to the member's illness or injury, excluding leave due to maternity, provided that any single such interrupted service shall have included such period of time during which the member failed to earn at least two months membership service, by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(aa) **Credit at Full Cost for Maternity Leave.** — Notwithstanding other provisions of this Chapter, any member in service

with five or more years of credited membership service may purchase creditable service for periods of service which were interrupted due to parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Creditable service purchased under this subsection may not exceed six months per parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(bb) **Credit at Full Cost for Probationary Local Government Employment.** — Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with any local employer as defined in G.S. 128-21(11) when considered to be in a probationary or employer-imposed waiting period status, between the date of employment and the date of membership service with the Local Governmental Employees' Retirement System, provided that the former employer of such a member has revoked this probationary employment or waiting period policy.

The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(cc) **Credit for Employment in Charter School Operated by a Private Nonprofit Corporation.** — Any member may purchase creditable service for any employment as an employee of a charter school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Creditable service purchased under this subsection shall not exceed a total of five years. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(dd) **Purchase of Service Credits Through Rollover Contributions From Certain Other Plans.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retire-

ment System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(ee) **Purchase of Service Credits Through Plan-to-Plan Transfers.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

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

- (1) When the reinstatement to service is by court order, final decision of an Administrative Law Judge, or with the approval of the Office of State Human Resources Director, and is:
 - a. Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or
 - b. After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preced-

ing calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

- (2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum amount equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, taking into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

In the event a member received a return of accumulated contributions subsequent to an involuntary termination as provided in G.S. 135-5(f), the member may redeposit, within 90 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity savings fund by single payment an amount equal to the total amount he previously withdrew plus regular interest and restore the creditable service forfeited upon receiving his return of accumulated contributions.

(gg) If a member who is an elected government official and has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-18.10 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is an elected government official and has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-18.10 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member

shall forfeit any benefit or creditable service earned from a position not as an elected government official.

(hh) **Credit at Full Cost for Service With The University of North Carolina During Which a Member Participated in the Optional Retirement Program.** — Notwithstanding any other provisions of this Chapter, a member upon the completion of five years of membership service may purchase creditable service for periods of employment with The University of North Carolina during which the member participated in the Optional Retirement Program as provided for in G.S. 135-5.1, provided that the member is not receiving, and is not entitled to receive, any retirement benefits resulting from this employment. The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(ii) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012.

(jj) **Contribution-Based Benefit Cap Purchase Provision.** — If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retire-

ment, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan under one of the following two options:

- (1) Option one. — An installment payment plan ending no more than 15 months after the retirement of the member.
- (2) Option two. — An installment payment plan ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.

Payment under both installment plans must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period.

History.

1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 11/2; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4; 1971, c. 117, ss. 9, 10; c. 993; 1973, c. 241, s. 2; c. 242, s. 1; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5; 1975, c. 205, s. 2; c. 875, s. 47; 1977, cc. 317, 790; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3; 1981, c. 557, s. 3; c. 636, s. 1; c. 1116, s. 1; 1981 (Reg. Sess., 1982), c. 1396, s. 4; 1983, c. 533, s. 1; c. 725; 1983 (Reg. Sess., 1984), c. 1030; c. 1034, ss. 230, 231; c. 1045, ss. 1, 2; 1985, c. 401, ss. 1, 2; c. 407, s. 1; c. 479, s. 193; c. 512; c. 530; c. 649, ss. 1, 4; c. 749, s. 1; 1987, c. 533, s. 1; c. 717, s. 2;

c. 738, s. 29(b); c. 809, s. 2; c. 821; c. 825; 1987 (Reg. Sess., 1988), c. 1088, ss. 1-4; c. 1103; c. 1110, s. 9; 1989, c. 255, ss. 11-20; c. 762, s. 3; 1991 (Reg. Sess., 1992), c. 1017, s. 2; c. 1029, s. 1; 1995, c. 507, s. 7.23D(b); 1998-71, ss. 3, 4; 1998-190, s. 1; 1998-212, s. 9.14A(c); 1998-214, s. 2; 1999-71, s. 1; 1999-158, s. 2; 2001-424, ss. 32.28(a), 32.32(a), 32.32(b), 32.32(c); 2002-71, s. 5; 2002-153, s. 4; 2002-174, s. 3; 2003-284, s. 30.18(b); 2003-358, s. 3; 2003-359, ss. 7, 8, 9, 12; 2005-91, s. 1; 2007-179, s. 3(b); 2007-233, s. 1; 2007-431, ss. 8, 11; 2009-281, s. 1; 2010-72, s. 5(a); 2011-183, s. 101; 2011-294, s. 5(a); 2012-130, s. 3(b), (c); 2012-193, s. 2; 2013-382, s. 9.1(c); 2013-405, s. 6(a); 2014-88, s. 1(c); 2014-115, s. 55.3(f); 2015-67, s. 6; 2015-168, s. 7(a); 2016-82,

s. 1; 2017-128, s. 2(a); 2017-129, s. 9(a); 2018-85, ss. 7, 14.

Editor's Note.

Section 126-5(c4), referred to in subsection (s) of this section, was repealed by Session Laws 1993, c. 321, s. 145(b).

Session Laws 1981, c. 636, s. 1, effective July 1, 1981, deleted subdivision (f)(6), which concerned purchase of service credit for service in the armed forces of the United States, subsection (l), which concerned purchase of credit for service to governmental entities, subsection (n), which defined "out-of-state service", and subsection (o), which concerned purchase of credit for time spent as a court reporter prior to establishment of the Uniform Court System, but provided that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

Prior to this amendment, subdivision (f)(6) and subsections (l), (n) and (o) read:

"(f)(6) Notwithstanding any other provision of this Chapter, teachers and other State employees not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this

subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

"(l) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service. Payment shall be permitted only on a total lump sum, an amount based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made.

"Notwithstanding the foregoing provisions, any member may, upon completion of 10 years of current membership service, purchase Federal School, Overseas Dependent Schools, or Military Dependent Schools service, or, while on an approved leave of absence from employment with the State of North Carolina, foreign service in the International Cooperation Administration or the Agency for International Development upon the same terms as in the preceding paragraph for out-of-state service.

"(n) Wherever the terminology 'out-of-state service,' is used in this section, that terminology shall be interpreted to include the United States Public Health Service and time spent in the Merchant Marines while in the United States Naval Reserve.

"(o) Notwithstanding any other provision of this Chapter, a member who is presently a court reporter may buy in

time spent serving as court reporter prior to the establishment of the Uniform Court System in 1968 by purchasing service credits, provided that the purchase payment equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities. Account shall be taken of the additional retirement allowance arising on account of the additional service credit commencing at the earliest date of which the member could retire or of a reduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary."

Session Laws 1991 (Reg. Sess., 1992), c. 1017, s. 2, which rewrote the first sentence of subsection (m), became effective on and after July 1, 1979.

Session Laws 2002-71, which added subsections (dd) and (ee) by s. 5, in s. 9, provides, in part, that s. 5 of the act becomes effective January 1, 2003, except that G.S. 135-4(ee), as enacted by s. 5, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection. The Revisor of Statutes is informed that a favorable letter of determination has been received.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

Session Laws 2012-193, s. 18, made subsection (ii) of this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Session Laws 2013-382, s. 9.1(b), provides: "The following entities and positions created by Chapter 126 of the General Statutes are hereby renamed by this act:

"(1) The State Personnel Commission is renamed the 'North Carolina Human Resources Commission.'

"(2) The Office of State Personnel is renamed the 'North Carolina Office of State Human Resources.'

"(3) The State Personnel Director is

renamed the 'Director of the North Carolina Office of State Human Resources.'"

Session Laws 2013-382, s. 9.1(c), provides in part: "Modification of References. — The Revisor of Statutes shall delete any references in the General Statutes to the State Personnel Act, State Personnel Commission, the State Personnel Director, and the Office of State Personnel (or any derivatives thereof) and substitute references to the North Carolina Human Resources Act, the State Human Resources Commission, the Director of the Office of State Human Resources, and the Office of Human Resources (or the appropriate derivative thereof) to effectuate the renaming set forth in this section wherever conforming changes are necessary."

Session Laws 2013-382, s. 9.2, provides: "No action or proceeding pending on the effective date of this section [August 21, 2013], brought by or against the State Personnel Commission, the Director of the Office of State Personnel, or the Office of State Personnel, shall be affected by any provision of this section, but the same may be prosecuted or defended in the new name of the Commission, Director, and Office. In these actions and proceedings, the renamed Commission, Director, or Office shall be substituted as a party upon proper application to the courts or other public bodies."

Session Laws 2013-382, s. 9.3, provides: "Any business or other matter undertaken or commanded by the former State Personnel Commission, State Personnel Director, or Office of State Personnel regarding any State program, office, or contract or pertaining to or connected with their respective functions, powers, obligations, and duties that are pending on the date this act becomes effective [August 21, 2013] may be conducted and completed by the Commission, Director, or Office in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the formerly named commission, director, or office."

Session Laws 2017-128, s. 9, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Effect of Amendments.

Session Laws 2016-82, s. 1, effective June 30, 2016, deleted "after that charter school employment" after "membership service" in the first sentence and

added the third sentence in subsection (cc).

Session Laws 2017-128, s. 2(a), effective July 20, 2017, in subsection (jj), substituted “under one of the following two options” for “beginning no less than 90 days after the retirement of the member and” at the end of the introductory paragraph, added the subdivision (jj)(1) designation and rewrote subdivision (jj)(1), added subdivision (jj)(2), and substituted “both installment plans” for “such an installment plan” in the last paragraph.

Session Laws 2017-129, s. 9(a), effective January 1, 2018, in subsection (e), made gender-neutralizing changes throughout the first paragraph, and added the present last sentence in the first paragraph.

Session Laws 2018-85, ss. 7, 14, effective June 25, 2018, deleted subsection (c), which pertained to verification of the service claimed in the statement of service and authorized use of compensation rates determined by the average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received, in lieu of actual actual compensation, for the purpose of this chapter; and in subsection (jj), substituted “G.S. 135-5(a3)” for “G.S. 128-27(a3)” in the first sentence.

Legal Periodicals.

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For 1999 legislative survey, see 21 Campbell L. Rev. 323 (1999).

CASE NOTES

The 1992 Amendment. — In 1992, the General Assembly revised subsection (m) of this section, to make it clear that its intention was that credits for military service had to be purchased within three years of the date a member first becomes eligible to do so. *Osborne v. Consolidated Judicial Retirement Sys.*, 333 N.C. 246, 424 S.E.2d 115 (1993).

Employee Held Not in Service for Death Benefit Purposes. — Where employee did not contribute to the Retirement System after being placed on leave without pay, the possible extension provided by this section for plan members who contribute while on leave of absence did not apply. Therefore, employee's death occurred more than 90 days after his last day of actual service, and he was not in service at the time of his death and thus, his beneficiary is not eligible for the death benefit. *Garrett v. Teachers' & State Employees' Retirement Sys. ex rel. Board of Trustees*, 91 N.C. App. 409, 371 S.E.2d 776, cert. denied, 323 N.C. 624, 374 S.E.2d 585 (1988).

Job Sharing Employee. — Petitioner remained an “employee” under G.S. 135-1(10) during the period of time when she participated in a job sharing program and was working full time and thus was entitled to credit for those years of service as reflected in her retirement records. *Wiebenson v. Board of Trustees*, 345 N.C. 734, 483 S.E.2d 153 (1997).

Retiree Not Entitled to Tax-Free Pension. — Retiree was not entitled to a tax free pension because he withdrew his contributions to the Consolidated Judicial Retirement System and the Teachers' and State Employees Retirement System and left public employment before August 12, 1989, and thus he was not vested on that date; although the retiree later returned to public employment, became vested, and repaid the money he had previously withdrawn, when read together, G.S. 135-4 and G.S. 135-5 made clear that a member who left state service and withdrew contributions in the retirement system had no rights to any benefits within the system except for the right to repay previously withdrawn contributions as provided in G.S. 135-4. The repayment served only to increase the retiree's years of service creditable. *Cashwell v. Dep't of State Treasurer, Ret. Sys. Div.*, 196 N.C. App. 80, 675 S.E.2d 73, 2009 N.C. App. LEXIS 452 (2009).

Cited in *In re Ford*, 52 N.C. App. 569, 279 S.E.2d 122 (1981); *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643 (1982); *Worrell v. North Carolina Dep't of State Treas.*, 333 N.C. 528, 427 S.E.2d 871 (1993); *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008); *McCaskill v. Dep't of State Treasurer, Ret. Sys. Div.*, 204 N.C. App. 373, 695 S.E.2d 108, 2010 N.C. App. LEXIS 1062 (2010).

OPINIONS OF ATTORNEY GENERAL

Subsection (m) of This Section Was Not Repealed by Session Laws 1975, Chapter 875. — See opinion of Attorney General to Mr. W.H. Hambleton, Director, Retirement and Health Benefits Division, Department of the Treasurer, Nov. 8, 1977.

Employee Reentering State Employment After Retirement. — When an employee, age 62, retires on July 1, 1959, and receives retirement benefits until July 1, 1964, at which time he reenters State employment, when that employee subsequently retires on July 1, 1969, he is entitled to the resumption of payment of his retirement benefits sus-

pending while he was reemployed, plus additional benefits based on a salary over the most recent 5 years' employment figured at the current formula rate. He is not entitled to benefits using the current formula and his total service recently plus that prior to his first retirement. See opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' and State Employees' Retirement System, 40 N.C.A.G. 623 (1969).

Sick Leave Included in Creditable Service. — See opinion of Attorney General to Mr. J.E. Miller, Director, Teachers' and State Employees' Retirement System, 41 N.C.A.G. 101 (1970).

§ 135-4A. Recodified as G.S. 135-4.1 by Session Laws 2006-264, s. 14, effective August 27, 2006.

§ 135-4.1. Reciprocity of creditable service with other State-administered retirement systems.

(a) **Members First Hired Prior to January 1, 2021.** — Only for the purpose of determining eligibility for benefits accruing under this Article for members first hired prior to January 1, 2021, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System or service standing to the credit of a member of the Optional Retirement Program shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems or the Optional Retirement Program, such creditable service standing or service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems or the Optional Retirement Program be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(a1) **Members First Hired on or After January 1, 2021.** — Only for the purpose of determining eligibility for benefits accruing under this Article for members first hired on or after January 1, 2021, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System, provided that in the event a person is a retired member of any of the foregoing retirement systems such

creditable service standing or service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits.

History.

1989 (Reg. Sess., 1990), c. 1066, s. 35(c); 2006-264, s. 14; 2010-38, s. 1; 2018-52, s. 7.

Editor's Note.

This section was formerly codified as G.S. 135-4A. It was recodified as G.S. 135-4.1 by Session Laws 2006-264, s. 14, effective August 27, 2006.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State

Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Effect of Amendments.

Session Laws 2018-52, s. 7, effective June 25, 2018, in subsection (a), added subsection (a) heading, and substituted "Article for members first hired prior to January 1, 2021" for "Article" in the first sentence; and added subsection (a1).

§ 135-5. (Effective until July 1, 2019) Benefits.

(a) Service Retirement Benefits.

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for

his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

- (1a) Repealed by Session Laws 2014-88, s. 3(b), effective July 30, 2014.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (4) Any member who is a law-enforcement officer and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.
- (4a) Repealed by Session Laws 2014-88, s. 3(b), effective July 30, 2014.
- (5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made electronic submission or written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) **Early Service Retirement Benefits.** — Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(a2) Repealed by Session Laws 2014-88, s. 3(c), effective July 30, 2014.

(a3) **Anti-Pension-Spiking Contribution-Based Benefit Cap.** — Notwithstanding any other provision of this section, every service retirement allowance provided under this section for members who retire on or after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under this subsection. The Board of Trustees shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon actual experience, such that no more than three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Prior to establishing a service retirement allowance under this section, the Board shall:

- (1) Determine an amount equal to the member's accumulated contributions as required under G.S. 135-8(b)(1) for all years during which the member earned membership service, other than service earned through armed service credit under G.S. 135-4(f) or G.S. 135-4(g), used in the calculation of the retirement allowance that the member would receive under this section.
- (2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under subdivision (1) of this subsection, adjusted for the age of the member at the time of retirement or, when appropriate, the age at the time of the member's death.
- (3) Multiply the annuity amount determined under subdivision (2) of this subsection by the contribution-based benefit cap factor.
- (4) Determine the amount of the retirement allowance that results from the member's membership service.

The product of the multiplication in subdivision (3) of this subsection is the member's contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection exceeds the member's contribution-based benefit cap, the member's retirement allowance shall be reduced by an amount equal to the difference between the contribution-based benefit cap and the amount determined under subdivision (4) of this subsection.

Notwithstanding the foregoing, the retirement allowance of a member with an average final compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap. The minimum average final compensation necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be increased on January 1 each year by the percent change between the June Consumer Price Index in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is positive.

Notwithstanding the foregoing, the retirement allowance of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the Retirement System after January 1, 2015, shall not be reduced; however, the member's last employer shall be required to make an additional contribution as specified in G.S. 135-8(f)(2)f., if applicable.

(b) **Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963.** — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:
 - a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and
 - b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) **Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967.** — Upon

retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) **Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) **Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) **Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable

service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of five thousand six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of five thousand six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.

- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) **Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent ($1\frac{1}{2}\%$) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) **Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) **Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) **Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985].** — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) **Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

- (1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer

and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

- (2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.
 - d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) **Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the

allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-

three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of

creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.
 - d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday

with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have at-

tained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent

(5%) times the difference between 30 years and his creditable service at retirement.

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final com-

pensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) **Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, a member shall receive the following service retirement allowance.

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.
- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 - 2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday

and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b19) **Service Retirement Allowance of Members Retiring on or After July 1, 2002.** — Upon retirement from service in accordance with subsection (a) or (a1) of this section, on or after July 1, 2002, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law

enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b19)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b19)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one

percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b19)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b20) Repealed by Session Laws 2014-88, s. 3(e), effective July 30, 2014.

(c) **Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988.** — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership

application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this

section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
 - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);
 - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and
 - c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a

member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of one percent ($\frac{1}{10}$ of 1%), provided that this percentage change is positive. Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

- (2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:
- a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would

have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

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

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

without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

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

(f) **Return of Accumulated Contributions.** — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, the member shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, the member's contributions, and the accumulated regular interest thereon, provided that the member has not in the meantime returned to service. Upon payment of such sum his or her membership in the System shall cease and, if he or she thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as the member or former member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such

person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his or her accumulated contributions unless the extension service employee is eligible to be paid his or her accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) **(See Editor's note) Election of Optional Allowance.** — With the provision that until the first payment on account of any benefit becomes normally due, or the member's first retirement check has been cashed, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or the member may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2, 3, or 6 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the member's first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until the member's first retirement check has been cashed. Provided, however, in the event a member has elected Option 2, 3, or 5 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has

been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Option 2, 3, 5, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option. Except as provided in this section, the member may not change the member's retirement benefit option or the member's designated beneficiary for survivor benefits, if any, after the member has cashed the first retirement check or after the 25th day of the month following the month in which the first check is mailed, whichever comes first.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less $\frac{1}{120}$ thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such

person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, effective as of the first of the month following the month of initial entitlement, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less $\frac{1}{120}$ thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E) but prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is eligible to receive the return of accumulated contributions. If more than one beneficiary is eligible to receive the return of accumulated contributions, or if no beneficiary has been designated, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the employee's voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated

contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such

beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) **Restoration to Service of Certain Former Members.** — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

- (1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.
- (2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) **Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967.** — From and after July

1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars (\$10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(l) **Death Benefit Plan.** — There is hereby created a Group Life Insurance Plan (hereinafter called the “Plan”) which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers’ and State Employees’ Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members’ estates in accordance with the Plan’s benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust’s trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board

of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70;
or
- (2) After December 31, 1969 and after he has attained age 69;
or
- (3) After December 31, 1970 and after he has attained age 68;
or
- (4) After December 31, 1971 and after he has attained age 67;
or
- (5) After December 31, 1972 and after he has attained age 66;
or
- (6) After December 31, 1973 and after he has attained age 65;
or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
 - c. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
- (4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and

thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits or extended short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection.

Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required

by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 2015, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members' estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of

members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if there is no surviving beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(l) **Reciprocity of Death Benefit Plan.** — Only for the purpose of determining eligibility for the death benefit provided for in subsection (l) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(l) be paid if a death benefit is paid under G.S. 135-63.

(m) **Survivor's Alternate Benefit.** — Upon the death of a member in service, the beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all four of the following conditions apply:

- (1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, or
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement

officer and was killed in the line of duty, in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b., notwithstanding the requirement of obtaining age 50.

- c. Repealed by Session Laws 2010-72, s. 2(a), effective July 1, 2010.
- (2) At the time of the member's death, one and only one beneficiary is eligible to receive a return of his accumulated contributions.
 - (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.
 - (4) The member had not commenced to receive a retirement allowance as provided under this Chapter.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

Notwithstanding the foregoing, a member who is in receipt of Workers' Compensation during the period for which the member would have otherwise been eligible to receive short-term benefits, as provided in G.S. 135-105, and who dies on or after 181 days from the last day of the member's actual service but on or before the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service at the time of the member's death for the purpose of this benefit.

For the purpose of calculating this benefit any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death.

(m1) **Special Retirement Allowance for Law Enforcement Officers.** — Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth

after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 135-6(n). Provided, however, a member, who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina, shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

(m2) **Special Retirement Allowance.** — At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System: (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or

political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code.

Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 135-18.7(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain the relationship between the transferred balance and the monthly benefit and how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a member who transfers the member's eligible accumulated contributions from an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers. An eligible plan shall not assess a fee specifically relating to a transfer of accumulated contributions authorized under this subsection. This provision shall not prohibit other fees that may

be assessable under the plan. Each plan, contract, account, or annuity shall fully disclose to any member participating in a transfer under this subsection any surrender charges or other fees, and such disclosure shall be made contemporaneous with the initiation of the transfer by the member.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 135-5(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.
- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection.

(m3) Repealed by Session Laws 2014-88, s. 3(g), effective July 30, 2014.

(m4) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 135-5(a) shall be paid his contributions in a lump sum as provided in G.S. 135-5(f) by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a teacher or State employee except by death. If such member fails, following reasonable notification, to complete a refund

application by such required date, the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld. For purposes of this subsection, a member shall not be considered to have ceased to be a teacher or State employee if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System. A lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 135-5(a) shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a teacher or State employee except by death. If such member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 135 of the General Statutes by such required beginning date, the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 135-5. For purposes of this subsection, a member shall not be considered to have ceased to be a teacher or State employee if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System. A retirement benefit shall not be paid under this subsection if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. This subsection does not affect the right of the Retirement System to recoup overpaid benefits as provided in G.S. 135-9.

(o) **Post-Retirement Increases in Allowances.** — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968,

shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

<i>Increase In Index</i>	<i>Increase In Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this

section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.** — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) **Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970.** — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Year(s) in Which Benefits Commenced</i>	<i>Percentage</i>
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, for persons who commenced receiving benefits from the System prior to January 1, 1970, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars (\$75.00) prior to the application of any optional benefit.

(s) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent

(5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1,

1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975.** — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) **Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977.** — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to

July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) **Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980.** — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) **Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985.** — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the

allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985.** — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(ll) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988,

shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988.** — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989.** — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.** From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent

(6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992.** — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993.** — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994.** — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995.** — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-

tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997.** — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000.** — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the

retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(kkk) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002.** — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly.

(lll) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(mmm) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(ppp) Repealed by Session Laws 2007-431, s. 7, effective July 1, 2007.

(qqq) From and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2006, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2006, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2006, and June 30, 2007.

(rrr) From and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2007, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2007, and June 30, 2008.

(sss) From and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2011, shall be increased by one percent (1%) of the allowance payable on June 1, 2012, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2011, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2011, and June 30, 2012.

(ttt) From and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2013, shall be increased by one percent (1%) of the allowance payable on June 1, 2014, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2013, but before June 30, 2014, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2013, and June 30, 2014.

(uuu) On or before October 31, 2016, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2016, and whose retirement

commenced on or before September 1, 2016. The payment shall be one and six-tenths percent (1.6%) of the beneficiary's annual retirement allowance payable as of September 1, 2016, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

(vvv) From and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2016, shall be increased by one percent (1%) of the allowance payable on June 1, 2017, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2016, but before June 30, 2017, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2016, and June 30, 2017.

(www) On or before October 31, 2018, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2018, and whose retirement commenced on or before September 1, 2018. The payment shall be one percent (1%) of the beneficiary's annual retirement allowance payable as of September 1, 2018, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

History.

1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222,

232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s. 33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d); 2003-284, s. 30.17(a); 2003-

359, ss. 3-6, 11; 2004-124, s. 31.17(a); 2004-147, s. 1; 2005-91, ss. 2, 3; 2005-276, s. 29.25(a); 2006-66, s. 22.18(a); 2006-172, s. 1; 2007-323, s. 28.20(a); 2007-384, ss. 10.3, 10.4; 2007-431, ss. 1, 5, 7, 12, 13; 2007-496, s. 1; 2008-107, s. 26.23(a); 2009-66, ss. 3(a)-(d), 5(a)-(c), 6(a), 9, 11(e)-(g), 12(c), (d); 2009-109, s. 1; 2010-72, ss. 1(a), 2(a), 3(b), 9(a), 10(a); 2010-96, s. 40.7; 2010-124, ss. 1, 2, 3, 6.1; 2011-232, ss. 2-7; 2011-294, s. 3(a); 2012-142, s. 25.13(a); 2013-405, s. 1; 2014-88, ss. 1(a), 2(a); 3(b)-(g); 2014-97, ss. 2, 3(a), 4(f); 2014-100, s. 35.14(a); 2014-112, ss. 1(a), 3(a); 2015-164, s. 10(a); 2016-56, ss. 4(a), 5(a); 2016-94, s. 36.21(a); 2017-57, s. 35.19A(a); 2017-129, ss. 1(b), 2(t), 3(a)-(b); 2018-5, s. 35.28(a); 2018-85, ss. 3(a), 11(a).

Section Set Out Twice.

The section above is effective until July 1, 2019. For the section as amended July 1, 2019, see the following section, also numbered G.S. 135-5.

Cross References.

As to repayment of contributions withdrawn pursuant to subsection (f) of this section, see G.S. 135-4, subsection (k).

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers.

Session Laws 2003-284, ss. 30.20(a) to (i), as amended by Session Laws 2004-78, s. 5, provides: “(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

“(b) The Commission shall be comprised of 13 members as follows:

“(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees.

“(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues

relating to State employees or school employees.

“(3) The State Treasurer, or the Treasurer’s designee.

“(4) The Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan.

“(5) The Chair of the North Carolina Industrial Commission, or the Chair’s designee.

“(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

“(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

“Any vacancy shall be filled by the officer who made the original appointment.

“(c) The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

“(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission shall terminate the earlier of the delivery of its final report or December 31, 2004.

“(e) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives’ and the Senate’s Directors of Legislative Assistants shall assign clerical staff to the Commis-

sion, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

“(f) The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

“(g) The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

“(h) The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

“(i) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of subsections (a) through (i) of this section.”

Session Laws 2003-284, s. 1.2, provides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 2003.’”

Session Laws 2003-284, s. 49.3, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium.”

Session Laws 2003-284, s. 49.5, is a severability clause.

Editor’s Note.

The amendment by Session Laws 1985, c. 479, s. 190, to subsection (b8) directed that “on or after January 1, 1985, but prior to July 1, 1985” be substituted for “on or after July 1, 1985” in the catchline and first sentence of subsection (b8). The language to be inserted by this amendment has been inserted in brackets, since the language of subsection (b8) prior to the amendment read “on or after January 1, 1985,” not “on or after July 1, 1985.”

Subsection (f1) of this section, which

provided for refund of contributions not withdrawn with refund, expired June 30, 1993, pursuant to Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 1.

Session Laws 2006-172, s. 1, added subsection (ooo), which was redesignated as subsection (ppp) at the direction of the Revisor of Statutes.

Session Laws 2007-384, s. 11(b), provides: “The Board of Trustees of the Teachers’ and State Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees.”

Session Laws 2009-109, s. 1, which, in subsection (m), added subdivision b1. and made a minor punctuation change, was effective June 16, 2009, and applicable to beneficiaries of law enforcement officers killed in the line of duty on and after January 1, 2007.

Session Laws 2010-72, s. 10(a), effective July 1, 2010, amended the first sentence of subsection (m1) by inserting “any portion of” preceding “his eligible accumulated contributions.” Section 10(a) was subsequently repealed by Session Laws 2010-124, s. 6.1, effective January 1, 2011. Session Laws 2010-96, s. 40.7, amended Session Laws 2010-124, s. 6.1, by adding s. 6.1(b), which provided, in part, that s. 10(b) of Session Laws 2010-72 was repealed effective July 1, 2010. The result is that the amendment to subsection (m1) by Session Laws 2010-72, s. 10(a) never took effect.

Session Laws 2010-96, s. 40.7 was contingent upon House Bill 2066, 2009 Reg-

ular Session, becoming law. House Bill 2066 was enacted as Session Laws 2010-124.

Session Laws 2010-124, s. 7, provides in part: "Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. Any administrative fees accessed by the Boards of Trustees may be used to hire additional personnel to administer this act."

Session Laws 2011-145, s. 29.18(a)-(e), provides: "(a) The following definitions apply in this section:

"(1) Furlough. — A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

"(2) Public agency. — A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

"(3) Public employee. — An employee employed by the legislative or judicial branches or by a public agency.

"(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services Officer, respectively, to balance the judicial branch or legislative branch budget.

"The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough its respective employees in order to balance the respective budgets.

"(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

"(1) The specifics of the authorized furlough.

"(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

"(3) The individual employees affected, including the applicable reduction in sal-

ary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

"(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

"(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

"(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

"(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches."

Session Laws 2011-145, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2011.'"

Session Laws 2011-145, s. 32.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium."

Session Laws 2011-145, s. 32.5 is a severability clause.

Session Laws 2011-208, s. 1, provides: "Notwithstanding any other provision of law, a retired member of the Teachers' and State Employees' Retirement System or the Local Governmental Employ-

ees' Retirement System (i) who designated a spouse as survivor under Option 5 as set forth in G.S. 135-5(g) or G.S. 128-27(g), (ii) whose designated spouse predeceased him or her, and (iii) who remarried prior to the enactment of S.L. 2010-72 may nominate the new spouse to receive the survivor retirement benefits in accordance with G.S. 135-5(g) or G.S. 128-27(g), provided that nomination is made within 90 days of the effective date of this act."

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2016-94, s. 36.21(d), provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year."

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2017-2019 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2017-2019 fiscal biennium."

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Session Laws 2018-5, s. 35.28(d), provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of

the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year."

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-56, ss. 4(a) and 5(a), effective June 30, 2016, in subsection (g), made gender neutral changes in the first paragraph and inserted "or if no beneficiary has been designated" in the last sentence of the last paragraph; and in subsection (m2), substituted "one-time, irrevocable" for "one-time" in the first sentence of the first and second paragraphs.

Session Laws 2016-94, s. 36.21(a), effective July 1, 2016, added subsection (uuu).

Session Laws 2017-57, s. 35.19A(a), effective July 1, 2017, added subsection (vvv).

Session Laws 2017-129, s. 1(b), effective July 20, 2017, added the second sentence in subsection (n).

Session Laws 2017-129, s. 2(t), effective June 30, 2017, in subsection (l), added the second through fifth sentences in the first paragraph; substituted "the member" for "he" in the middle of the second paragraph; and, in the last paragraph, substituted "the member's death required contributions" for "his death required contributions" and inserted "the North Carolina Teachers' and State Employees' Benefit Trust" in the first sentence, and added the present second through fifth sentences.

Session Laws 2017-129, s. 3(a), (b) effective January 1, 2018, rewrote the first sentence of subsection (f); and deleted "prior to completing 10 years of service" following "electronic submission" near the middle of the second paragraph in subsection (l).

Session Laws 2018-5, s. 35.28(a), effective July 1, 2018, added subsection (www).

Session Laws 2018-85, ss. 3(a), 11(a), effective June 25, 2018, in subsection (a3), substituted “service, other than service earned through armed service credit under G.S. 135-4(f) or G.S. 135-4(g),” for “service” in subdivision (a3)(1), substituted “June Consumer Price Index” for “December Consumer Price Index” twice, and inserted “fiscal” preceding “year most recently ended” in the penultimate paragraph; and in subsection (m2), deleted the penultimate paragraph which

formerly read “The Board of Trustees shall report annually to the Joint Legislative Commission on Governmental Operations on the number of persons who made an election in the previous calendar year, with any recommendations it might make on amendment or repeal based on any identified problems.”

Legal Periodicals.

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

Constitutionality. — Subsection (l) of this section, as in effect in 1974, was constitutional on its face. *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643, cert. denied, 305 N.C. 587, 292 S.E.2d 571 (1982).

Grant of Disability Retirement Benefits Terminated Status as “Career Teacher.” — The granting of a career teacher’s application for disability retirement benefits under the Teachers’ and State Employees’ Retirement System operated as an acceptance of her resignation by implication and terminated her status as a “career teacher” under former G.S. 115-142, since a finding that her disability was “likely to be permanent” was implicit in the granting of her application for disability retirement benefits and this finding rendered her status as a disabled retiree wholly inconsistent with her former status as a “career teacher”. *Meachan v. Montgomery County Bd. of Educ.*, 47 N.C. App. 271, 267 S.E.2d 349 (1980).

Employee’s Retirement Benefits Did Not Vest Prior to Statute’s Amendment. — State employee’s G.S. 135-5(d4) claim failed as the employee’s retirement benefits did not vest before the North Carolina legislature adopted a new policy under which disabled workers received disability benefits in lieu of retirement, which were offset by any payments received in the form of Social Security benefits. *Whisnant v. Teachers’ & State Emples. Ret. Sys.*, 191 N.C. App. 233, 662 S.E.2d 573, 2008 N.C. App. LEXIS 1187 (2008), cert. denied, 555 U.S. 1174, 129 S. Ct. 1370, 173 L. Ed. 2d 591 (2009).

Widow of a prison guard was not entitled to death benefits where the guard’s last day of service was ruled to be the date his sick and annual leave expired, and not the date his position was vacated, and thus his death, which oc-

curred more than 90 days after his last day of service, did not occur while “in service” within the meaning of the benefits provision. *Garrett v. Teachers’ & State Employees’ Retirement Sys. ex rel. Board of Trustees*, 91 N.C. App. 409, 371 S.E.2d 776, cert. denied, 323 N.C. 624, 374 S.E.2d 585 (1988).

Retiree Not Entitled to Tax-Free Pension. — Retiree was not entitled to a tax free pension because he withdrew his contributions to the Consolidated Judicial Retirement System and the Teachers’ and State Employees Retirement System and left public employment before August 12, 1989, and thus he was not vested on that date; although the retiree later returned to public employment, became vested, and repaid the money he had previously withdrawn, when read together, G.S. 135-4 and G.S. 135-5 made clear that a member who left state service and withdrew contributions in the retirement system had no rights to any benefits within the system except for the right to repay previously withdrawn contributions as provided in G.S. 135-4. The repayment served only to increase the retiree’s years of service creditable. *Cashwell v. Dep’t of State Treasurer, Ret. Sys. Div.*, 196 N.C. App. 80, 675 S.E.2d 73, 2009 N.C. App. LEXIS 452 (2009).

Earliest Retirement Date. — In making an equitable distribution of the property of a former husband and former wife, the trial court properly determined a former husband’s earliest retirement date for purposes of valuing his Teachers’ and State Employees’ Retirement System pension because G.S. 135-5(f) did not have to be used as the basis for calculating his “earliest retirement” date; the plain language of G.S. 135-5(f) allows for the return of accumulated contributions only if the State employee terminates his service with the State for reasons other than death or retirement.

Cochran v. Cochran, 198 N.C. App. 224, 679 S.E.2d 469, 2009 N.C. App. LEXIS 1161 (2009), review denied, 363 N.C. 801, 690 S.E.2d 533, 2010 LEXIS 57 (2010).

Applied in Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912 (1984).

Cited in Stanley v. Retirement & Health Benefits Div., 66 N.C. App. 122,

310 S.E.2d 637 (1984); Faulkenbury v. Teachers' & State Employees' Retirement Sys., 108 N.C. App. 357, 424 S.E.2d 420 (1993); Faulkenbury v. Teachers' & State Emps. Retirement Sys., 345 N.C. 683, 483 S.E.2d 422 (1997); Liptrap v. City of High Point, 128 N.C. App. 353, 496 S.E.2d 817 (1998); Ludlum v. State, 227 N.C. App. 92, 742 S.E.2d 580, 2013 N.C. App. LEXIS 480 (2013).

§ 135-5. (Effective July 1, 2019) Benefits.

(a) Service Retirement Benefits.

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.
- (1a) Repealed by Session Laws 2014-88, s. 3(b), effective July 30, 2014.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (4) Any member who is a law-enforcement officer and who (i) attains age 50 and completes 15 or more years of creditable service in this capacity, (ii) attains age 55 and completes five or more years of creditable service in this capacity, or (iii) has completed 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, the member desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(4a) Repealed by Session Laws 2014-88, s. 3(b), effective July 30, 2014.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made electronic submission or written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) **Early Service Retirement Benefits.** — Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(a2) Repealed by Session Laws 2014-88, s. 3(c), effective July 30, 2014.

(a3) **Anti-Pension-Spiking Contribution-Based Benefit Cap.** — Notwithstanding any other provision of this section, every service retirement allowance provided under this section for members who retire on or after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under this subsection. The Board of Trustees shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon actual experience, such that no more than three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Prior to establishing a service retirement allowance under this section, the Board shall:

(1) Determine an amount equal to the member's accumulated contributions as required under G.S. 135-8(b)(1) for all years during which the member earned membership ser-

vice, other than service earned through armed service credit under G.S. 135-4(f) or G.S. 135-4(g), used in the calculation of the retirement allowance that the member would receive under this section.

- (2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under subdivision (1) of this subsection, adjusted for the age of the member at the time of retirement or, when appropriate, the age at the time of the member's death.
- (3) Multiply the annuity amount determined under subdivision (2) of this subsection by the contribution-based benefit cap factor.
- (4) Determine the amount of the retirement allowance that results from the member's membership service.

The product of the multiplication in subdivision (3) of this subsection is the member's contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection exceeds the member's contribution-based benefit cap, the member's retirement allowance shall be reduced by an amount equal to the difference between the contribution-based benefit cap and the amount determined under subdivision (4) of this subsection.

Notwithstanding the foregoing, the retirement allowance of a member with an average final compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap. The minimum average final compensation necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be increased on January 1 each year by the percent change between the June Consumer Price Index in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is positive.

Notwithstanding the foregoing, the retirement allowance of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the Retirement System after January 1, 2015, shall not be reduced; however, the member's last employer shall be required to make an additional contribution as specified in G.S. 135-8(f)(2)f., if applicable.

(b) **Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963.** — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age,

computed on the basis of contributions made prior to such earlier age; and

- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:
 - a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and
 - b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) **Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars (\$4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars (\$4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) **Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969.** — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) **Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of fifty-six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of fifty-six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

- (3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) **Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent ($1\frac{1}{4}\%$) of the portion of his average final compensation not in excess of five thousand six hundred dollars (\$5,600) plus one and one-half percent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of five thousand six hundred dollars (\$5,600), multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) **Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable

service, such allowance shall be equal to one and one-half percent ($1\frac{1}{2}\%$) of his average final compensation, multiplied by the number of years of his creditable service.

- (2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) **Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) **Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985.** — Upon retirement from service, in accordance with subsection (a) above, on

or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
- (3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.
- (4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) **Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985].** — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first

day of the month coincident with or next following his 55th birthday.

(b9) **Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988.** — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

- (1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.
- (2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more

years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.

- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five

years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

- b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.
 - d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1,

1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) **Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995.** — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 - 2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 - 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after

the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one

percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent

- (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, a member shall receive the following service retirement allowance.

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.
- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.
- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b19) Service Retirement Allowance of Members Retiring on or After July 1, 2002, but Before July 1, 2018. — Upon retirement from service in accordance with subsection (a) or (a1) of this section, on or after July 1, 2002, but before July 1, 2018, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 135-5(b19)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 135-5(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to

his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b19)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 - 1. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 - 2. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 - 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b19)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b20) Repealed by Session Laws 2014-88, s. 3(e), effective July 30, 2014.

(b21) **Service Retirement Allowance of Members Retiring on or After July 1, 2018.** — Upon retirement from service on or after July 1, 2018, in accordance with subsection (a) or (a1) of this section, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after the member's 55th birthday and completion of

five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.

- b. If the member's service retirement date occurs prior to the member's 50th birthday and after the completion of 25 years of creditable service with a minimum of 15 years of creditable service in a law enforcement capacity but before the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 1. The service retirement allowance payable under G.S. 135-5(b21)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.
 2. The service retirement allowance as computed under G.S. 135-5(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and the member's creditable service at retirement plus four percent (4%) times the difference between age 50 and the member's age at retirement.
 - c. If the member's service retirement date occurs on or after the member's 50th birthday and before the member's 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the retirement allowance shall be equal to the greater of the following amounts:
 1. The service retirement allowance payable under G.S. 135-5(b21)(1)a. reduced by one-third of one percent ($\frac{1}{3}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the month the member would have attained age 55.
 2. The service retirement allowance as computed under G.S. 135-5(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after the member's 65th birthday upon the completion

of five years of membership service, or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of the member's average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after the member's 60th birthday and before the member's 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b21)(2)a. but shall be reduced by one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following the member's 65th birthday.
- c. If the member's early service retirement date occurs on or after the member's 50th birthday and before the member's 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, the early service retirement allowance shall be equal to the greater of the following amounts:
 - 1. The service retirement allowance as computed under G.S. 135-5(b21)(2)a. but reduced by the sum of five-twelfths of one percent ($\frac{5}{12}$ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the member's 60th birthday precedes the first day of the month coincident with or next following the member's 65th birthday.
 - 2. The service retirement allowance as computed under G.S. 135-5(b21)(2)a. reduced by five percent (5%) times the difference between 30 years and the amount of creditable service at retirement.
 - 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b21)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) **Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988.** — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that

the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969.** — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he contin-

ued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
 - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);
 - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance

shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

- c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) **Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988.** — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

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

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

prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of one percent ($\frac{1}{10}$ of 1%), provided that this percentage change is positive. Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

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

age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:
 - a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.
 - b. The actuarial equivalent of the retirement benefits he previously received.
- (3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to

provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

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

- (5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.
- (6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter
 - (i) not be subject to further reexaminations as to disability,
 - (ii) not be subject to any reduction in allowance on account

of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) **Return of Accumulated Contributions.** — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, the member shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, the member's contributions, and the accumulated regular interest thereon, provided that the member has not in the meantime returned to service. Upon payment of such sum his or her membership in the System shall cease and, if he or she thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as the member or former member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his or her accumulated contributions unless the extension service employee is eligible to be paid his or her accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this

Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) **(See Editor's note) Election of Optional Allowance.** —

With the provision that until the first payment on account of any benefit becomes normally due, or the member's first retirement check has been cashed, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or the member may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2, 3, or 6 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the member's first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until the member's first retirement check has been cashed. Provided, however, in the event a member has elected Option 2, 3, or 5 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Option 2, 3, 5, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option. Except as provided in this section, the member may not change the member's retirement

benefit option or the member's designated beneficiary for survivor benefits, if any, after the member has cashed the first retirement check or after the 25th day of the month following the month in which the first check is mailed, whichever comes first.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less $\frac{1}{120}$ thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, effective as of the first of the month following the month of initial entitlement, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within

10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less $\frac{1}{120}$ thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E) but prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is eligible to receive the return of accumulated contributions. If more than one beneficiary is eligible to receive the return of accumulated contributions, or if no beneficiary has been designated, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if

any, of the employee's voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly

acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate.

(h) **Computation of Benefits Payable Prior or Subsequent to July 1, 1947.** — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) **Restoration to Service of Certain Former Members.** — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any

retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

- (1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.
- (2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) **Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967.** — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars (\$10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(l) **Death Benefit Plan.** — There is hereby created a Group Life Insurance Plan (hereinafter called the “Plan”) which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers’ and State Employees’ Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members’ estates in accordance with the Plan’s benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust’s trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member’s death, otherwise to the member’s legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member’s accumulated contributions under the System on his death

pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70;
or
- (2) After December 31, 1969 and after he has attained age 69;
or
- (3) After December 31, 1970 and after he has attained age 68;
or
- (4) After December 31, 1971 and after he has attained age 67;
or
- (5) After December 31, 1972 and after he has attained age 66;
or
- (6) After December 31, 1973 and after he has attained age 65;
or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection “calendar year” shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection “calendar year” shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member’s sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
 - c. When a participant’s employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
- (4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers’ Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits or extended short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service

but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund

administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should

death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 2015, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members' estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if there is no surviving beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(1) **Reciprocity of Death Benefit Plan.** — Only for the purpose of determining eligibility for the death benefit provided for in subsection (1) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the

Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(l) be paid if a death benefit is paid under G.S. 135-63.

(m) **Survivor's Alternate Benefit.** — Upon the death of a member in service, the beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of the member's death, provided that all four of the following conditions apply:

- (1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b21)(1)c. or G.S. 135-5(b21)(2)c., notwithstanding the requirement of obtaining age 50, or
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b21)(1)c., notwithstanding the requirement of obtaining age 50.
- c. Repealed by Session Laws 2010-72, s. 2(a), effective July 1, 2010.
- (2) At the time of the member's death, one and only one beneficiary is eligible to receive a return of his accumulated contributions.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.
- (4) The member had not commenced to receive a retirement allowance as provided under this Chapter.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs

within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term “in service” as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

Notwithstanding the foregoing, a member who is in receipt of Workers’ Compensation during the period for which the member would have otherwise been eligible to receive short-term benefits, as provided in G.S. 135-105, and who dies on or after 181 days from the last day of the member’s actual service but on or before the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service at the time of the member’s death for the purpose of this benefit.

For the purpose of calculating this benefit any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death.

(m1) **Special Retirement Allowance for Law Enforcement Officers.** — Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 135-6(n). Provided, however, a member, who transfers his eligible accumulated contributions from the Supplemental Retirement In-

come Plan of North Carolina, shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

(m2) **Special Retirement Allowance.** — At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System: (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code. In addition, any transfer under this subsection may be paid in whole or in part with employer contributions paid directly to this Retirement System at the time of transfer.

Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 135-18.7(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S.

Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain the relationship between the transferred balance and the monthly benefit and how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a member who transfers the member's eligible accumulated contributions from an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers. An eligible plan shall not assess a fee specifically relating to a transfer of accumulated contributions authorized under this subsection. This provision shall not prohibit other fees that may be assessable under the plan. Each plan, contract, account, or annuity shall fully disclose to any member participating in a transfer under this subsection any surrender charges or other fees, and such disclosure shall be made contemporaneous with the initiation of the transfer by the member.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 135-5(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of

the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.

- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection.

(m3) Repealed by Session Laws 2014-88, s. 3(g), effective July 30, 2014.

(m4) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 135-5(a) shall be paid his contributions in a lump sum as provided in G.S. 135-5(f) by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a teacher or State employee except by death. If such member fails, following reasonable notification, to complete a refund application by such required date, the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld. For purposes of this subsection, a member shall not be considered to have ceased to be a teacher or State employee if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System. A lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 135-5(a) shall begin to

receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a teacher or State employee except by death. If such member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 135 of the General Statutes by such required beginning date, the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 135-5. For purposes of this subsection, a member shall not be considered to have ceased to be a teacher or State employee if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System. A retirement benefit shall not be paid under this subsection if the member is actively contributing to the Consolidated Judicial Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. This subsection does not affect the right of the Retirement System to recoup overpaid benefits as provided in G.S. 135-9.

(o) **Post-Retirement Increases in Allowances.** — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

<i>Increase In Index</i>	<i>Increase In Allowance</i>
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967.** — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) **Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970.** — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Year(s) in Which Benefits Commenced</i>	<i>Percentage</i>
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, for persons who commenced receiving benefits from the System prior to January 1, 1970, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars (\$75.00) prior to the application of any optional benefit.

(s) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1,

1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) **Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971.** — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) **Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975.** — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before

monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) **Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977.** — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

<i>Period in Which Benefits Commenced</i>	<i>Percentage</i>
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) **Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980.** — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) **Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985.** — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985.** — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable

and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(ll) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988.** — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989.** — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.** From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992.** — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in

effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993.** — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994.** — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the

retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995.** — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997.** — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000.** — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board

of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(kkk) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002.** — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly.

(lll) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(mmm) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or

before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(ppp) Repealed by Session Laws 2007-431, s. 7, effective July 1, 2007.

(qqq) From and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2006, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2006, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2006, and June 30, 2007.

(rrr) From and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2007, shall be increased by two and two-tenths

percent (2.2%) of the allowance payable on June 1, 2008, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2007, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2007, and June 30, 2008.

(sss) From and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2011, shall be increased by one percent (1%) of the allowance payable on June 1, 2012, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2011, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2011, and June 30, 2012.

(ttt) From and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2013, shall be increased by one percent (1%) of the allowance payable on June 1, 2014, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2013, but before June 30, 2014, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2013, and June 30, 2014.

(uuu) On or before October 31, 2016, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2016, and whose retirement commenced on or before September 1, 2016. The payment shall be one and six-tenths percent (1.6%) of the beneficiary's annual retirement allowance payable as of September 1, 2016, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

(vvv) From and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2016, shall be increased by one percent (1%) of the allowance payable on June 1, 2017, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced after

July 1, 2016, but before June 30, 2017, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2016, and June 30, 2017.

(www) On or before October 31, 2018, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2018, and whose retirement commenced on or before September 1, 2018. The payment shall be one percent (1%) of the beneficiary's annual retirement allowance payable as of September 1, 2018, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

History.

1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s.

33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d); 2003-284, s. 30.17(a); 2003-359, ss. 3-6, 11; 2004-124, s. 31.17(a); 2004-147, s. 1; 2005-91, ss. 2, 3; 2005-276, s. 29.25(a); 2006-66, s. 22.18(a); 2006-172, s. 1; 2007-323, s. 28.20(a); 2007-384, ss. 10.3, 10.4; 2007-431, ss. 1, 5, 7, 12, 13; 2007-496, s. 1; 2008-107, s. 26.23(a); 2009-66, ss. 3(a)-(d), 5(a)-(c), 6(a), 9, 11(e)-(g), 12(c), (d); 2009-109, s. 1; 2010-72, ss. 1(a), 2(a), 3(b), 9(a), 10(a); 2010-96, s. 40.7; 2010-124, ss. 1, 2, 3, 6.1; 2011-232, ss. 2-7; 2011-294, s. 3(a); 2012-142, s. 25.13(a); 2013-405, s. 1; 2014-88, ss. 1(a), 2(a); 3(b)-(g); 2014-97, ss. 2, 3(a), 4(f); 2014-100, s. 35.14(a); 2014-112, ss. 1(a), 3(a); 2015-164, s. 10(a); 2016-56, ss. 4(a), 5(a); 2016-94, s. 36.21(a); 2017-57, s. 35.19A(a); 2017-129, ss. 1(b), 2(t), 3(a)-(b); 2018-5, s. 35.28(a); 2018-22, ss. 2(a), 3(a)-(d); 2018-85, ss. 3(a), 11(a).

Section Set Out Twice.

The section above is effective July 1, 2019. For the section as in effect until July 1, 2019, see the preceding section, also numbered G.S. 135-5.

Cross References.

As to repayment of contributions withdrawn pursuant to subsection (f) of this section, see G.S. 135-4, subsection (k).

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers.

Session Laws 2003-284, ss. 30.20(a) to

(i), as amended by Session Laws 2004-78, s. 5, provides: “(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

“(b) The Commission shall be comprised of 13 members as follows:

“(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees.

“(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees.

“(3) The State Treasurer, or the Treasurer’s designee.

“(4) The Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan.

“(5) The Chair of the North Carolina Industrial Commission, or the Chair’s designee.

“(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

“(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

“Any vacancy shall be filled by the officer who made the original appointment.

“(c) The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would

enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

“(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochaIRS of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochaIRS. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission shall terminate the earlier of the delivery of its final report or December 31, 2004.

“(e) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives’ and the Senate’s Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

“(f) The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

“(g) The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

“(h) The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

“(i) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of subsections (a) through (i) of this section.”

Session Laws 2003-284, s. 1.2, provides: “This act shall be known as ‘The

Current Operations and Capital Improvements Appropriations Act of 2003’.”

Session Laws 2003-284, s. 49.3, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium.”

Session Laws 2003-284, s. 49.5, is a severability clause.

Editor’s Note.

The amendment by Session Laws 1985, c. 479, s. 190, to subsection (b8) directed that “on or after January 1, 1985, but prior to July 1, 1985” be substituted for “on or after July 1, 1985” in the catchline and first sentence of subsection (b8). The language to be inserted by this amendment has been inserted in brackets, since the language of subsection (b8) prior to the amendment read “on or after January 1, 1985,” not “on or after July 1, 1985.”

Subsection (f1) of this section, which provided for refund of contributions not withdrawn with refund, expired June 30, 1993, pursuant to Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 1.

Session Laws 2006-172, s. 1, added subsection (ooo), which was redesignated as subsection (ppp) at the direction of the Revisor of Statutes.

Session Laws 2007-384, s. 11(b), provides: “The Board of Trustees of the Teachers’ and State Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees’ Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective

the first of the month following the adoption of those factors by the Boards of Trustees.”

Session Laws 2009-109, s. 1, which, in subsection (m), added subdivision b1. and made a minor punctuation change, was effective June 16, 2009, and applicable to beneficiaries of law enforcement officers killed in the line of duty on and after January 1, 2007.

Session Laws 2010-72, s. 10(a), effective July 1, 2010, amended the first sentence of subsection (m1) by inserting “any portion of” preceding “his eligible accumulated contributions.” Section 10(a) was subsequently repealed by Session Laws 2010-124, s. 6.1, effective January 1, 2011. Session Laws 2010-96, s. 40.7, amended Session Laws 2010-124, s. 6.1, by adding s. 6.1(b), which provided, in part, that s. 10(b) of Session Laws 2010-72 was repealed effective July 1, 2010. The result is that the amendment to subsection (m1) by Session Laws 2010-72, s. 10(a) never took effect.

Session Laws 2010-96, s. 40.7 was contingent upon House Bill 2066, 2009 Regular Session, becoming law. House Bill 2066 was enacted as Session Laws 2010-124.

Session Laws 2010-124, s. 7, provides in part: “Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. Any administrative fees accessed by the Boards of Trustees may be used to hire additional personnel to administer this act.”

Session Laws 2011-145, s. 29.18(a)-(e), provides: “(a) The following definitions apply in this section:

“(1) Furlough. — A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

“(2) Public agency. — A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

“(3) Public employee. — An employee employed by the legislative or judicial branches or by a public agency.

“(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services

Officer, respectively, to balance the judicial branch or legislative branch budget.

"The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough its respective employees in order to balance the respective budgets.

"(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

"(1) The specifics of the authorized furlough.

"(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

"(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

"(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

"(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

"(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the

workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

"(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches."

Session Laws 2011-145, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2011.'"

Session Laws 2011-145, s. 32.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium."

Session Laws 2011-145, s. 32.5 is a severability clause.

Session Laws 2011-208, s. 1, provides: "Notwithstanding any other provision of law, a retired member of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System (i) who designated a spouse as survivor under Option 5 as set forth in G.S. 135-5(g) or G.S. 128-27(g), (ii) whose designated spouse predeceased him or her, and (iii) who remarried prior to the enactment of S.L. 2010-72 may nominate the new spouse to receive the survivor retirement benefits in accordance with G.S. 135-5(g) or G.S. 128-27(g), provided that nomination is made within 90 days of the effective date of this act."

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2016-94, s. 36.21(d), provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year.”

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2017.’”

Session Laws 2017-57, s. 39.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2017-2019 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2017-2019 fiscal biennium.”

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Session Laws 2018-5, s. 35.28(d), provides: “Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets.”

Session Laws 2018-5, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2018.’”

Session Laws 2018-5, s. 39.4, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year.”

Session Laws 2018-5, s. 39.7, is a severability clause.

Session Laws 2018-22, s. 4, provides: “Notwithstanding any other provision of law to the contrary, in order to administer the changes to the special retirement allowance, as well as the change in creditable service required for law enforcement officers to retire with a reduced benefit, as provided for in Sections 2 and 3 of this act, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of these changes directly from the retirement assets.”

Effect of Amendments.

Session Laws 2016-56, ss. 4(a) and 5(a), effective June 30, 2016, in subsection (g), made gender neutral changes in the first paragraph and inserted “or if no beneficiary has been designated” in the last sentence of the last paragraph; and in subsection (m2), substituted “one-time, irrevocable” for “one-time” in the first sentence of the first and second paragraphs.

Session Laws 2016-94, s. 36.21(a), effective July 1, 2016, added subsection (uuu).

Session Laws 2017-57, s. 35.19A(a), effective July 1, 2017, added subsection (vvv).

Session Laws 2017-129, s. 1(b), effective July 20, 2017, added the second sentence in subsection (n).

Session Laws 2017-129, s. 2(t), effective June 30, 2017, in subsection (l), added the second through fifth sentences in the first paragraph; substituted “the member” for “he” in the middle of the second paragraph; and, in the last paragraph, substituted “the member’s death required contributions” for “his death required contributions” and inserted “the North Carolina Teachers’ and State Employees’ Benefit Trust” in the first sentence, and added the present second through fifth sentences.

Session Laws 2017-129, s. 3(a), (b) effective January 1, 2018, rewrote the first sentence of subsection (f); and deleted “prior to completing 10 years of service” following “electronic submission” near the middle of the second paragraph in subsection (l).

Session Laws 2018-5, s. 35.28(a), effective July 1, 2018, added subsection (www).

Session Laws 2018-22, ss. 2(a), 3(a)-(d), effective July 1, 2019, in subdivision (a)(4), inserted the clause (i) and (ii) designations and added clause (iii); in subsection (b19), in the heading and the introductory paragraph, inserted “but before July 1, 2018”; added subsection (b21); in sub-subdivision (m)(1)b., substituted “G.S. 135-5(b21)(1)c. or G.S. 135-5(b21)(2)c.” for “G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c.”; in sub-subdivision (m)(1)b1., substituted “G.S. 135-5(b21)(1)c.” for “G.S. 135-5(b19)(1)b.”; in subsection (m2), added the last sentence in the second paragraph; and made minor stylistic changes.

Session Laws 2018-85, ss. 3(a), 11(a), effective June 25, 2018, in subsection (a3), substituted “service, other than service earned through armed service credit

under G.S. 135-4(f) or G.S. 135-4(g),” for “service” in subdivision (a3)(1), substituted “June Consumer Price Index” for “December Consumer Price Index” twice, and inserted “fiscal” preceding “year most recently ended” in the penultimate paragraph; and in subsection (m2), deleted the penultimate paragraph which formerly read “The Board of Trustees shall report annually to the Joint Legis-

lative Commission on Governmental Operations on the number of persons who made an election in the previous calendar year, with any recommendations it might make on amendment or repeal based on any identified problems.”

Legal Periodicals.

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

Constitutionality. — Subsection (l) of this section, as in effect in 1974, was constitutional on its face. *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643, cert. denied, 305 N.C. 587, 292 S.E.2d 571 (1982).

Grant of Disability Retirement Benefits Terminated Status as “Career Teacher”. — The granting of a career teacher’s application for disability retirement benefits under the Teachers’ and State Employees’ Retirement System operated as an acceptance of her resignation by implication and terminated her status as a “career teacher” under former G.S. 115-142, since a finding that her disability was “likely to be permanent” was implicit in the granting of her application for disability retirement benefits and this finding rendered her status as a disabled retiree wholly inconsistent with her former status as a “career teacher”. *Meachan v. Montgomery County Bd. of Educ.*, 47 N.C. App. 271, 267 S.E.2d 349 (1980).

Employee’s Retirement Benefits Did Not Vest Prior to Statute’s Amendment. — State employee’s G.S. 135-5(d4) claim failed as the employee’s retirement benefits did not vest before the North Carolina legislature adopted a new policy under which disabled workers received disability benefits in lieu of retirement, which were offset by any payments received in the form of Social Security benefits. *Whisnant v. Teachers’ & State Emples. Ret. Sys.*, 191 N.C. App. 233, 662 S.E.2d 573, 2008 N.C. App. LEXIS 1187 (2008), cert. denied, 555 U.S. 1174, 129 S. Ct. 1370, 173 L. Ed. 2d 591 (2009).

Widow of a prison guard was not entitled to death benefits where the guard’s last day of service was ruled to be the date his sick and annual leave expired, and not the date his position was vacated, and thus his death, which occurred more than 90 days after his last day of service, did not occur while “in

service” within the meaning of the benefits provision. *Garrett v. Teachers’ & State Employees’ Retirement Sys. ex rel. Board of Trustees*, 91 N.C. App. 409, 371 S.E.2d 776, cert. denied, 323 N.C. 624, 374 S.E.2d 585 (1988).

Retiree Not Entitled to Tax-Free Pension. — Retiree was not entitled to a tax free pension because he withdrew his contributions to the Consolidated Judicial Retirement System and the Teachers’ and State Employees Retirement System and left public employment before August 12, 1989, and thus he was not vested on that date; although the retiree later returned to public employment, became vested, and repaid the money he had previously withdrawn, when read together, G.S. 135-4 and G.S. 135-5 made clear that a member who left state service and withdrew contributions in the retirement system had no rights to any benefits within the system except for the right to repay previously withdrawn contributions as provided in G.S. 135-4. The repayment served only to increase the retiree’s years of service creditable. *Cashwell v. Dep’t of State Treasurer, Ret. Sys. Div.*, 196 N.C. App. 80, 675 S.E.2d 73, 2009 N.C. App. LEXIS 452 (2009).

Earliest Retirement Date. — In making an equitable distribution of the property of a former husband and former wife, the trial court properly determined a former husband’s earliest retirement date for purposes of valuing his Teachers’ and State Employees’ Retirement System pension because G.S. 135-5(f) did not have to be used as the basis for calculating his “earliest retirement” date; the plain language of G.S. 135-5(f) allows for the return of accumulated contributions only if the State employee terminates his service with the State for reasons other than death or retirement. *Cochran v. Cochran*, 198 N.C. App. 224, 679 S.E.2d 469, 2009 N.C. App. LEXIS 1161 (2009), review denied, 363 N.C. 801, 690 S.E.2d 533, 2010 LEXIS 57 (2010).

Applied in *Bennett v. Hertford County Bd. of Educ.*, 69 N.C. App. 615, 317 S.E.2d 912 (1984).

Cited in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984); *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 108 N.C. App. 357, 424 S.E.2d

420 (1993); *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997); *Liptrap v. City of High Point*, 128 N.C. App. 353, 496 S.E.2d 817 (1998); *Ludlum v. State*, 227 N.C. App. 92, 742 S.E.2d 580, 2013 N.C. App. LEXIS 480 (2013).

§ 135-5.1. Optional retirement program for The University of North Carolina.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. 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 participants in the Program. Participation in the Optional Retirement Program shall be limited to University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

- (1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;
- (2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);
- (3) Nonfaculty instructional and research staff who are exempt from the North Carolina Human Resources Act, as defined by the provisions of G.S. 126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics; and
- (4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the North Carolina Human Resources Act and who are eligible for membership in the Teachers' and State Employees' Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. 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.

- (5) Employees of The University of North Carolina Health Care System, subject to rules for eligibility and participation as may be adopted by the Board of Governors in the Optional Retirement Program plan document.
- (6) Employees hired on or after January 1, 2013.
- (b) Participation in the Optional Retirement Program shall be governed as follows:
 - (1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.
 - (2) Eligible employees initially appointed on or after July 1, 1985, 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. For purposes of this provision, the Optional Retirement Program shall be permitted to file individual election forms with the Retirement System using electronic transmission.
 - (3) 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.
 - (4) 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.
 - (5) If any participant in the Optional Retirement Program having less than five years of total membership service under any combination of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited. Consistent with Section 401(a) of the Internal Revenue Code, no part of the corpus or income of the

Optional Retirement Program, or any trust established under that Program, may be (within the taxable year or thereafter) used for purposes other than for the exclusive benefit of participants and their beneficiaries, except that contributions made under a good faith mistake of fact may be returned, consistent with the rules adopted by the University.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by The University of North Carolina. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
- (2) The relation of these rights and benefits to the amount of contributions to be made;
- (3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
- (4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program

pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement.

(h) The Board of Governors of The University of North Carolina shall ensure that the Optional Retirement Program contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for University personnel who are eligible for membership in the Teachers' and State Employees' Retirement System and have elected participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the Optional Retirement Program trust fund(s).

History.

1971, c. 338, s. 2; c. 916; 1973, c. 1425; 1977, c. 1070; 1985, c. 309; 1987 (Reg. Sess., 1988), c. 1086, s. 28; 2001-424, s. 32.27; 2003-356, s. 1; 2006-172, ss. 2, 3; 2011-145, ss. 29.26, 29.27; 2012-142, ss. 25.11, 25.12; 2012-193, s. 11; 2013-288, s. 5; 2013-382, s. 9.1(c).

Cross References.

As to the pick up of certain employee contributions by the employer, see G.S. 135-8.

Editor's Note.

Session Laws 2006-172, s. 4, provides: "Sections 2 and 3 of this act become effective July 1, 2007, and Section 3 of this act applies only to eligible persons who are employees as of July 1, 2007, or who are employed thereafter. The remainder of this act is effective when it becomes law."

Session Laws 2011-145, s. 29.18(a)-(e),

provides: "(a) The following definitions apply in this section:

"(1) Furlough. — A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

"(2) Public agency. — A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

"(3) Public employee. — An employee employed by the legislative or judicial branches or by a public agency.

"(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services

Officer, respectively, to balance the judicial branch or legislative branch budget.

"The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough its respective employees in order to balance the respective budgets.

"(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respectively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

"(1) The specifics of the authorized furlough.

"(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

"(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

"(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

"(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

"(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the

workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

"(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches."

Session Laws 2011-145, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2011.'"

Session Laws 2011-145, s. 32.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium."

Session Laws 2011-145, s. 32.5 is a severability clause.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

Session Laws 2012-193, s. 18, made subsection (h) of this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Session Laws 2013-382, s. 9.1(b), provides: "The following entities and positions created by Chapter 126 of the General Statutes are hereby renamed by this act:

"(1) The State Personnel Commission is renamed the 'North Carolina Human Resources Commission.'

"(2) The Office of State Personnel is renamed the 'North Carolina Office of State Human Resources.'

"(3) The State Personnel Director is renamed the 'Director of the North Carolina Office of State Human Resources.'"

Session Laws 2013-382, s. 9.1(c), provides in part: "Modification of References. — The Revisor of Statutes shall delete any references in the General Statutes to the State Personnel Act, State Personnel Commission, the State Personnel Director, and the Office of State Personnel (or any derivatives thereof) and substitute references to the North Carolina Human Resources Act,

the State Human Resources Commission, the Director of the Office of State Human Resources, and the Office of Human Resources (or the appropriate derivative thereof) to effectuate the renaming set forth in this section wherever conforming changes are necessary.”

Session Laws 2013-382, s. 9.2, provides: “No action or proceeding pending on the effective date of this section [August 21, 2013], brought by or against the State Personnel Commission, the Director of the Office of State Personnel, or the Office of State Personnel, shall be affected by any provision of this section, but the same may be prosecuted or defended in the new name of the Commission, Director, and Office. In these actions and proceedings, the renamed Commission, Director, or Office shall be

substituted as a party upon proper application to the courts or other public bodies.”

Session Laws 2013-382, s. 9.3, provides: “Any business or other matter undertaken or commanded by the former State Personnel Commission, State Personnel Director, or Office of State Personnel regarding any State program, office, or contract or pertaining to or connected with their respective functions, powers, obligations, and duties that are pending on the date this act becomes effective [August 21, 2013] may be conducted and completed by the Commission, Director, or Office in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the formerly named commission, director, or office.”

CASE NOTES

Cited in *Patterson v. Patterson*, 137 N.C. App. 653, 529 S.E.2d 484, 2000 N.C. App. LEXIS 505 (2000).

OPINIONS OF ATTORNEY GENERAL

The Legislative Intent Expressed in This Section Is Ambiguous. — In light of that ambiguity and the Board of Governors’ obligations to implement and administer the Optional Retirement Program (ORP), the policies and rules that the Board of Governors has adopted to clarify the description of persons eligible

to participate in the ORP are reasonable. See opinion of Attorney General to Mr. Roy A. Carroll, Senior Vice President and Vice President for Academic Affairs, The University of North Carolina General Administration, 1999 N.C.A.G. 1 (2/4/99).

§ 135-5.2. Chapel Hill utilities and telephone employees.

Notwithstanding any other provision to the contrary, all persons employed by Chapel Hill Telephone Company or University Service Plants at the time the Chapel Hill telephone services and utilities services are sold to the Southern Bell Company and Duke Power Company respectively, shall be entitled to retire upon early retirement after 30 years of combined service with the Teachers’ and State Employees’ Retirement System and either Southern Bell or Duke Power Company. An employee must have had at least five years’ service with the Teachers’ and State Employees’ Retirement System and at least five years with either Southern Bell or Duke Power Company in order to be eligible for benefits under this provision. This provision is in addition to any other retirement benefits or privileges the employee may have under the Teachers’ and State Employees’ Retirement System.

History.

1977, c. 1007.

§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.

(a), (b) Repealed by Session Laws 2015-168, s. 1, effective January 1, 2016.

(b1) The board of directors of a charter school operated by a private nonprofit corporation and that has received State Board of Education approval under G.S. 115C-218.5 may elect to become a participating employer in the Retirement System in accordance with this Article.

(b2) A charter school desiring to participate in the Retirement System shall file with the Board of Trustees an application for participation on a form approved by the Board of Trustees. In the application, the charter school shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this Chapter, and to transmit the contributions to the Board of Trustees. The charter school shall also agree to make the employer's contributions for the participation in the Retirement System of all employees entering the service of the employer, after the charter school's participation begins, who shall become members.

(b3) A charter school seeking to become a participating employer in the Retirement System prior to the end of the second year of operation shall be granted provisional entry into the Retirement System for one year. In the event the employee or employer contributions required under G.S. 135-8(f) are not received by the date set by the Board of Trustees, the Board of Trustees may revoke the charter school's provisional entry into the Retirement System. The Board must notify a charter school in writing not less than 90 days prior to revoking a charter school's provisional entry into the Retirement System. One year after the charter school was granted provisional entry into the Retirement System, the charter school shall undergo an actuarial and financial review as required by the Board of Trustees.

(b4) A charter school seeking to become a participating employer in the Retirement System after the end of the initial year of operation but before the end of the second year of operation may undergo an actuarial and financial review as required by the Board of Trustees prior to entry into the Retirement System. A charter school seeking to become a participating employer in the Retirement System after the end of the second year of operation shall undergo an actuarial and financial review as required by the Board of Trustees prior to entry into the Retirement System.

(b5) The actuarial review will result in an estimate of the amount of the withdrawal liability that would be required under G.S.

135-8(i) to cease participation in the Retirement System after five years and the amount that would be required to cease participation after 10 years. The cost of this actuarial review shall be paid by the charter school and shall not exceed two thousand five hundred dollars (\$2,500). A charter school that was granted provisional entry into the Retirement System shall not be required to pay the cost of this actuarial review, and this cost may be classified as costs of administering investment programs under G.S. 147-69.3.

(b6) The financial review will be based on financial statements and independent audit reports held by the Local Government Commission or functionally equivalent financial statements and independent audit reports submitted to the Board of Trustees by the charter school.

(b7) The Board of Trustees may grant final approval of the application if it finds the following:

- (1) The application meets the requirements set out in this Article.
- (2) All members of the board of directors of the charter school have signed a written statement acknowledging and accepting the estimate provided under subsection (b5) of this section and the provisions of G.S. 135-8(i).
- (3) The charter school has not been identified as continually low-performing by the State Board of Education as provided in G.S. 115C-218.94.
- (4) The charter school's most recent audited financial statements and independent audit report demonstrate that it is financially sound and can meet the financial obligations of participation in the Retirement System.

(b8) Upon acceptance by the Board of Trustees of the application to become a participating employer, the charter school shall be a fully participating employer in the Retirement System. The Board may make the final decision for acceptance of the application contingent upon the receipt of a financially sound independent audit report for the fiscal year ending prior to acceptance of the application.

(b9) For each charter school employee who is employed on or before the date the charter school is granted entry into the Retirement System, membership in the Retirement System is effective as of the date of entry. For each charter school employee who is employed after the date the charter school is granted entry into the Retirement System, membership in the Retirement System is effective as of the date of that employee's entry into eligible service. Provisional entry is considered entry into the Retirement System for the purpose of this subsection.

(c) A charter school board's election to become a participating employer in the Retirement System under this section shall require all eligible employees of the charter school to participate.

(d) No retirement benefit, death benefit, or other benefit payable under the Retirement System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers' and State Employees' Retirement System on account of employment with a charter school with respect to any employee, or with respect to any beneficiary of an employee, of a charter school that is not a participating employer in the Retirement System.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Retirement System under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Retirement System, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible credit or reimbursement under the Retirement System. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection.

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

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

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

The Retirement System shall have a lien upon the real property of a charter school that has received approval under this subsection from the Board of Trustees to pay the lump sum amount required under G.S. 135-8(i)(6) on installment at the time that the installment agreement is entered into and in the amount of the total withdrawal liability owed by the charter school. This lien shall attach to the real property upon the approval of the installment payment plan by the Board of Trustees and shall be perfected upon

filing in the office of the clerk of superior court in each county in which the real property is situated. The priority of the lien shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. The Retirement System may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

History.

1998-212, s. 9.14A(b); 2014-101, s. 7; 2015-168, s. 1; 2016-79, s. 1.7(c); 2017-98, s. 1; 2018-84, s. 3(a).

Local Modification.

Corvian Community School: 2013-279, s. 1.

Editor's Note.

Session Laws 2001-462, s. 2, provides: "Notwithstanding the time limitation contained in G.S. 135-5.3(b), the board of directors of any charter school that received State Board of Education approval under G.S. 115C-238.29D on or after January 1, 2001, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes. The election authorized by this section [s. 2 of Session Laws 2001-462] must be made no later than 30 days after the effective date [November 16, 2001], of this act [Session Laws 2001-462] and in accordance with all other requirements of G.S. 135-5.3."

Session Laws 2003-69, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3(b) and G.S. 135-40.3A(b), the board of directors of any charter school that received State Board of Education approval under G.S. 115C-238.29D on or after January 1, 2002, and the board of directors of River Mill Academy in Alamance County may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act [May 20, 2003] and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2004-164, s. 1, provides: "Notwithstanding the time limitations

contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of (i) New Century High School in Saxapahaw; (ii) Lake Norman Charter School in Huntersville; (iii) Exploris Middle School in Raleigh, a charter school division of Exploris; (iv) Magellan Charter School in Raleigh; (v) American Renaissance Charter School in Statesville; and (vi) Healthy Start Academy in Durham may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2005-315, s. 1, provides: "Notwithstanding the time limitation contained in G.S. 135-5.3, the Board of Directors of Evergreen Charter School, a charter school located in Asheville, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes. The election authorized by this section shall be made no later than 30 days after the effective date of this act [August 25, 2005] and shall be made in accordance with all other requirements of G.S. 135-5.3."

Session Laws 2005-317, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of Success Institute, a charter school in Statesville, and Piedmont Community Charter School in Gastonia may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina

Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act [August 25, 2005] and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2007-464, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the Board of Directors of Orange Charter School, a charter school located in Hillsborough, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135 of the General Statutes. Notwithstanding the time limitations contained in G.S. 135-40.3A, the Board of Directors of Bethany Community Middle School, a charter school in Rockingham County, may elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135 of the General Statutes. Notwithstanding the time limitations contained in G.S. 135-40.3A, the board of directors of Tiller School, a charter school, may elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135 of the General Statutes. The election authorized by this section shall be made no later than 30 days after the effective date of this act [August 28, 2007] and shall be made in accordance with all other requirements of G.S. 135-40.3A and, as applicable, with G.S. 135-5.3."

Session Laws 2010-137, s. 1, provides: "Notwithstanding the time limitation contained in G.S. 135-5.3 and G.S. 135-45.5, the Board of Directors of Brevard Academy, a charter school located in Brevard, may elect to become a participating employer in the Teachers and State Employees Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the State Health Plan for Teachers and State Employees in accor-

dance with Article 3A of Chapter 135. The elections authorized by this act shall be made no later than 30 days after the effective date of this act [July 21, 2010] and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-45.5."

Session Laws 2014-101, s. 8 provides in part that the amendment of this section by Session Laws 2014-101, s. 7 is applicable beginning with the 2014-2015 school year.

Session Laws 2016-79, s. 4, made the amendments to subdivision (b7)(3) of this section by Session Laws 2016-79, s. 1.7(c), applicable beginning with the 2016-2017 school year.

Session Laws 2018-84, s. 3(b), made the amendment of subsection (f) by Session Laws 2018-84, s. 3(a), effective June 25, 2018, and applicable to charter schools electing to cease participation in the Teachers' and State Employees' Retirement System on or after that date. Priority of the lien over nongovernmental liens and rights, created under subsection (a) of this section, shall apply only to nongovernmental liens and rights that have attached to the applicable property on or after the effective date of this section.

Effect of Amendments.

Session Laws 2015-168, s. 1, effective January 1, 2016, deleted former subsections (a) and (b); added subsections (b1) through (b9); inserted "charter school" preceding "board's election" and deleted "is irrevocable and" following "under this section" in subsection (c); substituted "that is not a participating employer in the Retirement System" for "whose board of directors does not elect to become a participating employer in the Retirement System under this section" in subsection (d); and added subsection (f).

Session Laws 2016-79, s. 1.7(c), effective June 30, 2016, in subdivision (b7)(3), substituted "continually low-performing" for "inadequate" following "has not been identified" and substituted "G.S. 115C-218.94" for "G.S. 115C-218.95(b)" at the end of the subdivision. See editor's note for applicability.

Session Laws 2017-98, s. 1, effective August 1, 2017, substituted "second year" for "initial year" in the first sentence of subsection (b3); in subsection (b4), in the first sentence, inserted "but before the end of the second year of operation" and substituted "may" for "shall", and added the second sentence.

Session Laws 2018-84, s. 3(a), effective

June 25, 2018, added all but the first sentence of subsection (f). For effective date and applicability, see editor's note.

§ 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 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.
- (4) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of the System and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program

attributable to contributions of the employing institution shall be forfeited and shall either (i) be refunded to the employing institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount that he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by the employing institution. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 115D-25. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The System shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
- (2) The relation of these rights and benefits to the amount of contributions to be made;
- (3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of the System in recruiting and retaining faculty in a national and market;
- (4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

In lieu of such designation and in order to provide a more efficient, cost-effective, and flexible Program, the System may designate the company or companies designated for the Optional Retirement Program for State institutions of higher education as prescribed in G.S. 135-5.1(d).

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The System or employing institution may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within the System, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or the System, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement.

(h) The North Carolina Community College System shall ensure that the Optional Retirement Program for State-funded community colleges contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for community college personnel eligible for membership in the Teachers' and State Employees' Retirement System and have elected participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the Optional Retirement Program trust fund(s).

History.

2001-424, s. 32.24(a); 2001-513, s. 24; 2012-193, s. 12; 2018-84, s. 1.

Editor's Note.

Session Laws 2011-145, s. 29.18(a)-(e), provides: "(a) The following definitions apply in this section:

"(1) Furlough. — A temporary, involuntary period of leave from employment without pay but shall not include any period of involuntary leave resulting from disciplinary action.

"(2) Public agency. — A State agency, department, or institution in the executive branch of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.

"(3) Public employee. — An employee employed by the legislative or judicial branches or by a public agency.

"(b) Any furlough of a public employee paid with State funds is prohibited unless the furlough is ordered by the Governor while acting to balance the budget pursuant to Section 5 of Article III of the North Carolina Constitution or by the Chief Justice or the Legislative Services Officer, respectively, to balance the judicial branch or legislative branch budget.

"The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and each local public school board of education must petition the Governor to furlough its respective employees in order to balance the respective budgets.

"(c) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, the employing public agency, the judicial branch, or the legislative branch, respec-

tively, shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

“(1) The specifics of the authorized furlough.

“(2) The positions affected, including all full-time, part-time, temporary, and contractual positions, all nonessential personnel, and all nonteaching positions.

“(3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.

“(d) If, in accordance with subsection (b) of this section, necessary economies in expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

“(1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer or of an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4 shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.

“(2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the

workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

“(e) The benefits protections provided by this section shall also apply to public employees in the judicial and legislative branches.”

Session Laws 2011-145, s. 1.1, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2011.’”

Session Laws 2011-145, s. 32.2, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium.”

Session Laws 2011-145, s. 32.5 is a severability clause.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: “The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100.”

Session Laws 2012-193, s. 18, made subsection (h) of this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Effect of Amendments.

Session Laws 2018-84, s. 1, effective June 25, 2018, substituted “section on or before June 30, 2018” for “section” in the second sentence of subsection (a); and inserted “and on or before June 30, 2018,” following “Optional Retirement Program” in subdivision (b)(1).

§ 135-6. Administration.

(a) **Administration by Board of Trustees; Corporate Name; Rights and Powers; Tax Exemption.** — The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the Chapter are hereby vested in a Board of Trustees which shall be organized immediately after a majority of the trustees provided for in this section shall have qualified and taken the oath of office.

The Board of Trustees shall be a body politic and corporate under the name “Board of Trustees Teachers’ and State Employees’ Retirement

ment System”; and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(b) **Membership of Board; Terms.** — The Board shall consist of the following 13 members:

- (1) The State Treasurer, ex officio.
- (2) The Superintendent of Public Instruction, ex officio.
- (2a) The Director of the Office of State Human Resources, ex officio.
- (3) Eight members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be a retired teacher who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one shall be a retired State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1977, and quadrennially thereafter; one to be a general State employee, and two who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years; one appointive member shall be a law-enforcement officer employed by the State, appointed by the Governor, for a term of four years commencing April 1, 1985. One member shall be an active or retired member of the North Carolina National Guard appointed by the Governor for a term of four years commencing July 1, 2013. At the expiration of these terms of office the appointment shall be for a term of four years.
- (4) Two members appointed by the General Assembly, one appointed upon the recommendation of the Speaker of the House of Representatives, and one appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Neither of these members may be an active or retired teacher or State employee or an employee of a unit of local government. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their

successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(c) **Compensation of Trustees.** — The trustees shall be paid during sessions of the Board at the prevailing rate established for members of State boards and commissions, and they shall be reimbursed for all necessary expenses that they incur through service on the Board.

(d) **Oath.** — Each trustee other than the ex officio members shall, within 10 days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(e) **Voting Rights.** — Each trustee shall be entitled to one vote in the Board. A majority of affirmative votes by trustees in attendance shall be necessary for a decision by the trustees at any meeting of the Board. A vote may only be taken if at least seven members of the Board are in attendance, in person or by telephone, for the meeting at which a vote on a decision is taken.

(f) **Rules and Regulations.** — Subject to the limitations of this Chapter, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this Chapter and for the transaction of its business. The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Chapter.

(g) **Officers and Other Employees; Salaries and Expenses.** — The State Treasurer shall be ex officio chair of the Board of Trustees and shall appoint a director. The Board of Trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons, other than the director, engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the Board of Trustees shall approve, subject to the approval of the Director of the Budget.

(h) **Actuarial Data.** — The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(i) **Record of Proceedings; Annual Report.** — The Board of Trustees shall keep a record of all of its proceedings which shall be

open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System. It shall also publish annually a report on supplemental insurance offerings that are made available to retirees and the extent to which retirees participate in those offerings.

(j) **Legal Adviser.** — The Attorney General shall be the legal adviser of the Board of Trustees.

(k) **Medical Board.** — The Board of Trustees shall designate a medical board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board members. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A person serving on the medical board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

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

(l) **Duties of Actuary.** — The Board of Trustees shall designate an actuary who shall be the technical adviser of the Board of Trustees on matters regarding the operation of the funds created by the provisions of this Chapter and shall perform such other duties as are required in connection therewith. For purposes of the annual valuation of System assets, the experience studies, and all other actuarial calculations required by this Chapter, all the assumptions used by the System's actuary, including mortality tables, interest rates, annuity factors, and employer contribution rates, shall be set out in the actuary's periodic reports or other materials provided to the Board of Trustees. These materials, once accepted by the Board,

shall be considered part of the Plan documentation governing this Retirement System; similarly, the Board's minutes relative to all actuarial assumptions used by the System shall also be considered part of the Plan documentation governing this Retirement System, with the result of precluding any employer discretion in the determination of benefits payable hereunder, consistent with Section 401(a)(25) of the Internal Revenue Code.

(m) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the Board of Trustees such tables and such rates as are required in subsection (n), subdivisions (1) and (2), of this section. The Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this Chapter.

(n) In 1943, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the Board of Trustees shall:

- (1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and
- (2) Certify the rates of contributions payable by the State of North Carolina on account of new entrants at various ages.

(o) On the basis of such tables and interest assumption rate as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Chapter. The annual valuation shall include a supplementary section that provides an analysis of assets on a market basis using the 30-year treasury rate as of December 31 of the year of the valuation as the discount rate.

(p) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained

and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a Class 1 misdemeanor; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter.

(q) **Compliance Investigations and Fraud Investigations — Access to Persons and Records.** — In the course of conducting a compliance investigation or a fraud investigation, the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall:

- (1) Have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employer. The review of State tax returns shall be limited to matters of official business, and the Division's report shall not violate the confidentiality provisions of tax laws.
- (2) Have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization that pertain to the following:
 - a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State.
- (3) Have the authority, and shall be provided with ready access, to examine and inspect all property, equipment, and facilities in the possession of any employer agency or any individual, private corporation, institution, association, board, or other organization that were furnished or otherwise provided through grant, contract, or any other type of funding by the employer agency.

With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to a beneficiary available to the Retirement Systems Division, or to the authorized representatives who are assisting the Retirement Systems Division staff. Copies of the records of social and medical services provided to a beneficiary will permit verification of the

health or other status of a beneficiary as required for the payment of benefits under Article 1, Article 4, or Article 6 of this Chapter. The Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall request records in writing by providing the name of each beneficiary for whom records are sought, the purpose of the request, the statutory authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge, and the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided in accordance with this subsection.

(r) **Compliance or Fraud Investigative Reports and Work Papers.** — The Director of the Retirement Systems Division shall maintain for 10 years a complete file of all compliance investigative reports, fraud investigative reports and reports of other examinations, investigations, surveys, and reviews issued under the Director's authority. Fraud or compliance investigation work papers and other evidence or related supportive material directly pertaining to the work of the Retirement Systems Division of the Department of State Treasurer shall be retained according to an agreement between the Director of Retirement and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of fraud and compliance investigative efforts, and notwithstanding local unit personnel policies to the contrary, pertinent work papers and other supportive material relating to issued fraud or compliance investigation reports may be, at the discretion of the Director of Retirement and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud and compliance investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

(s) **Fraud Reports May Be Anonymous.** — The identity of any person reporting fraud, waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be maintained as a public record within the meaning of G.S. 132-1.

(t) **Immunity.** — A person serving on the Teachers' and State Employees' Retirement System Board of Trustees shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.

- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper personal financial benefit, either directly or indirectly, from the transaction.
- (5) The person incurred the liability from the operation of a motor vehicle.

History.

1941, c. 25, s. 6; 1943, c. 719; 1947, c. 259; 1957, c. 541, s. 15; 1965, c. 780, s. 1; 1969, c. 805; c. 1223, s. 17; 1973, c. 241, s. 8; c. 507, s. 5; c. 1114; 1977, c. 564; 1979, c. 376; 1981 (Reg. Sess., 1982), c. 1191, s. 11; 1983 (Reg. Sess., 1984), c. 1034, s. 238; 1987, c. 539, s. 1; 1993, c. 539, s. 972; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 490, s. 57; 2012-130, ss. 2(b), 9(b); 2012-185, ss. 2(d), 4(b); 2013-287, s. 4(a); 2014-112, ss. 4(a), 6(a); 2016-108, s. 6(a)-(c); 2017-102, s. 33.2; 2017-102, s. 33.2; 2017-128, s. 1(d).

Editor's Note.

Session Laws 2016-108, s. 6(a) added a new subdivision (b)(3) and redesignated subdivisions (b)(3) and (4) accordingly. At the direction of the Revisor of Statutes the new subdivision was designated (b)(2a) making the redesignation of subdivisions (b)(3) and (4) unnecessary.

Session Laws 2016-108, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 6(a), (b), effective July 22, 2016, in subsection (b), added subdivision (b)(2a); and, in subsection (g), substituted "The State Treas-

urer shall be ex officio chair of the Board of Trustees and shall appoint a director." for "The State Treasurer shall be ex officio chairman of the Board of Trustees. The Board of Trustees shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members." See editor's note for redesignation of subdivisions by the Revisor of Statutes.

Session Laws 2016-108, s. 6(c), as amended by Session Laws 2017-102, s. 33.2, effective July 22, 2016, added the last sentence in subsection (o).

Session Laws 2017-128, s. 1(d), effective July 20, 2017, in subsection (k), added the last sentence in the introductory paragraph, and added subdivisions (k)(1) through (k)(5); in subsection (q), inserted "Compliance Investigations and" in the subsection heading and inserted "compliance investigation or a" in the introductory paragraph; in subsection (r), inserted "Compliance or" in the subsection heading, inserted "compliance investigative reports" in the first sentence, inserted "or compliance" in the second sentence, in the third sentence, substituted "and compliance investigative efforts" for "investigative effort" and inserted "or compliance," and inserted "and compliance" in the last sentence.

CASE NOTES

Board Without Power to Waive Statutory Deadlines. — The Board of Trustees of the Retirement System does not have discretionary power to extend or waive statutory deadlines for the reinstatement of a withdrawn account or for purchase of out-of-state service, since a waiver would not be a rule or regulation to prevent injustice and inequality across the board but simply a waiver in a specific instance. In re Ford, 52 N.C. App. 569, 279 S.E.2d 122 (1981).

Board had Power to Waive Penalties. — Board's practice of waiving penalties under circumstances where employers were not at fault for failing to remit employer contributions to the Re-

tirement System was entirely consistent with the Board's statutory discretion to adopt rules to prevent injustices under G.S. 135-6(f). Accordingly, the Treasurer and the Board were not required by G.S. 135-8(f)(3) to punish those employers whose employer contributions were not deposited in the Retirement System. *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008), review denied, appeal dismissed, 363 N.C. 381, 680 S.E.2d 712 (2009).

Actuarially Sound Manner is a Term in State Employees' Retirement Contract. — Because state employees had a contractual right to the funding of the Retirement System in an

actuarially sound manner, under G.S. 135-6(i) and (m)-(o), the right to have the Retirement System funded in an actuarially sound manner was a term or condition included in the employees' retirement contracts. *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008), review denied, appeal dismissed, 363 N.C. 381, 680 S.E.2d 712 (2009).

Role of Actuary. — G.S. 135-6(m)-(o) envision an active role for an actuary in

the state employees' Retirement System. *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008), review denied, appeal dismissed, 363 N.C. 381, 680 S.E.2d 712 (2009).

Cited in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984); *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 108 N.C. App. 357, 424 S.E.2d 420 (1993).

§ 135-6.1. Member retirement record files held by the Retirement System.

(a) The following definitions apply in this section:

- (1) Employment-related information. — As defined in G.S. 126-22(b)(3).
- (2) Personal information. — As defined in G.S. 126-22(b)(3).
- (3) Retirement file. — Any employment-related, retirement-related, or personal information of members in a State-administered retirement plan gathered by the Retirement Systems Division of the Department of State Treasurer.
- (4) Retirement-related information. — Information including membership and service details, benefit payment information, and other information the Retirement Systems Division of the Department of State Treasurer deems necessary to administer a retirement plan.

(b) Member retirement files are not subject to inspection and examination as authorized by G.S. 132-6 except as provided in G.S. 135-6(p), G.S. 128-28(q), and subsections (c), (d), and (e) of this section.

(c) The following information regarding members and individuals in receipt of a recurring monthly benefit, if held by the Retirement System, is public and subject to subsection (d) of this section:

- (1) Name.
- (2) Age.
- (3) Date of membership in the applicable Retirement System, first service earned date, date of first enrollment, date of first employment, and date of retirement.
- (4) The terms of any contract by which the member is employed whether written or oral, past and current, to the extent that the Retirement System has the written contract or a record of the oral contract in its possession.
- (5) Current or most recently held position or title.
- (6) Compensation and other relevant remuneration history and benefits paid.
- (7) Date, general description, and type of each change and the corresponding employing agency.

- (8) The office or station to which the member is currently assigned, if any.
- (9) The record of benefit payments made by one of the Retirement Systems or Disability Benefits Programs administered by the Department of State Treasurer to a member or to the survivor, beneficiary, or alternate payee of a member.
- (10) Purchases of educational leave.

(d) Subject only to rules and policies for the safekeeping of member retirement files adopted by the Board of Trustees, every person having custody of the retirement file information outlined in subsection (b) of this section shall permit the information to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any retirement file for the purpose of inspecting, examining, or copying the file has a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(e) The Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former State and local government employees, former public school employees, or former community college employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees.

(f) All information other than the information listed in subsection (c) of this section contained in a retirement file is confidential and not open for inspection and examination except to the following persons:

- (1) The member, or the member's authorized agent, who may examine his or her own retirement file, except for any information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. A member's medical record may be disclosed to a licensed physician in writing by the member.
- (2) A member of the General Assembly who may inspect and examine records under the authority of G.S. 120-19.
- (3) A party by authority of a proper court order may inspect and examine a particular confidential portion of a member's retirement file.

(g) Any public official or employee who knowingly and willfully permits any person to have access to or custody or possession of any portion of a retirement file designated as confidential by this section, unless the person is one specifically authorized by this section to have access thereto for inspection and examination, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

(h) Any person not specifically authorized by this section to have access to a retirement file designated as confidential by this section,

who knowingly and willfully examines, removes, or copies any portion of a confidential retirement file, is guilty of a Class 3 misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

History.

2016-108, s. 2(b); 2018-85, s. 8(a).

Editor's Note.

Session Laws 2016-108, s. 10, made this section effective July 22, 2016.

Session Laws 2016-108, s. 2(a), provides: "The February 5, 2008, Attorney General's advisory opinion entitled 'Advisory Opinion: Confidentiality of Retirement Benefit Information; Session Law 2007-508' concluded that information about retirement benefits was intended to be included among those records required to be maintained for public inspection by each department, agency, institution, commission, and bureau of the State and that as a result the Retirement Systems Division of the Department of

the State Treasurer makes that information available for public inspection and examination. The General Assembly finds that the interests of clarity require statutory language providing guidance to the Retirement Systems Division in determining and maintaining consistency as to what information should be made available about the retirement accounts of State and local employees."

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2018-85, s. 8(a), retroactively effective July 22, 2016, inserted "and local government" following "former State" in subsection (e).

§ 135-7. Management of funds.

(a) **Vested in Board of Trustees.** — The Board of Trustees shall be the trustee of the several funds created by this Chapter as provided in this section and in G.S. 135-8.

(b) **Regular Interest Allowance.** — The Board of Trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the Board of Trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the Board of Trustees on the basis of the interest earnings of the System for the preceding year and of the probable earnings to be made, in the judgment of the Board, during the immediate future, such rate to be limited to a minimum of three per centum (3%) and a maximum of four per centum (4%), with the latter rate applicable during the first year of operation of the Retirement System.

(c) **Custodian of Funds; Disbursements; Bond of Director.** — The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(d) **Deposits to Meet Disbursements.** — For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum (10%) of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer of North Carolina.

(e) **Personal Profit or Acting as Surety Prohibited.** — Except as otherwise herein provided, no trustee and no employee of the Board of Trustees shall have any direct interest in the gains or profits of any investment made by the Board of Trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the Board of Trustees; nor shall any trustee or employee of the Board of Trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the Board of Trustees.

(f) **Retiree Health Benefit Fund.** — It is the intent of the General Assembly that the Retiree Health Benefit Fund be a trust that provides an irrevocable source of funding to be used, to the extent the Fund's assets are sufficient, only for health benefits to retired and disabled employees and their applicable beneficiaries. Accordingly, the following provisions apply to the Retiree Health Benefit Fund:

- (1) For the purposes of this subsection, the term "eligible Plan members" means eligible retired and disabled employees, and their applicable beneficiaries, who are members of the North Carolina State Health Plan for Teachers and State Employees as provided by this Chapter.
- (2) The Retiree Health Benefit Fund is established as a trust fund in which accumulated contributions and any earnings on those contributions shall be used only to provide health benefits to eligible Plan members, after payment of any accrued reasonable investment and administrative expenses. The Retiree Health Benefit Fund shall be administered in accordance with the provisions of subsection (a) of this section.
- (3) Employer and non-employer contributions to the Fund and earnings on those contributions are irrevocable. The assets of the Fund are dedicated to providing health benefits to eligible Plan members in accordance with the Plan's benefit terms, as those terms may from time to time be amended. The assets of the Fund are not subject to the claims of creditors of the employers and non-employers making contributions to the Fund, are not subject to the claims of any creditors of the Fund's trustees and administrators, and are not subject to the claims of creditors of eligible Plan members.

- (4) Fund assets may be used for reasonable expenses to administer benefits provided by the Fund, as approved by the Board of Trustees, including offsets to the State budget to the Retirement Systems Division for staff administration of benefits and costs to conduct required actuarial valuations of State-supported retired employees' health benefits under other post-employment benefit accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

(g) It is the intent of the General Assembly that a master trust fund be created that provides an irrevocable source of funding to be used, to the extent the fund's assets are sufficient, only for death benefits and disability benefits to the Plans' members, participants, and beneficiaries, pursuant to G.S. 120-4.27, G.S. 128-27(*l*), subsections (*l*2) through (*l*6) of G.S. 128-27, 135-5(*l*), 135-64(k), and 143-166.60. Accordingly, the following provisions apply to the Trust:

- (1) The following definitions apply in this subsection:
 - a. Beneficiaries. — Any person in receipt of, or eligible to receive, a benefit payable from the North Carolina Teachers' and State Employees' Benefit Trust pursuant to G.S. 120-4.27, subsections (*l*2) through (*l*6) of G.S. 128-27, 135-5(*l*), 135-64(k), and 143-166.60.
 - b. Plans. — The retiree group death benefit trust established under G.S. 120-4.27, the Group Life Insurance Plan established under G.S. 128-27(*l*), the retiree group death benefit trust fund established under subsections (*l*2) through (*l*6) of G.S. 128-27, the Group Life Insurance Plan established under G.S. 135-5(*l*), the retiree group death benefit trust fund established under G.S. 135-5(*l*), the retiree group death benefit trust fund established under G.S. 135-64(k), and the Separate Insurance Benefits Plan established by G.S. 143-166.60.
- (2) A trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, is hereby created as a master trust to which all receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plans shall be deposited, and from which all benefits and expenses against the Plans shall be disbursed. The Boards of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall be the trustee of the Trust. Within the Benefit Trust, the funds of the Plans shall be accounted for separately and not commingled. Assets of one plan cannot be used to pay for liabilities of another plan within the Trust.
- (3) Employer and non-employer contributions to the North Carolina Teachers' and State Employees' Benefit Trust and

earnings on those contributions are irrevocable. The assets of the Trust are dedicated to providing benefits to members, participants, and beneficiaries in accordance with the Plans' benefit terms. The assets of the Trust are not subject to the claims of creditors of the employers and non-employers making contributions to the Trust, are not subject to the claims of any creditors of the Trust, trustees, and administrators, and are not subject to the claims of creditors of members, participants, and beneficiaries.

(h) **Legislative Enactment Implementation Arrangement.**

— The Legislative Enactment Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under the management of the Board of Trustees. The purpose of the LEIA is to provide for timely administrative implementation of legislative provisions regarding the retirement of, or payment of retirement benefits to, public officers or public employees. The LEIA shall have the following parameters:

- (1) **Administration.** — The LEIA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the LEIA and to adopt such rules and regulations as may be necessary or desirable to implement the provisions of the LEIA.
- (2) **Funding of the LEIA.** — In the event that the General Assembly creates or modifies any provision for the retirement of, or payment of retirement benefits to, public officers or public employees that has a cost savings as measured by actuarial note required by Article 15 of Chapter 120 of the General Statutes, the Board of Trustees may direct up to one hundredth percent (0.01%) of the required contributions to fund the LEIA. These funds must be deposited in a separate fund from the fund into which regular employer contributions are deposited for the Retirement System. The Board of Trustees shall not direct any employer contributions into the LEIA after November 1, 2021.
- (3) **Allocation of LEIA funds.** — The Board of Trustees may allocate LEIA funds to the implementation of legislative provisions regarding the retirement of, or payment for retirement benefits to, public officers or public employees, subject to the following restrictions:
 - a. The Board of Trustees must identify individual implementation projects that will be paid for with LEIA funds. These implementation projects must be necessitated by a specific statute or session law that was enacted within five years of the allocation of the funds. The Board of Trustees must also identify the number of

years for which each individual implementation project will be paid for with LEIA funds.

- b. For implementation projects that will be paid for with LEIA funds for a period of one year or less, the Board of Trustees must determine that the cost savings from implementing the project is projected to be no less than half of the amount of LEIA funds utilized to pay for implementation.
 - c. For implementation projects that will be paid for with LEIA funds for a period of greater than one year, but not more than four years, the Board of Trustees must determine that the long-term cost savings from implementing the project is projected to be at least three times greater than the cost of implementation.
 - d. No implementation project shall be paid for with LEIA funds for a period of more than four years.
- (4) **Treatment of unused assets.** — Any assets of the LEIA not used to pay allowed administrative expenses for timely administrative implementation of legislative provisions shall be transferred to the Retirement System as an additional employer contribution.
- (5) **Reporting.** — The Department of State Treasurer shall report to the Board of Trustees, the Joint Legislative Commission on Government Operations, and the Fiscal Research Division on or before August 1 of each year on the (i) amounts and sources of funds collected by year pursuant to this section and (ii) the amounts expended, the projects for which those funds were expended, and the current status of the projects. The Board of Trustees shall also post this report on its public Web site.

History.

1941, c. 25, s. 7; 1957, c. 846, s. 2; 1959, c. 1181, s. 2; 1961, c. 397; 1965, c. 780, s. 1; 1967, c. 720, s. 11; c. 1205; 1971, c. 386, s. 4; 1973, c. 241, s. 9; 1979, c. 467, ss. 14, 15; 2004-124, s. 31.20(a); 2007-323, s. 28.23; 2017-129, ss. 2(n), 2(p), 5(a); 2017-212, s. 8.9(a).

Editor's Note.

Session Laws 2017-129, s. 2(p) and Session Laws 2017-129, s. 5(a) both enacted a subsection (g). Pursuant to the direction of the Revisor of Statutes, the subsection (g) enacted by Session Laws

2017-129, s. 5(a) was redesignated as subsection (h).

Effect of Amendments.

Session Laws 2017-129, ss. 2(f) and 2(p), effective June 30, 2017, rewrote subsection (f); and added subsection (g).

Session Laws 2017-129, s. 5(a), effective October 1, 2017, added subsection (g) (now subsection (h)).

Session Laws 2017-212, s. 8.9(a), effective October 1, 2017, substituted "Board of Trustees" for "Board of Trustee" in the third sentence of subdivision (g)(2) (now subdivision (h)(2)).

CASE NOTES

Applied in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984).

Cited in *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 108 N.C. App. 357, 424 S.E.2d 420 (1993).

OPINIONS OF ATTORNEY GENERAL

Investment by Teachers' and State Employees' Retirement System in Government National Mortgage Association Mortgages. — See opinion of Attorney General to Mr. R. Moore, Assistant Treasurer, State of North Carolina, 40 N.C.A.G. 752 (1970).

§§ 135-7.1, 135-7.2. Repealed by Session Laws 1979, c. 467, ss. 16, 17.

§ 135-8. Method of financing.

(a) **Funds to Which Assets of Retirement System Credited.** — All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of two funds, namely, the annuity savings fund and the pension accumulation fund.

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

- (1) With respect to the period of service commencing on July 1, 1975, each participating employer shall deduct from the salary of each member on every payroll of the employer for every payroll period, six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.
- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department,

agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

- (4) Repealed by Session Laws 2017-129, s. 2(e), effective June 30, 2017.
- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer only for the purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer, subject to the provisions of this subdivision. A leave of absence or interrupted service may be approved for purchase under this subdivision for a period of employment as a teacher in a charter school. Any other leave of absence or interrupted service shall qualify for purchase under this subdivision only if (i) during the time of the leave or interrupted service the member is enrolled and participates in a full time degree program at an accredited institution of higher education, (ii) the member is not paid compensation, other than a stipend resulting from participation in a full-time degree program, for the activity in which he or she is acquiring knowledge, talents, or abilities, and (iii) the service is not purchased for any month in which the

member performed any services for any of the organizations listed in G.S. 135 27(a) or G.S. 135 27(f), or a successor to any of those organizations. Approval by the Board under this subdivision shall be made prior to the purchase of the creditable service, is limited to a career total of six years for each member, and may be obtained in the following manner:

- a. **Approved leave of absence.** — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
- b. **No educational leave policy.** — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
- c. **Educational program prior to July 1, 1981.** — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.

- d. Repealed by Session Laws 2016-82, s. 2, effective June 30, 2016.

Payments required to be made by the member, the employer, or both under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(b1) **Pick Up of Employee Contributions.** — Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 135-1. Picked up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Teachers' and State Employees' Retirement System and shall be accompanied by a schedule of the picked-up contribu-

tions on such forms as may be prescribed. In the case of a failure to fulfill these conditions, the provisions of subsection (f)(3) of this section shall apply.

The pick up of employee contributions by an employer as provided for hereunder shall be equally applicable to participant contributions required under the optional retirement program as specified in G.S. 135-5.1(c).

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

- (1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days of the denial of the promotion or the error in reporting, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

For members or beneficiaries electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's or beneficiary's employer, which granted the retroactive promotion or erred in underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or beneficiary or group of members or beneficiaries in his employ in paying all or any part of the interest assessed on the employee contributions due.

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) the compensation the member or beneficiary would have received during the period shall be included in calculating the member's or

beneficiary's average final compensation only in the event the appropriate employee and employer contributions are paid on such compensation.

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

(c) Repealed by Session Laws 2017-129, s. 2(f), effective June 30, 2017.

(d) **Pension Accumulation Fund.** — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid in the pension accumulation fund by employers an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of the member's actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation, duly approved by the Board of Trustees, and shall be called the "actuarially determined employer contribution rate."
- (1a) For fiscal years beginning subsequent to January 1, 2017, the sum of the "normal contribution" and the "accrued liability contribution" shall not be less than the employee contribution required under subdivision (1) of subsection (b) of this section.
- (2) Repealed by Session Laws 2017-129, s. 2(h), effective June 30, 2017.
- (2a) The actuarially determined employer contribution rate shall be calculated annually by the actuary using assumptions and a cost method approved by the Actuarial Standards Board of the American Academy of Actuaries and selected by the Board of Trustees.
- (3) Repealed by Session Laws 2017-129, s. 2(h), effective June 30, 2017.
- (3a) Notwithstanding Chapter 150B of the General Statutes, the total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate

per centum known as the actuarially determined employer contribution rate of the total earned compensation of all members during the preceding year as adjusted higher under a contribution rate policy adopted by the Board of Trustees and known as the 'required employer contribution' rate. The Board of Trustees shall not adopt a contribution rate policy that results in a rate less than the normal contribution rate.

- (4) Repealed by Session Laws 2017-129, s. 2(h), effective June 30, 2017.
- (5) Repealed by Session Laws 2017-129, s. 2(h), effective June 30, 2017.
- (6) All pensions, and benefits in lieu thereof payable from contributions of employer shall be paid from the pension accumulation fund.
- (7) Repealed by Session Laws 2017-129, s. 2(h), effective June 30, 2017.
- (e) Repealed by Session Laws 2017-129, s. 2(j), effective June 30, 2017.

(f) **Collection of Contributions.** —

- (1) The collection of members' contributions shall be as follows:
 - a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.
- (2) The collection of employers' contributions shall be made as follows:
 - a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with the State Budget Act, Chapter 143C of the General Statutes.
 - b. Repealed by Session Laws 2017-129, s. 2(l), effective June 30, 2017.
 - c. Repealed by Session Laws 1993, c. 257, s. 13.
 - d. Each board of education in each county and each board of education in each city in which teachers or other

employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

- e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover required employer contribution of each member employed by such employer for the preceding month.
- f. Each employer shall transmit to the Retirement System on account of each member who retires on or after January 1, 2015, having earned his or her last month of membership service as an employee of that employer the lump sum payment, as calculated under G.S. 135-4(jj) for inclusion in the Pension Accumulation Fund, that would have been necessary in order for the retirement system to restore the member's retirement allowance to the pre-cap amount. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hundred thousand dollars (\$100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000), as provided and indexed under G.S. 135-5(a3).

Under such rules as the Board of Trustees shall adopt, the Retirement System shall report monthly to each employer a list of those members for whom the employer made a contribution to the Retirement System in the preceding month that are most likely to require an additional employer contribution should they elect to retire in the following 12 months, if applicable.

- (3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances, the Board shall assess the employer with a penalty, in lieu of interest, of 1% per month with a minimum penalty of twenty-five dollars (\$25.00). The Board may waive one penalty per employer every five years if the Board finds that the employer has consistently demonstrated good-faith efforts to comply with the set deadline. If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

In the event that an employer fails to submit payment of any required contributions or payments to the Retirement Systems Division, other than the one percent (1%) payment provided for in the first paragraph of this subdivision, within 90 days after the date set by the Board of Trustees, the Board shall notify the State Treasurer of its intent to collect the delinquent contributions and other payments due to the Retirement Systems Division and request an interception of State appropriations due to the participating employer. Upon such notification by the Board of Trustees to the State Treasurer and the Office of State Budget and Management as to the default of the employer, the Office of State Budget and Management shall withhold from any State appropriation due to that employer an amount equal to the sum of all delinquent contributions and other debts due to the Retirement Systems Division and shall transmit that amount to the Retirement Systems Division.

- (4) In conjunction with the employee and employer contributions required under this section, the Board of Trustees shall direct employers to submit such information on a

monthly basis as is necessary for proper administration of the Retirement System, actuarial valuation, and reporting under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. Submission of such information by an employer to the Retirement System constitutes a certification of its accuracy.

(g) **Merger of Annuity Reserve Fund and Pension Reserve Fund into Pension Accumulation Fund.** — Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees may determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(h) Repealed by Session Laws 1965, c. 780, s. 1.

(i) **Procedure and Payment to Cease Participation.** — Any employing unit that is allowed to cease participation in the Retirement System by the General Assembly or as otherwise provided in this Chapter, through its governing body, may declare its intent to withdraw completely from the Retirement System as follows:

- (1) The employer shall notify its employees and the Board of Trustees, in writing, of its action. An employer shall automatically be considered to have requested a complete withdrawal from the Retirement System the date the employer permanently ceases to employ active members. A withdrawing employer shall be required to make a lump-sum withdrawal liability payment to the Board of Trustees as provided by this section.
- (2) Complete withdrawal by an employer shall be the first day of the month following the date the employer ceases to employ active members or the first day of the month following 60 days from the date the Board of Trustees receives the employer's written request to withdraw. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subdivision (5) of this subsection.
- (3) After complete withdrawal, all employees of the withdrawing employer shall be ineligible to accrue future benefits with the Retirement System due to employment with the withdrawing employer. The withdrawing employer shall be ineligible to elect to become a participating employer in the Retirement System, as provided in G.S. 135-5.3, for five years after its complete withdrawal date.

- (4) All active or inactive members of the employer shall be eligible for benefits accrued with the Retirement System up to the complete withdrawal date. However, no retirement allowance or return of accumulated contributions shall be paid until the member actually terminates employment and completely separates from active service with the withdrawing employer, and there is no intent or agreement, express or implied, to return to service with the withdrawing employer.
- (5) On the date of complete withdrawal, the withdrawal liability of an employer is the greater of one thousand dollars (\$1,000) or the amount determined by a. multiplied by the ratio of b. to c., as follows:
 - a. The excess of the actuarial present value of the vested accrued benefits of the Retirement System's members over the market value of its assets, both as of the date of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date based on the plan provisions and actuarial assumptions used in the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date, except the interest rate assumption shall be reduced by an amount determined by the consulting actuary to reflect the increased investment, mortality, and other actuarial risk for the exiting agency's participants.
 - b. The total present value of accrued benefits of all active members of the withdrawing employer as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
 - c. The total present value of accrued benefits of all active members of the Retirement System as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
- (6) The actuarial costs to determine the amount described in subdivision (5) of this subsection shall be paid by the withdrawing employer. An employer that does not pay the lump-sum withdrawal liability payment described in subdivision (5) of this subsection and the actuarial costs to determine this withdrawal liability within 90 days of the complete withdrawal date will continue to be a participating employer. No withdrawal liability payment shall be required if an employer exits before the end of the first year following the date of participation or if the Board of Trustees revokes entry as provided in G.S. 135-5.3(b8).
- (7) Upon the complete withdrawal of the employer, the Retirement System shall have no further legal obligation to the employer or its employees, nor shall the Retirement System

be held accountable for the continued future accrual of any retirement benefit rights to which the employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the employer's complete withdrawal from the Retirement System shall be the sole legal responsibility of the withdrawing employer, and the withdrawing employer shall indemnify and hold harmless the Retirement System, its Board of Trustees, its employees, and the State of North Carolina from any claims, losses, costs, damages, expenses, and liabilities, including, without limitation, court costs, and reasonable attorneys' fees asserted by any person or entity as a result of the employer's withdrawal from the Retirement System.

(j) **Pension Spiking Report.** — Upon receipt of a report from the Retirement System generated pursuant to G.S. 135-8(f)(2)f., containing a list of employees for whom the employer made a contribution to the North Carolina Teachers' and State Employees' Retirement System that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the employer's chief financial officer shall transmit a copy of the report to the chief executive of the employer, as well as to the governing body of the employer, including any board which exercises financial oversight of the employer, if applicable.

History.

1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5; 1965, c. 780, s. 1; 1967, c. 720, ss. 12, 13; 1969, c. 1223, s. 13; 1971, c. 117, ss. 2, 10; 1975, c. 457, s. 5; c. 879, s. 46; 1977, c. 909; 1981, c. 636, s. 1; c. 1000, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 8; 1985, c. 539, ss. 1, 2; 1991, c. 585, s. 3; c. 718, s. 1; 1993, c. 257, s. 13; 1997-430, s. 11; 2003-359, s. 10; 2006-203, s. 73; 2009-66, s. 7(a); 2010-72, s. 8(a); 2014-88, s. 1(e); 2014-101, s. 7; 2014-112, s. 2(a); 2015-164, ss. 5(a), 6(a); 2015-168, s. 3(a); 2015-241, s. 30.30; 2016-56, ss. 6(a), 7(a); 2016-82, s. 2; 2017-125, s. 2(a); 2017-128, ss. 4(b), 8(a); 2017-129, ss. 2(a), 2(b), 2(e), 2(f), 2(h), 2(j), 2(l), 2(m); 2018-52, s. 9(a).

Editor's Note.

This section, as amended by Session Laws 1993, c. 257, s. 13 does not contain a subdivision (f)(1)b.

Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2014-101, s. 8, provides, in part: "Except as otherwise provided, this act is effective when it becomes law [August 6, 2014] and applies beginning with the 2014-2015 school year."

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2017-125, s. 9, is a severability clause.

Session Laws 2017-128, s. 9, is a severability clause.

Session Laws 2017-129, s. 12, is a severability clause.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit

programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

“Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,”

Session Laws 2018-52, s. 1, provides: “This act shall be known and cited as the ‘Financial Accountability, Integrity, and Recovery Act of 2018.’”

Effect of Amendments.

Session Laws 2016-56, s. 6(a), effective January 1, 2017, in the first sentence of subdivision (b)(5), substituted “only for the purpose” for “for the sole purposes,” and substituted “to increase” for “increasing.”

Session Laws 2016-56, s. 7(a), effective June 30, 2016, in subdivision (f)(2)f, inserted “or her” and substituted “G.S. 135-4(jj) for inclusion in the Pension Accumulation Fund” for “G.S. 135-4(jj)” in the first sentence and in subdivision (f)(3), substituted “Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances” for “Trustees” in the first sentence.

Session Laws 2016-82, s. 2, effective June 30, 2016, repealed subdivision (b)(5)d. which read, “Notwithstanding subparagraph a. of this subdivision, where the employer grants an approved leave of absence for the member to be employed in a charter school or where the member’s service is interrupted by employment in a charter school, authorized under Article 14A of Chapter 115C of the General Statutes, the member

may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.”

Session Laws 2017-125, s. 2(a), effective July 20, 2017, inserted “compensation, other than a stipend resulting from participation in a full-time degree program” in the third sentence in subdivision (b)(5).

Session Laws 2017-128, ss. 4(b) and 8(a), effective July 20, 2017, added subdivision (d)(1a) and subsection (j).

Session Laws 2017-129, ss. 2(a), 2(b), 2(e), 2(f), 2(h), 2(j), 2(l), 2(m), effective June 30, 2017, substituted “of two funds, namely, the annuity savings fund and the pension accumulation fund” for “four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund” in subsection (a); rewrote subdivision (b)(1), deleting provisions related to contributions to the annuity fund prior to July 1, 1975; deleted subdivision (b)(4), relating to redepositing funds, and subsection (c), related to the annuity reserve fund; rewrote subsection (d); deleted subsection (e), relating to the pension reserve fund and (f)(2)b. relating to collection of employer contributions; and substituted “required employer” for “the normal contribution and the accrued liability” in subdivision (f)(2)e.

Session Laws 2018-52, s. 9(a), effective June 25, 2018, added the last two sentences in the first paragraph of subdivision (f)(2)f.

CASE NOTES

Funding. — Teachers’ and State Employees’ Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contributions computed as a set percentage of the employees’ salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actu-

arial valuation of liabilities of the retirement systems. *State Emples. Ass’n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

Local Unit Contribution. — Where a local unit assumes the burden of supplementing State support for the schools, the provision of subdivision (b)(3) of this section that the local unit make its contribution and the taxing authority provide the necessary funds is mandatory. *Bridges v. City of Charlotte*, 221 N.C. 472, 20 S.E.2d 825 (1942), holding no vote necessary to tax to meet deficiency in previously authorized tax.

Penalties Not Required. — Board’s

practice of waiving penalties under circumstances where employers were not at fault for failing to remit employer contributions to the Retirement System was entirely consistent with the Board's statutory discretion to adopt rules to prevent injustices under G.S. 135-6(f). Accordingly, the Treasurer and the Board were not required by G.S. 135-8(f)(3) to punish those employers whose employer contributions were not deposited in the Retirement System. *Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32, 2008 N.C. App. LEXIS 1485 (2008), review denied, ap-

peal dismissed, 363 N.C. 381, 680 S.E.2d 712 (2009).

Applied in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984).

Cited in *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968); *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643 (1982); *McCaskill v. Dep't of State Treasurer, Ret. Sys. Div.*, 204 N.C. App. 373, 695 S.E.2d 108, 2010 N.C. App. LEXIS 1062 (2010).

§ 135-9. Exemption from garnishment, attachment, etc.; employing unit to offset amount owed by member or beneficiary.

(a) Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Application for System approval of a domestic relations order dividing a person's interest under the Retirement System shall be accompanied by an order consistent with the system-designed template order provided on the System's Web site. For orders entered on or after January 1, 2015, payment to a member's former spouse pursuant to any such domestic relations order shall be limited to the lifetime of that former spouse and, upon the death of that former spouse, the former spouse's share shall revert to the member.

(b) Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payments to a member in a State-administered retirement system or the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member or beneficiary who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary.

(c) Notwithstanding any provisions to the contrary, if a member or beneficiary is employed by the State or any political subdivision of

the State, then any overpayment of benefits or erroneous payments to, or on behalf of, the member or beneficiary shall be offset against the net wages of the member or beneficiary. If a member or beneficiary owes an amount to the Retirement System, has been notified of this amount in writing, and has not entered into a payment plan acceptable to the Retirement System, then the Retirement System shall notify the member or beneficiary's employer of the amount owed. Upon receipt of this notice from the Retirement System, the employer shall offset the amount owed against not less than ten percent (10%) of the net wages of the member or beneficiary until the Retirement System notifies the employer that the amount has been paid in full. The Retirement System's notice shall be prima facie evidence that the debt is valid and, notwithstanding any other provision of law to the contrary, the employer has no obligation to verify the amount owed. The employer shall provide no more than 30 days' but not less than 14 days' written notice to the member or beneficiary prior to beginning the offset. The employer shall remit all amounts offset under this subsection to the Retirement System in intervals corresponding with its regular pay periods. If an employer fails to adhere to the provisions of this section, then the Retirement System shall, after notice to the employer of its failure to cooperate, be entitled to seek recovery of any amounts due directly from the employer.

(d) Nothing in this section shall be construed to limit the Retirement System's ability to pursue alternative judicial remedies against a member or a beneficiary, including the pursuit of a judgment and lien against real property.

History.

1941, c. 25, s. 9; 1985, c. 402, s. 1; c. 649, s. 5; 1987, c. 738, s. 29(k); 1989, c. 665, s. 1; c. 792, s. 2.5; 2013-405, s. 4(a); 2014-112, s. 5(a); 2017-135, s. 9(a); 2018-52, s. 2(b).

Editor's Note.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from

compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 2(d), made subsections (c) and (d) of this section, as added by Session Laws 2018-52, s. 2(b), effective June 25, 2018, and applicable to all amounts owed by a member or beneficiary to the applicable retirement system for which notice is sent on and after that date, regardless of the date the overpayment of benefits or the erroneous payment was made.

Effect of Amendments.

Session Laws 2017-135, s. 9(a), effective July 20, 2017, in the fourth sen-

tence, inserted “or erroneous payments”, “or claims”, “or unentitled to those amounts,” and made a stylistic change.

Session Laws 2018-52, s. 2(b), effective June 25, 2018, added “employing unit to offset amount owed by member or beneficiary” in the section heading; inserted subsection designations (a) and (b); and

added subsections (c) and (d). For effective date and applicability, see editor’s note.

Legal Periodicals.

For comment on this enactment, see 19 N.C.L. Rev. 519 (1941).

CASE NOTES

The language of this section is clear and unequivocal. A person’s rights to state employee retirement benefits are not assignable. *Reynolds v. North Carolina State Employees Credit Union*, 31 Bankr. 296 (Bankr. E.D.N.C. 1983).

This section and G.S. 50-20(b)(3) do not require entry of a Qualified Domestic Relations Order to assign a retirement plan; therefore, the plain language of a property settlement agreement incorporated into a consent order served to secure ex-wife’s twenty percent interest in her ex-husband’s state university retirement plan. *Patterson v. Patterson*, 137 N.C. App. 653, 529 S.E.2d 484, 2000 N.C. App. LEXIS 505 (2000).

G.S. 1C-1601(c) does not preclude the use of this section by a bankruptcy debtor to claim an exemption in state employee retirement benefits. *In re Hare*, 32 Bankr. 16 (Bankr. E.D.N.C. 1983).

The designation of “retirement” as “other collateral” on loan document was clearly misleading, since the “retirement” account of a state employee is unassignable, and therefore not avail-

able as a source of security to a creditor. *Petersen v. State Employees Credit Union (In re Kittrell)*, 115 Bankr. 873 (Bankr. M.D.N.C. 1990).

Credit union deceived borrower by purporting to have enforceable security interest in retirement accounts. Practices and actions of credit union in deceiving borrower into thinking that credit union had a valid, enforceable security interest in his retirement account by inserting the word “retirement” in the “other collateral” block on front of loan documents and having debtor sign documents at the time of making his first loan, which authorized the sending of employee’s retirement checks to the credit union and depositing therein and the filing away of these forms and applying them to all loans made thereafter violated public policy of protecting the retirement accounts of teachers and other state employees. *Petersen v. State Employees Credit Union (In re Kittrell)*, 115 Bankr. 873 (Bankr. M.D.N.C. 1990).

Cited in *Wells v. Consolidated Judicial Retirement Sys.*, 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-10. Protection against fraud.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a Class 1 misdemeanor. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

History.

1941, c. 25, s. 10; 1993, c. 539, s. 973;
1994, Ex. Sess., c. 24, s. 14(c).

CASE NOTES

Legislative Intent. — This section shows the intent of the General Assembly to allow the courts to require that compensation paid for underpayment of a pension compensation be paid at the actuarial value. *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

Calculation of Additional Benefit. — The re-calculation of additional bene-

fits owed to retirees did not mandate the use of a mortality factor, where the right to payments was not forfeited upon the death of a retiree but was passed to the retiree's survivors. *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 132 N.C. App. 137, 510 S.E.2d 675, 1999 N.C. App. LEXIS 89, cert. denied, 350 N.C. 379, 536 S.E.2d 620 (1999).

§ 135-10.1. Failure to respond.

If a member fails to respond within 120 days after preliminary option figures and the Form 6-E or Form 7-E are transmitted to the member, or if a member fails to respond within 120 days after the effective date of retirement, whichever is later, the Form 6 or Form 7 shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved. The Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 120-day limitation provided for in this section when a member has suffered incapacitation such that a reasonable person would not have expected the member to be able to complete the required paperwork within the regular deadline, or when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline.

History.

2005-91, s. 4; 2009-66, s. 4(b); 2010-72, s. 6(a); 2016-108, s. 3(a).

Editor's Note.

Session Laws 2016-108, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-108, s. 3(a), effective July 22, 2016, in the first sentence, substituted "transmitted to the member" for "mailed."

§ 135-11. Application of other pension laws.

Subject to the provisions of Article 2, Chapter 135 of the General Statutes, Volume 17, as amended, no other provisions of law in any

other statute which provides wholly or partly at the expense of the State of North Carolina for pensions or retirement benefits for teachers or State employees of the said State, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this Chapter, their widows or other dependents.

History.

1941, c. 25, s. 11; 1955, c. 1155, s. 6.

§ 135-12. Obligation of maintaining reserves and paying benefits.

The maintenance of annuity reserves and pension reserves as provided for and regular interest creditable to the various funds as provided in G.S. 135-8, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this Chapter, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this Chapter shall be used for the payment of the said obligations of the said fund.

History.

1941, c. 25, s. 12.

§ 135-13. Certain laws not repealed; suspension of payments and compulsory retirement.

Nothing in this Chapter shall be construed to repeal or invalidate any of the provisions of Chapter 483 of the Public-Local Laws of 1919, or Chapter 385 of the Public-Local Laws of 1921, as amended, relating to pensions for school teachers in New Hanover County. No payment on account of any benefit granted under the provisions of G.S. 135-5, subsections (a) and (d) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during such period.

History.

1941, c. 25, s. 13.

§ 135-14. Pensions of certain former teachers and State employees.

On and after July 1, 1983, special pensions and allowances of certain former teachers and State employees shall be paid out of the Pension Accumulation Fund of the Retirement System, as follows:

- (1) Any person who was a teacher or employee, as defined in G.S. 135-1(10) and (25), for 20 or more years, whose separation from service was prior to April 1, 1956, was not

due to any dishonorable cause, and who had attained age 65 prior to July 1, 1960, shall upon application be paid an allowance of one hundred seventy-three dollars and twenty-five cents (\$173.25) per month.

- (2) Any beneficiary who did not qualify for Social Security benefits and had 20 or more years of creditable service and qualified for a minimum eighty-five dollars (\$85.00) per month under the provisions of Chapter 1140 of the 1965 Session Laws, shall be paid the allowance in effect on June 30, 1983.
- (3) Any beneficiary who did not qualify for Social Security benefits and who had 15 years but less than 20 years of creditable service and qualified for a benefit of four dollars (\$4.00) per month for each year of creditable service under the provisions of Chapter 1199 of the 1965 Session Laws shall be paid the allowance in effect on June 30, 1983.
- (4) All the allowances in subsections (1) through (3) of this section may be adjusted by any cost-of-living increases in retirement allowances provided by the General Assembly or by the Board of Trustees.

History.

1943, c. 785; 1953, c. 1132, s. 1; 1955, c. 1199, ss. 1, 2; 1957, cc. 852, 1408, 1412; 1959, c. 538, s. 1; 1979, c. 1057, ss. 1, 2; 1983, c. 761, s. 223.

§ 135-14.1. Certain school superintendents and assistant superintendents.

Any person who has been a superintendent or assistant superintendent in the public schools of North Carolina for a total of 20 years or more and who was not a superintendent or assistant superintendent in the public schools of this State at the time of the enactment of the Teachers' and State Employees' Retirement System Act, the same being this Chapter, and whose cessation of employment as a superintendent or assistant superintendent was not due to any dishonorable cause shall be entitled to receive benefits under said Retirement Act for such services in the same manner and to the same extent as such 20 years of prior service would have entitled such superintendent or assistant superintendent had he or she been a superintendent or assistant superintendent in the public schools at the time said Retirement Act became effective, and had chosen to become a member of the Retirement System, provided that such former superintendent or assistant superintendent has returned to State service and been employed for at least five years and has reached the age of 65 before July 1, 1957; provided, further, the monthly benefit to such former superintendent or assistant superintendent shall be equal to the minimum provided with respect to teachers under the provisions of G.S. 135-14, as amended.

History.

1957, c. 1431.

§ 135-15. Repealed by Session Laws 1949, c. 1056, s. 9.

**§ 135-16. Employees transferred to North Carolina State
Employment Service by act of Congress.**

Notwithstanding any provision contained in this Chapter, any employee of the United States Employment Service who was transferred to and became employed by the State of North Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower Commission or the United States Employment Service between January 1, 1942, and November 15, 1946, shall be deemed to have been engaged in membership service as defined by this Chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1, 1948, pays to the Board of Trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would have made during such period if he had been a member of the Retirement System with earnable compensation based on the salary received for such period and as limited by this Chapter: Provided, further that funds are made available by the United States Employment Service, or other federal agency, to the Division of Employment Security for the payment of and the Division of Employment Security pays to the Board of Trustees for the benefit of the proper fund a sum equal to the employer's contributions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The Board of Trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section.

History.1947, c. 464, s. 1; c. 598, s. 1; 2011-401,
s. 3.17.

§ 135-16.1. Blind or visually impaired employees.

(a) On July 1, 1971, all blind or visually impaired employees employed by the Department of Health and Human Services shall be enrolled as members of the Teachers' and State Employees' Retirement System. All such employees shall be given full credit for all service theretofore as employees of the Department of Health and Human Services. All retired employees drawing or receiving benefits from and under the private retirement plan purportedly created on December 6, 1966, by the Bureau of Employment for the Blind Division pursuant to a trust agreement purportedly entered

into with a private banking institution as trustee shall continue to be paid by the Teachers' and State Employees' Retirement System benefits in the same amount which they purportedly were entitled to under the private retirement plan and trust agreement, except that such retired persons shall be eligible for such annual cost-of-living increases as may be provided for retirement members of the Teachers' and State Employees' Retirement System under the provisions of this Article.

(b) Upon the enrollment of the employees in the Teachers' and State Employees' Retirement System, the purported private retirement plan and trust agreement hereinabove referred to shall be dissolved and terminated.

(c) Notwithstanding the foregoing, blind persons licensed by the State and operating vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, hereinafter referred to as licensed vendors, so licensed on and after October 1, 1983, shall not be members of the Retirement System. All licensed vendors in service or who are members of the Retirement System before October 1, 1983, shall make an irrevocable election to do one of the following:

- (1) Continue contributing membership service as if an employee under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance;
- (2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f), and in any event with regular interest regardless of membership service; or
- (3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or 135-5(a).

History.

1971, c. 1025, s. 3; 1973, c. 476, s. 143;

1983, c. 867, s. 3; 1997-443, s. 11A.118(a);
2000-121, s. 28.

§ 135-17. Facility of payment.

In the event of the death of a member or beneficiary not survived by a person designated to receive any return of accumulated contributions or balance thereof, or in the event that the Board of Trustees shall find that a beneficiary is unable to care for his affairs because of illness or accident, any benefit payments due may, unless claim shall have been made therefor by a duly appointed guardian, committee or other legal representative, be paid to the spouse, a child, a parent or other blood relative, or to any person deemed by the Board of Trustees to have incurred expense for such beneficiary or deceased member, and any such payments so made shall be a

complete discharge of the liabilities of this Retirement System therefor.

History.

1949, c. 1056, s. 6.

§ 135-18. Repealed by Session Laws 1969, c. 1223, s. 14.

§ 135-18.1. Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.

(a) Any person who is a member of the Teachers' and State Employees' Retirement System of North Carolina on July 1, 1951, and who was previously a member of the North Carolina Governmental Employees' Retirement System, hereafter in this section referred to as the local system, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system, notwithstanding that his membership in the local system may have been terminated prior to July 1, 1951: Provided, such member shall deposit in this Retirement System prior to January 1, 1952, the full amount of any accumulated contributions standing to his credit in, or previously withdrawn from, the local system and shall apply to the Board of Trustees of this Retirement System for a transfer of credit from the local system. Any person who becomes a member of this Retirement System on or after July 1, 1951, shall be entitled prior to his retirement to transfer to this Retirement System his credits for membership and prior service in the local system: Provided, the actual transfer of employment is made while his account in the local system is active and such person shall request the local system to transfer his accumulated contributions, interest, and service credits to this Retirement System; provided further, with respect to any person who becomes a member of this Retirement System after July 1, 1969, the local system agrees to transfer to this Retirement System the amount of reserve held in the local system as a result of previous contributions of the employer on behalf of the transferring employee.

(b) The accumulated contributions withdrawn from the local system and deposited in this Retirement System shall be credited to such member's account in the annuity savings fund of this Retirement System and shall be deemed, for the purpose of computing any benefits subsequently payable from the annuity savings fund, to be regular contributions made on the date of such deposit.

(c) Upon the deposit in this Retirement System of the accumulated contributions previously withdrawn from the local system the Board of Trustees of this Retirement System shall request the Board of Trustees of the local system to certify to the period of membership service credit and the regular accumulated contributions attribut-

able thereto and to the period of prior service credit, if any, and the contributions with interest allowable as a basis for prior service benefits in the local system, as of the date of termination of membership in the local system. Credit shall be allowed in this System for the service so certified in determining the member's credited service and, upon his retirement he shall be entitled, in addition to the regular benefits allowable on account of his participation in this Retirement System, to the pension which shall be the actuarial equivalent at age 65 or at retirement, if prior thereto, of the amount of the credit with interest thereon representing contributions attributable to his service credits in the local system.

(d) The Board of Trustees of the Retirement System shall effect such rules as it may deem necessary to prevent any duplication of service, interest or other credits which might otherwise occur.

History.

1951, c. 797; 1961, c. 516, s. 7; 1965, c.

780, s. 1; 1969, c. 1223, s. 15; 1971, c. 117, ss. 16, 17; 1973, c. 241, s. 11.

CASE NOTES

Transfer of Local Creditable Service to State System. — In determining the date of eligibility of state employee petitioner to purchase retirement credits under Teachers' and State Employees' Retirement System for time

spent in the military service, petitioner could not include service in the Local Governmental Employees' Retirement System. *Worrell v. North Carolina Dep't of State Treas.*, 333 N.C. 528, 427 S.E.2d 871 (1993).

§ 135-18.2. Repealed by Session Laws 1959, c. 538, s. 3.

§ 135-18.3. Conditions under which amendments void.

If for any reason the federal-state agreement provided in Article 2 of Chapter 135 of the General Statutes, Volume 17 [now Volume 15], as amended, is not entered upon, or the referendum authorized therein with respect to positions covered by the Teachers' and State Employees' Retirement System of North Carolina is not held, or the conditions specified in section 218 (d)(3) of this Social Security Act with respect to such referendum if held are not met, this act shall be null and void.

History.

1955, c. 1155, s. 7.

refer to Session Laws 1955, c. 1155, which amended the following: G.S. 135-1, 135-3, 135-5, 135-8 and 135-11.

Editor's Note.

The words "this act" in this section

§ 135-18.4. Reservation of power to change.

The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes, in the benefit and other provisions of the Social Security Act made after

January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the Teachers' and State Employees' Retirement System of North Carolina.

History.

1955, c. 1155, s. 8.

CASE NOTES

Cited in *Faulkenbury v. Teachers' & State Emps. Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997).

§ 135-18.5. Provision for emergency expenses of integration of System.

For the purpose of meeting the expenses involved in administering the provisions of this Article to June 30, 1959, and in holding the referendum described herein with respect to positions covered under the Teachers' and State Employees' Retirement System of North Carolina as established by Article 1 of Chapter 135 of the General Statutes, Volume 17, as amended, any funds not otherwise provided for such purpose by action of the General Assembly during the session of 1955 or 1957 may be borrowed from the pension accumulation fund of such System; provided, however, that the amount so borrowed and the expenditure thereof shall be subject to the approval of the Board of Trustees of such System and the assistant director of the budget, and that such amounts so borrowed shall be repaid as soon as practicable.

History.

1955, c. 1155, s. 9; 1957, c. 855, s. 9.

§ 135-18.6. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested.

History.

1987, c. 177, s. 1(a), (b).

Editor's Note.

Session Laws 1987, c. 177, s. 1(c), made this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of

determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended. A favorable letter was received prior to the enactment of c. 177.

§ 135-18.7. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars (\$150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any

reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated

beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the exclusion of any after-tax portion from such a rollover distribution in the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code.

History. 1995, c. 361, s. 1; 2002-71, s. 6; 2009-66, 1989, c. 276, s. 3; 1993, c. 531, s. 6; s. 1(a); 2012-130, s. 4(c).

§ 135-18.8. Deduction for payments allowed.

(a) Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(b) Any beneficiary may also authorize, in writing, the monthly deduction from the beneficiary's retirement benefits of a designated lump sum to be paid to the State Health Plan for any dependent whom the beneficiary wishes to cover under the State Health Plan. In the event that the beneficiary's own State Health Plan coverage is contributory, in whole or in part, the beneficiary may also authorize a designated lump sum to be paid to the State Health Plan on behalf of the beneficiary. In addition, a beneficiary may similarly authorize the deduction for supplemental voluntary insurance benefits, provided that the deduction is authorized by the Department of State Treasurer and is payable to a company with which the Department of State Treasurer has or had an exclusive contractual relationship. Any such authorization shall remain in effect until revoked by the beneficiary.

History.

1998-212, s. 9.24(a); 1999-237, s. 23; 2002-126, s. 6.4(c); 2012-1, s. 2; 2012-178, s. 4(c); 2014-115, s. 62(a).

pealed Session Laws 2012-1, effective August 11, 2014. Session Laws 2012-1, s. 2, effective July 1, 2011, deleted "or public school employees" following "of the State" in the first sentence.

Editor's Note.

Session Laws 2014-115, s. 62(a), re-

§ 135-18.9. Transfer of members from the Legislative Retirement System or the Consolidated Judicial Retirement System.

(a) The accumulated contributions, creditable service, and reserves, if any, of a member of the Legislative Retirement System, as provided for in Article 1A of G.S. 120, or the Consolidated Judicial Retirement System, as provided for in Article 4 of G.S. 135, who later becomes a member of the Teachers' and State Employees' Retirement System for a period of five or more years may, upon application of the member, be transferred from the Legislative Retirement System or the Consolidated Judicial Retirement System. The accumulated contributions, creditable service, and reserves of any member whose service as a member of the Legislative Retirement System or the Consolidated Judicial Retirement System is terminated other than by retirement or death and who later becomes a member of the Teachers' and State Employees' Retirement System may, upon application of the member, be transferred from the Legislative Retirement System or the Consolidated Judicial Retirement System to the Teachers' and State Employees' Retirement System. In order to effect the transfer of a member's creditable service from the Legislative Retirement System or the Consolidated Judicial Retirement System to the Teachers' and State Employees' Retirement System, the accumulated contributions of each member credited in the annuity savings fund in the Legislative Retirement System or the Consolidated Judicial Retirement System

shall be transferred and credited to the annuity savings fund in the Teachers' and State Employees' Retirement System.

(b) The Board of Trustees shall effect such rules as it may deem necessary to administer subsection (a) of this section and to prevent any duplication of service credits or benefits that might otherwise occur.

History.

2003-284, s. 30.18(c).

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

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

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

(b) The federal offenses covered by this section are as follows:

- (1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Interference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C. § 1962 (Prohibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).

(2) Reserved for future codification purposes.

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

- (1) A felony violation of any of the following provisions of the General Statutes:
 - a. Article 29 of Chapter 14, Bribery.
 - b. Article 30 of Chapter 14, Obstructing Justice.
 - c. Article 30A of Chapter 14, Secret Listening.
 - d. G.S. 14-228, Buying and selling offices.
 - e. Part 1 of Article 14 of Chapter 120, Code of Legislative Ethics.
 - f. Part 1 of Article 21 of Chapter 163A, Absentee Ballot.
 - g. Article 22 of Chapter 163A, Regulation of Election Campaigns — Corrupt Practices and Other Offenses Against the Elective Franchise.
 - h. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
 - i. G.S. 14-91, Embezzlement of State property by public officers and employees.
 - j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
 - k. G.S. 14-99, Embezzlement of taxes by officers.
 - l. G.S. Subsection (a) of G.S. 14-454.1, Accessing government computers.
 - m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources.
 - n. G.S. 14-456.1, Denial of government computer services to an authorized user.
- (2) Perjury or false information as follows:
 - a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
 - b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.
 - c. Perjury under Article 23 of Chapter 163A of the General Statutes.

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

History.

2007-179, s. 3(a); 2017-6, s. 3; 2018-84, s. 2(a).

Recodification; Technical and Conforming Changes.

Session Laws 2017-6, s. 3, provides, in part: "The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the

General Statutes, as amended by this act, into a new Chapter 163A of the General Statutes to be entitled 'Elections and Ethics Enforcement Act,' as enacted by Section 4 of this act. The Revisor may also recodify into the new Chapter 163A of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate." The Revisor

was further authorized to make additional technical and conforming changes to catchlines, internal citations, and other references throughout the General Statutes to effectuate this recodification. Pursuant to this authority, the Revisor of Statutes substituted “Part 1 of Article 21 or Article 22 of Chapter 163A” for “Article 20 or 22 of Chapter 163” in subdivision (c)(1), and substituted “Article 23 of Chapter 163A” for “Article 22A of Chapter 163” in sub-subdivision (c)(2)c.

Editor’s Note.

Session Laws 2007-179, s. 5, made this section effective July 1, 2007, and applicable to offenses committed on or after that date.

Session Laws 2007-179, s. 3(a), enacted this section with a subdivision (b)(1), but no subdivision (b)(2). Subsection (b) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2018-84, s. 2(e), made the amendment to this section by Session Laws 2018-84, s. 2(a), effective June 25, 2018, and applicable to offenses committed on or after that date.

Effect of Amendments.

Session Laws 2018-84, s. 2(a), effective

June 25, 2018, rewrote subdivision (c)(1), which read “(1) A felony violation of any of the following provisions of the General Statutes: a. Article 29 of Chapter 14, Bribery. b. Article 30 of Chapter 14, Obstructing Justice. c. Article 30A of Chapter 14, Secret Listening. d. G.S. 14-228, Buying and selling offices. e. Part 1 of Article 14 of Chapter 120, Code of Legislative Ethics. f. Part 1 of Article 21 of Chapter 163A, Absentee Ballot. g. Article 22 of Chapter 163A, Regulation of Election Campaigns — Corrupt Practices and Other Offenses Against the Elective Franchise. h. G.S. 14-90, Embezzlement of property received by virtue of office or employment. i. G.S. 14-91, Embezzlement of State property by public officers and employees. j. G.S. 14-92, Embezzlement of funds by public officers and trustees. k. G.S. 14-99, Embezzlement of taxes by officers. l. G.S. Subsection (a) of G.S. 14-454.1, Accessing government computers. m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources. n. G.S. 14-456.1, Denial of government computer services to an authorized user.” For effective date and applicability, see editor’s note.

§ 135-18.10A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

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

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member’s conviction is directly related to the member’s office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member’s conduct is directly related to the member’s office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal

of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited.

History.

2012-193, s. 1.

Cross References.

As to forfeiture of retirement benefits in the Legislative Retirement System for certain felonies related to employment or holding office, see G.S. 120-4.33A. As to forfeiture of retirement benefits for certain felonies related to public employment by or holding office in counties, cities, and towns, see G.S. 128-38.4A. As to forfeiture of retirement benefits under the Judicial Retirement Act for certain felonies related to employment or holding office, see G.S. 135-75.1A.

Editor's Note.

Session Laws 2012-193, s. 18, made

this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

§ 135-18.10B. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 135-18.10 or G.S. 135-18.10A is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits.

History.

2018-52, s. 6(a).

Editor's Note.

Session Laws 2018-52, s. 11 made this section effective June 25, 2018.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit pro-

grams, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

§ 135-18.11. Improper receipt of decedent's retirement allowance.

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

History.

2011-232, s. 10(a); 2012-185, s. 3(a); 2013-288, s. 9(b).

in part, that the amendments to this section by Session Laws 2012-185, s. 3(a), are applicable to acts committed on or after December 1, 2012.

Editor's Note.

Session Laws 2011-232, s. 11, made this section effective December 1, 2011, and applicable to acts committed on or after that date.

Session Laws 2012-185, s. 5, provides,

Session Laws 2013-288, s. 12, made the amendment to this section by Session Laws 2013-288, s. 9(b), applicable to acts committed on or after December 1, 2013.

ARTICLE 2.

COVERAGE OF GOVERNMENTAL EMPLOYEES UNDER TITLE II OF THE SOCIAL SECURITY ACT.

§ 135-19. Declaration of policy.

In order to extend to employees of the State and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the Old Age and Survivors Insurance System embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitation of this Article, that such steps be taken as to provide such protection to employees of the State and local governments on as broad a basis as is permitted under applicable federal law.

It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this Article is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History.

1951, c. 562, s. 3; 1955, c. 1154, s. 1.

Cross References.

As to source of payment of employer

salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for public employees, see G.S. 143-34.1.

§ 135-20. Definitions.

For the purposes of this Article:

- (1) The term “employee” includes an officer of the State, or one of its political subdivisions or instrumentalities.
- (2) The term “employment” means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, except
 - a. Service which in the absence of an agreement entered into under this Article would constitute “employment” as defined in the Social Security Act; or
 - b. Service which under the Social Security Act may not be included in an agreement between the State and the Secretary of Health, Education and Welfare entered into under this Article.

Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with section 218(d)(3) of that act shall be included in the term “employment” if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to G.S. 135-29.

- (3) The term “Federal Insurance Contributions Act” means Subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 and Subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term “employee tax” means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954.
- (4) The term “political subdivision” includes an instrumentality of a state, of one or more of its political subdivisions, or of a state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.
- (5) The term “Secretary of Health, Education and Welfare” includes any individual to whom the Secretary of Health, Education and Welfare has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such Administrator has delegated any such function.

- (6) The term "Social Security Act" means the act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended.
- (7) The term "State agency" means the director of the Teachers' and State Employees' Retirement System.
- (8) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

History.

1951, c. 562, s. 3; 1955, c. 1154, ss. 2-4, 12; 1959, c. 1020; 1965, c. 780, s. 1; 1973, c. 108, s. 84.

Local Modification.

Village of Pinehurst: 1977, c. 245.

State Government Reorganization.

The Public Employees' Social Security Agency was transferred to the Department of State Treasurer by G.S. 143A-36, enacted by Session Laws 1971, c. 864.

OPINIONS OF ATTORNEY GENERAL

The Piedmont Triad Council of Governments is a separate political entity and its employees are eligible for social security coverage through the State agency and are eligible for participation in the Local Governmental Em-

ployees' Retirement System. Opinion of Attorney General to Mr. J.E. Miller, Director, Local Governmental Employees' Retirement System, 40 N.C.A.G. 620 (1969).

§ 135-21. Federal-State agreement; interstate instrumentalities.

(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Secretary of Health, Education and Welfare, consistent with the terms and provisions of this Article, for the purpose of extending the benefits of the Federal Old Age and Survivors Insurance System to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in G.S. 135-20. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State agency and Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that —

- (1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and sur-

vivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

- (2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in G.S. 135-20), equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.
 - (3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but shall in no event cover any such services performed prior to January 1, 1951.
 - (4) All services which constitute employment as defined in G.S. 135-20 and are performed in the employ of the State by employees of the State, shall be covered by the agreement.
 - (5) All services which constitute employment as defined in G.S. 135-20, are performed in the employ of a political subdivision of the State, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under G.S. 135-23, shall be covered by the agreement.
 - (6) As modified, the agreement shall include all services described in either subdivision (4) or subdivision (5) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and
 - (7) As modified, the agreement shall include all services described in either subdivision (4) or subdivision (5) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education and Welfare pursuant to G.S. 135-29.
- (b) Any instrumentality jointly created by this State and any other state or states is hereby authorized, upon the granting of like authority by such other state or states,
- (1) To enter into an agreement with the Secretary of Health, Education and Welfare whereby the benefits of the Federal Old Age and Survivors Insurance System shall be extended to employees of such instrumentality,
 - (2) To require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under G.S.

135-22(a) if they were covered by an agreement made pursuant to subsection (a) of this section, and

- (3) To make payments to the Secretary of the Treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements.

Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (a) and other provisions of this Article.

(c) Pursuant to section 218(d)(6) of the Social Security Act, the Teachers' and State Employees' Retirement System of North Carolina as established by Article 1 of Chapter 135 of the General Statutes, Volume 17, as amended and as the same may be hereafter amended, shall for the purposes of this Article, be deemed to constitute a single retirement system; and, the North Carolina Local Governmental Employees' Retirement System as established by Article 3 of Chapter 128 of the General Statutes, Volume 16, as amended and as the same may be hereafter amended, shall be deemed to constitute a single retirement system with respect to each political subdivision having positions covered thereby.

History.

1951, c. 562, s. 3; 1953, c. 52; 1955, c. 1154, ss. 5-7, 12.

§ 135-22. Contributions by State employees.

(a) Every employee of the State whose services are covered by an agreement entered into under G.S. 135-21 shall be required to pay for the period of such coverage, into the contribution fund established by G.S. 135-24, contributions, with respect to wages (as defined in G.S. 135-20), equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this Article.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agency shall prescribe.

History.

1951, c. 562, s. 3; 1955, c. 1154, s. 8.

§ 135-23. Plans for coverage of employees of political subdivisions.

(a) Each political subdivision of the State is hereby authorized to submit for approval by the State agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State agency if it finds that such plan or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agency, except that no such plan shall be approved unless —

- (1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under G.S. 135-21.
- (2) It provides that all services which constitute employment as defined in G.S. 135-20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable.
- (3) It specifies the source or sources from which the funds necessary to make the payments required by subdivision (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.
- (4) It provides for such methods of administration of the plan by the political subdivision as are found by the State agency to be necessary for the proper and efficient administration of the plan.
- (5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agency may from time to time require, and comply with such provisions as the State agency or the Secretary of Health, Education and Welfare may from time to time find necessary to assure the correctness and verification of such reports.
- (6) It authorizes the State agency to terminate the plan in its entirety, in the discretion of the State agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State agency and may be consistent with the provisions of the Social Security Act.

(b) The State agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall

not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in G.S. 135-20), at such time or times as the State agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State agency under G.S. 135-21.

(2) Each political subdivision required to make payments under subdivision (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this Article, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in G.S. 135-20), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under subdivision (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under subdivision (1) of subsection (c), may, with interest at the rate of six per centum (6%) per annum, be recovered by action in the Superior Court of Wake County against the political subdivision liable therefor or may, at the request of the State agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State.

History.

1951, c. 562, s. 3; 1955, c. 1154, ss. 9, 10, 12. c. 408; city of Raleigh (as to subsection (c)(2)): 1957, c. 4.

Local Modification.

Rowan (as to subdivision (c)(2)): 1957,

§ 135-24. Contribution fund.

(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund:

- (1) All contributions, interest, and penalties collected under G.S. 135-22 and 135-23;
- (2) All moneys appropriated thereto under this Article;

- (3) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;
- (4) Interest earned upon any moneys in the fund; and
- (5) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source.

All moneys in the fund shall be mingled and undivided. Subject to the provisions of this Article, the State agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this Article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this Article. Withdrawals from such fund shall be made for, and solely for

- (1) Payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under G.S. 135-21;
- (2) Payment of refunds provided for in G.S. 135-22(c); and
- (3) Refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the State agency in accordance with any agreement entered into under G.S. 135-21 and the Social Security Act.

(d) The Treasurer of the State shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this Article and the directions of the State agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State agency may prescribe pursuant thereto.

- (e)(1) There are hereby authorized to be appropriated biennially to the contribution fund, in addition to the contributions collected and paid into the contribution fund under G.S. 135-22 and 135-23, to be available for the purposes of G.S. 135-24(b) and (c) until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under G.S. 135-21.
- (2) The State agency shall submit to each regular session of the State legislature, at least 90 days in advance of the beginning of such session, an estimate of the amounts authorized

to be appropriated to the contribution fund by subdivision (1) of this subsection for the next appropriation period.

(f) The State agency shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this Article. Such charge or assessment shall be determined by the State agency and shall be apportioned among the various political subdivisions of government in a ratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this Article. In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this Article, or in case such charge or assessment remains unpaid for a period of 30 days, the State agency may maintain a suit in the Superior Court of Wake County for the recovery of such charge or assessment. The Superior Court of Wake County is hereby vested with jurisdiction over all such suits or actions. Only such amount shall be assessed against such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this Article by the State agency, including compensation of the State agency for the agency's services. The funds accumulated and derived from such assessments and charges shall be deposited by the State agency in some safe and reliable depository chosen by the State agency, and the State agency shall issue such checks or vouchers as may be necessary to defray the above-mentioned expenses of administration with the right of the representative of any political subdivision to inspect the books and records and inquire into the amounts necessary for such administration.

History.

1951, c. 562, s. 3; 1963, c. 687, s. 6.

§ 135-25. Rules and regulations.

The State agency shall make and publish such rules and regulations, not inconsistent with the provisions of this Article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this Article.

History.

1951, c. 562, s. 3.

§ 135-26. Studies and reports.

The State agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this Article and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this Article during the preceding biennium, including such recommendations for amendments to this Article as it considers proper.

History.

1951, c. 562, s. 3.

§ 135-27. Transfers from State to certain association service.

(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position prior to July 1, 1983, with the North Carolina Education Association, the North Carolina State Employees' Association, North Carolina State Firefighters' Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union, alumni associations of state-supported universities and colleges, local professional associations of teachers and State employees as defined by the Board of Trustees, and North Carolina State School Boards Association may elect to leave his total accumulated contributions in this Retirement System during the period he is in such association employment, by filing with the Board of Trustees at the time of such termination the form provided by it for that purpose.

(b) Any member who files such an election shall remain a member of the Retirement System during the time he is in such association employment and does not withdraw his contributions. Such a member shall be entitled to all the rights and benefits of the Retirement System as though remaining in State service on the basis of the funds accumulated for his credit at the time of such transfer plus any additional accruals on account of future contributions made as hereinafter provided. Such former State employee may restore any such account and pay into the annuity savings fund before July 1, 1960, such amounts as would have been paid after transfer to such service, provided that the association makes contributions to the Retirement System on behalf of such former members in accordance with subsection (c) of this section.

(c) Under such rules as the Board of Trustees shall adopt, the association to which the member has been transferred may agree to contribute to the Retirement System on behalf of such member such current service contributions as would have been made by his employer had he remained in State service with actual compensa-

tion equal to the remuneration received from such association; provided the member continues to contribute to the Retirement System. Any period of such association employment on account of which contributions are made by both the association and the member as herein provided shall be credited as membership service under the Retirement System.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause the employees of such association or organization so employed prior to July 1, 1983, to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc.

(e) Notwithstanding the foregoing, employees of the State Employees' Credit Union who are in service and members of the Retirement System on June 30, 1983, shall, on or before October 1, 1983, make an irrevocable election to do one of the following:

- (1) Continue contributing membership service under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance; or
- (2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f) and in any event with regular interest regardless of membership service; or
- (3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or G.S. 135-5(a).

(f) Notwithstanding the foregoing, employees of the State Employees Association of North Carolina, the employees of the North

Carolina Association of Educators, and the employees of the North Carolina School Boards Association who are in service and members of the Retirement System on June 30, 1985, shall, on or before October 1, 1985, make an irrevocable election to exercise one of the three options provided in G.S. 135-27(e).

History.

1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5; 1967, c. 720, s. 14; 1969, cc. 540, 847, 1227; 1983, c. 412, ss. 4-6; c. 782; 1985, c. 757, s. 200; 2008-194, s. 6(a); 2012-120, s. 1(b); 2016-51, s. 6.

Editor's Note.

Session Laws 2016-51, s. 6, provides: "Chapter 251 of the Private Laws of 1889 is hereby amended by replacing the words 'North Carolina State Firemen's Association' with the words 'North Carolina State Firefighters' Association.'"

"The entity formerly known as the North Carolina State Firemen's Association, and now known as the North Carolina State Firefighters' Association, is hereby authorized to amend its corporate documents to conform them to the association's new name by an appropriate filing with the Secretary of State.

The Revisor of Statutes is hereby au-

thorized to replace any occurrences in the General Statutes of the words 'North Carolina State Firemen's Association,' 'North Carolina Firemen's Association,' 'State Firemen's Association,' or any reasonable derivative thereof, with the words 'North Carolina State Firefighters' Association,' including the following sections of the General Statutes: G.S. 58-2-121, 58-78-1, 58-80-5, 58-80-25, 58-80-60, 58-84-5, 58-84-25, 58-84-33, 58-84-35, 58-84-40, 58-84-41, 58-84-46, 58-84-50, 58-84-52, 58-85-1, 58-85-10, 58-85-20, 58-85-25, 58-85-30, 58-85-35, 58-86-25, 58-87-10, 135-27, 143-136, 143B-1401, 166A-26, and 166A-69."

Effect of Amendments.

Session Laws 2016-51, s. 6, effective July 1, 2016, substituted "North Carolina State Firefighters' Association" for "North Carolina State Firemen's Association" in subsection (a).

§ 135-28. Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.

(a) Any member whose services as a teacher or State employee are terminated for any reason other than retirement or death, who, while his account remains active, becomes employed by an employer participating in the North Carolina Local Governmental Employees' Retirement System or an employer which brings its employees into participation in said System while his account is active, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer, or his account remains active in the local system. This subsection shall be effective retroactively as well as prospectively.

(b) Any such member shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such transfer while he is a member of the local system and does not withdraw his contributions hereunder and in addition, he shall be granted membership service credits under this Retirement System on account of the period of his membership in the local system for the purpose of increasing his years of creditable service hereunder in order to meet any service requirements of any retirement benefit under this Retirement System and, if he is a member in

service under the local system, he shall be deemed to be a member in service under this Retirement System if so required by such benefit: Provided, however, that in lieu of transfer of funds from one retirement system to another, such member who is eligible for retirement benefits shall file application therefor with each retirement system to the end that each retirement system shall pay appropriate benefits without transfer of funds between the systems.

(c) Any member who became or becomes employed by an employer of the North Carolina Local Governmental Employees' Retirement System as provided in (a) above shall be entitled to waive the provisions of (b) above and to transfer to the local system his credits for membership and prior service in this System provided such member shall request this System to transfer his accumulated contributions, interest and service credits to the local system. If such request is made, in addition to the member's accumulated contributions, interest and service credits, there shall be transferred to the local system the amount of reserve held in this System as a result of previous employer contributions on behalf of the transferring employee.

History.

1965, c. 780, s. 1; 1971, c. 117, ss. 16, 18;
1953, c. 1050, s. 2; 1961, c. 516, s. 6; 1973, c. 241, s. 12.

§ 135-28.1. Transfer of members to employment covered by the Uniform Judicial Retirement System.

(a) Any member whose service as a teacher or State employee is terminated other than by retirement or death and, who, while still a member of this Retirement System, becomes a judge participating in the Uniform Judicial Retirement System, may elect to retain his membership in this Retirement System by not withdrawing his accumulated contributions hereunder. Any such member shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such termination of service hereunder while he is a member of the other system and does not withdraw his contributions hereunder.

(b) The provisions of the preceding subsection to the contrary notwithstanding, with respect to each judge or former judge of the district court division of the General Court of Justice who was a member of this Retirement System immediately prior to January 1, 1974, and who becomes a member of the Uniform Judicial Retirement System on or after January 1, 1974, upon his commencement of membership in the other system there shall be paid in a lump sum to his account in the annuity savings fund of the other system the amount of his accumulated contributions under this System that are attributable to contributions made by him hereunder while a judge of said district court division. Upon such payment, the member's accumulated contributions hereunder shall be reduced by the amount of such payment and his period of creditable membership

service shall be reduced by the period of service during which such repaid contributions were originally made.

Any member for whom the payment of his accumulated contributions as herein provided reduces the balance of his account in the annuity savings fund to zero and cancels his entire period of creditable service shall no longer be a member of this Retirement System.

In the case of any member who retains his membership in this Retirement System after the payment hereinabove provided and who subsequently becomes eligible for retirement benefits under this Retirement System or whose death results in benefit payments to another beneficiary, the average final compensation used in the computation of the amount of any such benefits shall be computed as of the date of commencement of his membership in the other system on the same basis as if his retirement or death had occurred as of such date of commencement. Moreover, for the sole purpose of increasing his creditable service hereunder in order to meet any applicable service requirements for benefits hereunder, any such member shall be granted membership service credits under this Retirement System on account of (i) the period of membership service cancelled under the first paragraph of this subsection and (ii) the period of his membership in the other system so long as he remains a member hereunder and, if he is a member in service under the other system, he shall be deemed to be a member in service under this Retirement System if so required for any benefit hereunder.

(c) Any member who becomes eligible for benefits under both this Retirement System and the Uniform Judicial Retirement System may file application therefor with each retirement system to the end that each retirement system shall pay appropriate benefits without transfer of funds between the systems except as otherwise provided in subsection (b) above.

(d) The Board of Trustees shall effect such rules as it may deem necessary to administer the provisions of the preceding subsections of this section and to prevent any duplication of service credits or benefits that might otherwise occur.

(e) When any judge of a district court division of the General Court of Justice shall have made application for disability retirement prior to January 1, 1974, while a member of this Retirement System to become effective after January 1, 1974, and such judge died before January 1, 1974, and there was filed with the application for disability retirement a statement by a physician that such judge was permanently and totally disabled, such person shall be deemed to have complied with all provisions of this Retirement System as of the date of application for disability retirement and no action of the medical board shall be necessary. He shall be presumed to have chosen Option 2 as to retirement benefits and survivor's benefits

shall commence immediately and shall also be paid retroactively to the first day of the calendar month following such judge's death.

(f) Notwithstanding the provisions of subsections (a), (b), (c), (d), and (e) of this section, the accumulated contributions and creditable service of any member whose service as a teacher or employee has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-53(11), of the Consolidated Judicial Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System, there shall be transferred from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Teachers' and State Employees' Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

History.

1973, c. 640, s. 2; c. 1221; 1999-237, s. 28.24(b).

Editor's Note.

Session Laws 2008-107, s. 26.24(i), provides: "Notwithstanding the provisions of G.S. 135-28.1, G.S. 135-70.1, or any other law, any member covered by this section shall not be eligible to transfer any remaining creditable service from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System until the member has contributed to the Consolidated Judicial System for a period of five years beginning July 1, 2008."

Session Laws 2008-107, s. 1.2, pro-

vides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Legal Periodicals.

For note, "Gregory v. Ashcroft: The Plain Statement Rule and Judicial Supervision of Federal-State Relations," see 70 N.C.L. Rev. 1563 (1992).

§ 135-29. Referenda and certification.

(a) With respect to employees of the State and any other individuals covered by Article 1 of Chapter 135 of the General Statutes, Volume 17, as amended and as may be hereafter amended, the Governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such vision covered by Article 3 of Chapter 128 of the General Statutes, Volume 16, as amended and as the same may be hereafter amended, or by some other retirement system established either by the State or by the political subdivision; and in either case the referendum shall be

conducted, and the Governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the State or by a political subdivision thereof should be excluded from or included under an agreement under this Article. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or the individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this Article.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the Governor or such State official as may be designated by him, shall so certify to the Secretary of Health, Education and Welfare.

History.

1955, c. 1154, s. 11; 1961, c. 516, s. 8.

§ 135-30. State employees members of Law-Enforcement Officers' Benefit and Retirement Fund.

The federal-state agreement provided in G.S. 135-21 shall be revised and extended to provide that, effective on, or retroactively as of, such date as may be fixed by the Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund, all or some of the members of said fund who are employees of the State of North Carolina or any of its agencies, shall be covered by the Social Security Act, dependent upon a referendum or referendums held pursuant to federal laws and regulations, at the request of said board, with the approval of the Governor: Provided, that such action shall be subject to the conditions and terms set forth in such agreement and subject to all applicable provisions of Article 2 of Chapter 135 of the General Statutes not inconsistent herewith: Provided, however, that the effecting of social security coverage shall not cause to be reduced or lowered the amount of the contributions to be made to the Law-Enforcement Officers' Benefit and Retirement Fund by any State employee who is a member thereof nor the amount to be contributed by the State to said fund with respect to each State employee member; provided, further, from and after the date the above-described employees become subject to the Social Security Act, there shall be deducted from each such employee's salary for each and every payroll period such sum as may be necessary to pay the amount of contributions of taxes required on his account with respect to social security coverage, and the State, or

the appropriate State agency, as an employer, shall pay the amount of contributions or taxes with respect to such person, as may be necessary on his account to effect the above-described social security coverage.

History.

1959, c. 618, s. 1.

§ 135-31. Split referendums.

The provisions of this Article shall be construed as authorization for the State or political subdivisions or instrumentalities of government which have not heretofore secured social security coverage, and which are otherwise authorized to secure such coverage, to hold any type of referendum with respect thereto which federal law now or hereafter may authorize, and not be restricted to the types of referendums authorized by federal law at the time of the original enactment of this Article.

History.

1959, c. 618, s. 1.

ARTICLE 3.

OTHER TEACHER, EMPLOYEE BENEFITS; CHILD HEALTH BENEFITS.

§§ 135-32 through 135-33.1. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1398, s. 1.

§ 135-34. Repealed by Session Laws 1987, c. 738, s. 29(*I*).

§ 135-35. Repealed by Session Laws 1981, c. 859, s. 13.17; 1981 (Regular Session, 1982), c. 1398, s. 1.

§ 135-36. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1398, s. 1.

§§ 135-37 through 135-42.1. Recodified and renumbered as G.S. 135-43 to 135-47.3.

Editor's Note.

Session Laws 2008-168, s. 1(a), effective July 1, 2008, recodified former Article 3 (§§ 135-37 through 135-42.1) of Chapter 135 as Article 3A of Chapter 135 containing §§ 135-37.1 through 135-42.1. The section numbers were subsequently renumbered as G.S. 135-43 through 135-47.3 at the direction of the Revisor of Statutes.

Former G.S. 135-39.3A was repealed

by Session Laws 1987, c. 857, s. 4. Former G.S. 135-39.4 was repealed by Session Laws 1985 (Regular Session, 1986), c. 1020, s. 2. Former G.S. 135-39.5B, 135-40.4, 135-40.6, 135-40.8, and 135-40.9 were repealed effective July 1, 2008, by Session Laws 2007-323, s. 28.22A(a). Former G.S. 135-40.7A was repealed by Session Laws 1997-512, s. 15.

Former G.S. 135-40 was repealed by Session Laws 2008-168, s. 3(b), effective

July 1, 2008. The following local modifications applied to former G.S. 135-40: Local Modifications. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Former G.S. 135-40.1 was repealed by Session Laws 2008-168, s. 3(d), effective

July 1, 2008. The following local modifications applied to former G.S. 135-40.1: Local Modifications. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Former G.S. 135-40.6A was repealed by Session Laws 2008-168, s. 3(k), effective July 1, 2008.

ARTICLE 3A.

OTHER BENEFITS FOR TEACHERS, STATE EMPLOYEES, RETIRED STATE EMPLOYEES, AND CHILD HEALTH.

§§ 135-43 through 135-47.3. Recodified as Article 3B of Chapter 135 by Session Laws 2011-85, ss. 2.4 through 2.8, effective January 1, 2012.

History.

§ 135-43.1: 1981, c. 859, s. 13.18; 1981 (Reg. Sess., 1982), c. 1398, s. 5; 1983, c. 452, ss. 1, 2; 1985, c. 732, s. 45; 1987, c. 61; c. 857, s. 1; 1989 (Reg. Sess., 1990), c. 1038, s. 19.1; 1991, c. 739, s. 21; 1995, c. 229, s. 1; 1997-278, s. 2; 1997-468, s. 1; 1998-1, s. 4(b); 2008-168, ss. 1(a), (c), (e); repealed by Laws 2011-85, s. 2.9 effective January 1, 2012; § 135-43.2: 2008-168, s. 2.1; 2008-187, s. 49; repealed by 2011-85, s. 2.9 effective January 1, 2012; § 135-43.3: 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 47, 67; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-168, ss. 1(a), 2(a), (b); repealed by 2011-85, s. 2.9 effective January 1, 2012. 1985, c. 732, s. 57; 1991, c. 427, s. 8; 2007-323, s. 28.22A(d); 2008-168, ss. 1(a), 2(a), (i);

repealed by 2011-85, s. 2.9, effective January 1, 2012; § 135-44.3: 1985, c. 732, s. 57; 1991, c. 427, s. 8; 2007-323, s. 28.22A(d); 2008-168, ss. 1(a), 2(a), (i); repealed by 2011-85, s. 2.9, effective January 1, 2012; § 135-44.4 (except for subdivision (26)): 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50, 51; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5; 1989, c. 752, s. 22(a); 1991, c. 427, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.3; 1997-468, s. 2; 1997-519, s. 3.15; 1998-1, s. 4(c); 2000-141, s. 3; 2001-253, ss. 1(a), 1(q); 2001-487, s. 85.5; 2006-249, s. 4(b); 2007-323, s. 28.22(i); 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (k), (j); 2009-16, s. 5(b); repealed by 2011-85, s. 2.9, effective January 1, 2012; § 135-

44.6(a), (b), (f): 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 52; 1991, c. 427, s. 5; 1997-468, s. 4; 1998-1, s. 4(e); 1999-237, s. 28.29(h); 2003-69, s. 2; 2004-124, s. 31.21(c); 2005-276, s. 29.31(e); 2007-323, s. 28.22A(m), (m1), (o); 2007-345, ss. 11, 12; 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (m); 2009-281, s. 1; 2009-571, s. 3(c); § 135-45(b), (f)-(h): 2008-168, s. 3(c); 2009-16, ss. 2(f), 5(h); 2009-281, s. 1; 2009-313, s. 2; repealed by 2011-85; § 135-45.6: 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 7; 1985, c. 192, ss. 5, 9, 12; c. 732, ss. 16-18; 1985 (Reg. Sess., 1986), c. 1020, ss. 10, 20; 1987, c. 857, s. 14; 1991, c. 427, ss. 13, 20; 1995, c. 507, s. 7.24(a); 1999-237, s. 28.28(b); 2000-141, s. 1; 2000-184, s. 2; 2001-253, ss. 1(d), 1(e); 2003-186, s. 5(a); 2005-276, s. 29.31(a); 2006-249, s. 2(a); 2007-323, s. 28.22A(a); 2008-168, ss. 1(a), 3(a), (j); 2009-16, s. 2(c); 2009-571, s. 3(e); 2011-85, s. 1.3(b); 2011-96, s. 2(a) repealed by 2011-85, s. 2.9, effective January 1, 2012. § 135-45.7: 2008-168, s. 3(l); repealed by 2011-85, s. 2.10, effective January 1, 2012; § 135-45.8: 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 15, 21.4; 1985 (Reg. Sess., 1986), c. 1020, ss. 16, 20, 21, 25, 26; 1987, c. 282, s. 35; 1991, c. 427, ss. 16, 30, 40; 1993, c. 464, s. 7; 1995, c. 535, s. 29; 1997-456, s. 55.9; 1997-468, s. 6; 1997-512, ss. 4, 13; 1998-212, s. 28.29(c); 2000-141, s. 5; 2007-323, ss. 28.22A(j), (k); 2008-168, ss. 1(a), 3(a), (m), (v); 2009-16, s. 2(d); 2010-2, s. 2; 2010-96, s. 33; repealed by Laws 2011-85, s. 2.9, effective January 1, 2012. § 135-45.9: 1991, c. 427, s. 32; 1993, c. 464, ss. 3(a), 4; 1995, c. 157, s. 2; c. 406, s. 2; 1997-512, s. 14; 1999-186, s. 1; 1999-199, s. 3; 1999-210, s. 8; 1999-351, s. 7; 2001-258, s. 1; 2001-487, s. 40(n); 2003-368, ss. 2, 3; 2004-124, s. 31.28; 2007-323, ss. 28.22(f), (o); 2008-168, ss. 1(a), 3(a), (n); 2009-16, s. 5(d); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012. § 135-45.11: 2008-168, s. 3(p); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012. § 135-45.14: 1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 18; 1985 (Reg. Sess., 1986), c. 1020, ss. 20, 30; 1989, c. 770, s. 35; 2008-168, ss. 1(a), 3(a), (s); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012; 2011-96, s. 4. § 135-46.3: 1997-468, s. 7; 2008-168, ss. 1(a), 4(a); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012. § 135-47: 1998-1, s. 4(a); 2007-323, s. 28.22A(i); 2008-107, s. 10.13(b), (n); 2008-168, ss. 1(a), 4(a); repealed by 2008-107, s. 10.13(n), effective January 1, 2010. § 135-47.1: 1998-1, s.

4(a); 2008-168, ss. 1(a), 4(a); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012. § 135-47.3: 2008-107, s. 10.13(c); repealed by Laws 2011-85, s. 2.9, effective January 1, 2012.

Editor's Note.

Session Laws 2011-85, ss. 2.3 through 2.8, effective January 1, 2011, recodified former Article 3A (§§ 135-43 through 135-47.3) of Chapter 135 as Article 3B of Chapter 135 containing §§ 135-48.1 through 135-48.62. Where appropriate, the historical citations to former sections have been added to corresponding new sections. At the end of Article 3A are tables showing comparable sections of Article 3A and their disposition in Article 3B.

Session Laws 2011-85, s. 2.9, provides: "All portions of Article 3A of Chapter 135 of the General Statutes not recodified by this act are repealed." Former G.S. 135-43.1 through 135-43.3, 135-44.3, 135-44.4 (except for 135-44.4(26)), 135-44.6(a), (b), and (f), 135-45(b) and (f)-(h), 135-45.6 through 135-45.9, 135-45.11, 135-45.14, 135-46.3, 135-47.1 and 135-47.3 are thereby repealed effective January 1, 2012.

Former G.S. 135-43.1 pertained to Committee on Employee Hospital and Medical Benefits.

Former G.S. 135-43.2 pertained to State Health Plan Administrative Commission.

Former G.S. 135-43.3 pertained to oversight team.

Former G.S. 135-44.3 pertained to Meaning of "Executive Administrator and Board of Trustees."

Former G.S. 135-44.4 was amended by Session Laws 2011-266, s. 1.33(b), effective July 1, 2011, by deleting "and the State Health Plan Blue Ribbon Task Force" following "Medical Benefits" in the last sentence of subdivision (31). Former G.S. 135-44.4 was amended by Session Laws 2011-85, s. 1.10(a), effective July 1, 2010, by adding the last sentence in subdivision (18), which read: "Notwithstanding this provision, the Executive Administrator and Board of Trustees may authorize coverage or payment of claims that have been denied as a result of administrative errors or system issues."

Former G.S. 135-44.4(1)-(25) and (27)-(31), pertaining to powers and duties of the Executive Administrator and Board of Trustees, was repealed by Session Laws 2011-85, s. 2.9.

Former G.S. 135-45(b) was amended

by Session Laws 2011-85, s. 1.6(a), as amended by Session Laws 2011-96, s. 2(a), effective September 1, 2011, by substituting “partially, one-half, or fully” for “fully or partially.”

Former G.S. 135-45(g) was amended by Session Laws 2011-85, s. 1.4, effective July 1, 2011, by substituting “July 1, 2011” for “July 1, 2009.” Session Laws 2011-96, s. 2(b) amended Session Laws 2011-85, by deleting section 1.4.

Session Laws 2011-96, which amended former G.S. 135-45(b) and (g), was contingent on Senate Bill 323, 2011 Regular Session, becoming Law. Senate Bill 323 was enacted as Session Laws 2011-85.

Former G.S. 135-45(g) was amended by Session Laws 2011-96, s. 2(c), effective May 26, 2011, by substituting “September 1, 2011” for “July 1, 2009.”

Former G.S. 135-45.6 pertained to benefits not subject to deductible or coinsurance. Former G.S. 135-45.6 was amended by 2011-85, s. 1.3(b), as amended by Session Laws 2011-96, s. 2(a), effective September 1, 2011, by substituting “twelve dollars (\$12.00)” for “ten dollars (\$10.00),” “forty dollars (\$40.00)” for “thirty-five dollars (\$35.00),” and “sixty-four dollars (\$64.00)” for “fifty-five dollars (\$55.00)” in subdivision (b)(1).

Former G.S. 135-45.6 was amended by 2011-85, s. 1.3(b), as amended by Session Laws 2011-96, s. 2(a), effective September 1, 2011, by substituting “twelve dol-

lars (\$12.00)” for “ten dollars (\$10.00),” “forty dollars (\$40.00)” for “thirty-five dollars (\$35.00),” and “sixty-four dollars (\$64.00)” for “fifty-five dollars (\$55.00)” in subdivision (b)(1).

Former G.S. 135-45.7 pertained to prior approval procedures.

Former G.S. 135-45.8 pertained to general limitations and exclusions.

Former G.S. 135-45.9 pertained to special provisions for chemical dependency and mental health benefits.

Former G.S. 135-45.11 pertained to cost-savings initiatives and incentive programs authorized.

Former G.S. 135-45.14 pertained to coordination of benefits. Former G.S. 135-45.14 was amended by Session Laws 2011-96, s. 4, effective May 26, 2011, by inserting “Plan or its” preceding “Claims Processor” three times in subsection (g).

Former G.S. 135-46.3 pertained to right to alter, amend, or repeal.

Former G.S. 135-47, pertaining to the administration and processing of claims under the Health Insurance Program for Children, was repealed by Session Laws 2008-107, s. 10.13(n), effective July 1, 2010.

Former G.S. 135-47.1 pertained to right to alter, amend, or repeal.

G.S. 135-47.2 was recodified as G.S. 108A-70.20A, by Session Laws 2011-85, s. 2.8, effective January 1, 2012.

Former G.S. 135-47.3 pertained to data reporting.

§ 135-48. Reserved for future codification purposes.

TABLES OF COMPARABLE SECTIONS FOR CHAPTER 135, ARTICLE 3B

Former to Present

Editor's Note. — The following table shows G.S. sections from former Chapter 135, Article 3A, and their comparable, Chapter 135, revised Article 3B numbers.

Former Section	Present Section	Former Section	Present Section
Part 1		135-45(d1)	135-48.33
135-43(a) and (b)	135-48.10	135-45(e)-(h)	Repealed
135-43(c)	135-48.57	135-45.1	135-48.1
135-43.1	Repealed	135-45.2(a),(a1),(b),(c)	135-48.40
135-43.2	Repealed	135-45.2(d)-(k)	135-48.41
135-43.3	Repealed	135-45.3	135-48.42
135-43.4	135-48.12	135-45.4	135-48.43
135-43.5	135-48.28	135-45.5	135-48.54
135-43.6	135-48.27	135-45.6	Repealed
135-43.7	135-48.35	135-45.7	Repealed
Part 2		135-45.8	Repealed
135-44	135-48.20	135-45.9	Repealed
135-44.1	135-48.21	135-45.10	135-48.38
135-44.2	135-48.23	135-45.11	Repealed
135-44.3	Repealed	135-45.12	135-48.44
135-44.4(26)	135-48.56	135-45.13	135-48.45
135-44.4, remainder	Repealed	135-45.14	Repealed
135-44.5	135-48.5	135-45.15	135-48.37
135-44.6(a), (b), (f)	Repealed	135-45.16	135-48.3
135-44.6(d)	135-48.58	Part 4	
135-44.6(e)	135-48.55	135-46	135-48.60
135-44.7	135-48.24	135-46.1	135-48.61
135-44.8	135-48.25	135-46.2	135-48.62
Part 3		135-46.3	Repealed
135-45(a),(e)	135-48.2	Part 5	
135-45(b)	Repealed	135-47.1	Repealed
135-45(c)	135-48.8	135-47.2	108A-70.20A
135-45(d)	135-48.32	135-47.3	Repealed

ARTICLE 3B.

STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES.

PART 1.

GENERAL PROVISIONS.

§ 135-48.1. General definitions.

As used in this Article unless the context clearly requires otherwise, the following definitions apply:

- (1) Authorized representatives who are assisting the State Health Plan Division staff. — Staff of the Department of

the State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

- (1a) Benefit period. — The period of time during which charges for covered services provided to a Plan member must be incurred in order to be eligible for payment by the Plan.
- (2) Chemical dependency. — The pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social, or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.
- (2a) Claims Data Feed. — An electronic file provided by a Claims Processor that contains all claims processing data elements for every claim processed by the Claims Processor for the Plan, including Claim Payment Data for each claim.
- (2b) Claim Payment Data. — Data fields within a Claims Data Feed that reflect the provider and the amount the provider billed for services provided to a Plan member, the allowed amount applied to the claim by the Claims Processor, and the amount paid by the Plan on the claim. The term “Claim Payment Data” includes any document, material, or other work, whether tangible or electronic, that is derived from, is based on, or reflects any of the foregoing data fields or information contained therein. If the Claims Processor designates Claim Payment Data as a trade secret, the Claim Payment Data shall be treated as a trade secret as defined in G.S. 66-152(3).
- (3) Claims Processor. — One or more administrators, third-party administrators, or other parties contracting with the Plan to administer Plan benefits.
- (4) Comprehensive group health benefit plan. — A comprehensive health benefit plan offered to an individual because of an employment, organizational, or other group affiliation.
- (5) Comprehensive health benefit plan. — Health care coverage that consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market.
- (6) Covered service; benefit; allowable expense. — Any medically necessary, reasonable, and customary items of service, including prescription drugs, and medical supplies included in the Plan.
- (7) Deductible. — The dollar amount that must be incurred for certain covered services in a benefit period before benefits are payable by the Plan.
- (8) Dependent. — An eligible Plan member other than the subscriber.

- (9) Dependent child. — Subject to the eligibility requirements of subsections (a) and (b) of G.S. 135-48.41, any of the following up to the first month following the dependent child's 26th birthday:
- a. A natural or legally adopted child or children of the employee, whether or not the child is living with the employee.
 - b. A foster child or children of the employee, whether or not the child is living with the employee.
 - c. A child for which an employee is a court-appointed guardian.
 - d. A stepchild of a member who is married to the stepchild's natural parent.
 - e. Repealed by Session Laws 2011-96, s. 3(a), effective July 1, 2011.
- (10) Employee or State employee. — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.
- (11) Employing Unit. — A North Carolina School System; Community College; State Department, Agency, or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean (i) a charter school in accordance with Article 14A of Chapter 115C of the General Statutes whose board of directors elects to become a participating employer in the Plan under G.S. 135-48.54 or (ii) a local government unit that participates in the Plan under G.S. 135-48.47 or under any other law. Bona fide fire departments, rescue or emergency medical service squads, and National Guard units are deemed to be employing units for the purpose of providing benefits under this Article.
- (12) Firefighter. — A member of the group “eligible firefighter” as defined in G.S. 58-86-2.
- (13) Health Benefits Representative or HBR. — The employee designated by the employing unit to administer the Plan for the unit and its employees. The HBR is responsible for enrolling new employees and dependents in accordance with the eligibility requirements under this Article, reporting changes, explaining benefits, reconciling group statements, and remitting group fees. The State Retirement System is the Health Benefits Representative for retired State employees.
- (14) Plan or State Health Plan. — The North Carolina State Health Plan for Teachers and State Employees. Depending on the context, the term may refer to the entity created in

- G.S. 153-48.2 [135-48.2] or to the health benefit plans offered by the entity, in which case “Plan” includes all comprehensive health benefit plans offered under the Plan.
- (15) Plan member. — A subscriber or dependent who is eligible and currently enrolled in the Plan and for whom a premium is paid.
 - (16) Predecessor plan. — The Hospital and Medical Benefits for the Teachers’ and State Employees’ Retirement System of the State of North Carolina and the North Carolina Teachers’ and State Employees’ Comprehensive Major Medical Plan.
 - (17) Rescue squad worker. — An “eligible rescue squad worker” as defined in G.S. 58-86-30.
 - (18) **(Effective until January 1, 2021)** Retired employee (retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled.
 - (18) **(Effective January 1, 2021)** Retired employee (retiree). — Retired teachers, State employees, and members of the General Assembly who (i) are receiving monthly retirement benefits from the Teachers’ and State Employees’ Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, or the Optional Retirement Programs established under G.S. 135-5.1 and G.S. 135-5.4 and (ii) earned contributory retirement service in one of these retirement systems prior to January 1, 2021, and did not withdraw that service, so long as the retiree is enrolled.
 - (19) Subscriber. — A Plan member who is not a dependent.

History.

2008-168, s. 3(e); 2009-16, s. 3(a); 2009-281, s. 1; 2010-120, s. 1; 2011-85, ss. 1.7(a), 1.10(c), 2.6(b), 2.10; 2011-96, s. 3(a); 2011-183, s. 102; 2011-326, s. 19.3; 2012-173, s. 1; 2014-75, s. 1; 2014-97, s. 5(a); 2014-101, s. 7; 2016-104, s. 1; 2017-57, s. 35.21(c); 2017-135, s. 5.

Subdivision (18) Set Out Twice.

The first version of subdivision (18) set out above is effective until January 1, 2021. The second version of subdivision (18) set out above is effective January 1, 2021.

2009 Health Benefit Changes.

Session Laws 2009-16, s. 2(a), provides: “Eliminate PPO Plus Option. — Effective July 1, 2009, the PPO Plus option (90/10 in-network coverage) un-

der the State Health Plan for Teachers and State Employees (‘Plan’) is eliminated. The Executive Administrator shall provide notice to all members of the Plan that this option will no longer be available as of July 1, 2009. Employees enrolled in the Plan’s Plus option shall have the choice of enrolling in the Basic or Standard Plan options for the 2009-2010 benefit year.”

Session Laws 2009-16, s. 2(h), provides: “Pharmacy Benefit Savings. — The Plan shall direct its pharmacy benefit manager (PBM), within the terms of the Plan’s PBM contract, to achieve the sum of eighteen million dollars (\$18,000,000) in savings in pharmacy benefit costs in the 2009-2010 fiscal year, and the sum of twenty million dollars (\$20,000,000) in savings in pharmacy benefit costs in the 2010-2011 fiscal year

through reduced reimbursements paid to pharmacies for prescription drugs. If the savings achieved in each six-month period of the fiscal year do not exceed one hundred five percent (105%) of the savings amount specified in this section for that fiscal year, there shall be no further adjustment to reimbursements paid to pharmacies for that six-month period. If the total savings achieved, by fiscal year, exceeds one hundred five percent (105%) of the specified savings amount in each six-month period of the fiscal year, the Plan shall adjust pharmacy reimbursement reductions accordingly. The Plan shall review savings achieved twice annually to ensure compliance with this section. The Plan shall calculate the savings to be achieved based on Plan enrollment and estimated cost and utilization trends incorporated in the Plan's Financial Projections as of March 20, 2009. The total savings by fiscal year achieved in this section may be increased or decreased without adjustment based on a change in total enrollment provided that the rate of savings achieved on a per-member per-month basis remains constant. Not later than 60 days immediately following each six-month period, the Plan shall report the amount of savings achieved and any adjustments made for that period to the Committee on Employee Hospital and Medical Benefits."

Editor's Note.

Session Laws 2011-85, s. 2.6(b), effective January 1, 2012, recodified former G.S. 135-45.1 as G.S. 135-48.1. Former G.S. 135-45.1 itself was formerly codified as G.S. 135-39.13 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(e), effective July 1, 2008, but was renumbered as G.S. 135-45.1 at the direction of the Revisor of Statutes.

Session Laws 2010-3, s. 2, provides: "The Executive Administrator of the State Health Plan for Teachers and State Employees shall consult with the Committee on Employee and Hospital Medical Benefits prior to implementing any program to verify tobacco usage by members of the Plan."

Session Laws 2011-85, s. 2.2, provides: "The North Carolina State Health Plan for Teachers and State Employees is transferred to the Department of State Treasurer. This transfer shall have all the elements of a Type II transfer, as defined by G.S. 143A-6."

Session Laws 2011-85, ss. 2.3 through 2.8, effective January 1, 2011, recodified

former Article 3A (§§ 135-43 through 135-47.3) of Chapter 135 as Article 3B of Chapter 135 containing §§ 135-48.1 through 135-48.62. Where appropriate, the historical citations to former sections have been added to corresponding new sections. At the end of Article 3A are tables showing comparable sections of Article 3A and their disposition in Article 3B.

Session Laws 2011-85, s. 2.12, provides: "In repealing a specific, detailed provision of Article 3A of Chapter 135 of the General Statutes and not placing that detailed provision into Article 3B of Chapter 135 of the General Statutes, it is not necessarily the intent of the General Assembly to prohibit the State Treasurer or the State Health Plan from having that authority."

Session Laws 2011-85, s. 2.13(a), provides: "Rules and policies adopted by the Executive Administrator and the Board of Trustees prior to the effective date of this section shall continue to be in effect unless the rule or policy directly conflicts with a provision of Article 3B of Chapter 135 of the General Statutes or until the State Treasurer changes the rule or policy."

Session Laws 2011-85, s. 3.1(a), provides: "The State Treasurer and the Board of Trustees of the State Health Plan for Teachers and State Employees shall do the following:

"(1) Examine the issue of moving to a calendar year, including the costs and mechanics of doing so.

"(2) Find savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources and use those savings to offer a premium-free plan option no later than July 1, 2013.

"(3) Strive to keep all premiums low by finding savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources."

Session Laws 2011-85, s. 3.1(b), provides: "The State Health Plan for Teachers and State Employees shall issue a Request for Proposals for a Medicare Advantage Plan no later than June 30, 2012."

Session Laws 2011-96, s. 3(a), which amended this section, was contingent on Senate Bill 323, 2011 Regular Session becoming law. Senate Bill 323, 2011 Regular Session, was enacted as Session Laws 2011-85.

Former G.S. 135-45.1 was amended by Session Laws 2011-183, s. 102, effective June 20, 2011, by deleting "Army and

Air” and three times inserting “North Carolina” before “National Guard.” Pursuant to Session Laws 2011-326, s. 19.3, the amendment to this section by Session Laws 2011-183, s. 102 was repealed effective June 27, 2011.

In this section as amended by Session Laws 2011-85, s. 2.10, the reference in subdivision (14) to “153-48.2” should probably be to “135-48.2.” The bracketed reference was added at the direction of the Revisor of Statutes. Also, subdivisions (4) and (5) were renumbered as subdivisions (5) and (4), respectively, at the direction of the Revisor of Statutes to maintain alphabetical order.

Session Laws 2012-173, s. 3(a), effective January 1, 2013, rewrote the Article heading, which formerly read: “State Health Plan for Teachers and State Employees; Long-Term Care Benefits.”

Session Laws 2013-382, s. 10.2, provides: “The State Health Plan for Teachers and State Employees shall establish a workgroup to examine the best way to provide teachers and State employees greater transparency in the costs of health services provided under the State Health Plan. The State Health Plan for Teachers and State Employees shall report the findings and recommendations of the workgroup to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Committee on Governmental Operations on or before December 31, 2013, and annually thereafter through December 31, 2016.” For transparency in health care costs generally, see Article 11B of Chapter 131E (G.S. 131E-214.11 through 131E-214.14).

Session Laws 2014-101, s. 8, provides, in part: “Except as otherwise provided, this act is effective when it becomes law [August 6, 2014] and applies beginning with the 2014-2015 school year.”

Session Laws 2016-104, s. 9, made subdivisions (2a) and (2b) of this section, as added by Session Laws 2016-104, s. 1, applicable to contracts entered into on or after July 22, 2016.

Session Laws 2016-106, s. 1, effective

July 22, 2016, provides: “Notwithstanding the time limitation contained in G.S. 135-48.54, the Board of Directors of Longleaf School of the Arts, a charter school located in Raleigh, may elect to become a participating employing unit in the State Health Plan for Teachers and State Employees in accordance with Article 3B of Chapter 135 of the General Statutes. The election authorized by this act shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-48.54.”

Session Laws 2017-57, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2017.’”

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2017-128, s. 7, provides: “The Executive Administrator and the Board of Trustees of the State Health Plan (Plan) shall not approve resolutions electing to cover retirees under the Plan for local government entities that were authorized under S.L. 2004-124, S.L. 2006-7, S.L. 2005-276, and S.L. 2006-249 to participate in the Plan but that did not opt to cover retirees before January 1, 2017.”

Session Laws 2017-128, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-104, s. 1, effective July 22, 2016, inserted subdivisions (2a) and (2b). See editor’s note for applicability.

Session Laws 2017-57, s. 35.21(c), effective January 1, 2021, rewrote subdivision (18), which read: “Retired employee (retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled.”

Session Laws 2017-135, s. 5, effective July 20, 2017, added present subdivision (1) and redesignated former subdivision (1) as subdivision (1a).

§ 135-48.2. Undertaking.

(a) The State of North Carolina undertakes to make available a State Health Plan (hereinafter called the “Plan”) exclusively for the benefit of eligible employees, eligible retired employees, and certain of their eligible dependents, which will pay benefits in accordance with the terms of this Article. The Plan shall have all the powers and privileges of a corporation and shall be known as the State Health

Plan for Teachers and State Employees. The State Treasurer, Executive Administrator, and Board of Trustees shall carry out their duties and responsibilities as fiduciaries for the Plan. The Plan shall administer one or more group health plans that are comprehensive in coverage. The State Treasurer may operate group plans as a preferred provider option, or health maintenance, point-of-service, or other organizational arrangement.

(b) Payroll deduction shall be available for coverage under the Plan for subscribers able to meet the Plan's requirements for payroll deduction.

History.

2008-168, s. 3(c); 2009-16, ss. 2(f), 5(h); 2009-281, s. 1; 2009-313, s. 2; 2010-194, s. 18(b); 2011-85, ss. 2.6(a), 2.10.

Editor's Note.

Former G.S. 135-45(c) is recodified as G.S. 135-48.8. Former G.S. 135-45(d) and (d1) are recodified as G.S. 135-48.32 and 135-48.33, respectively. The remainder of G.S. 135-45 is repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012.

Session Laws 2010-3, s. 2, provides: "The Executive Administrator of the State Health Plan for Teachers and State

Employees shall consult with the Committee on Employee and Hospital Medical Benefits prior to implementing any program to verify tobacco usage by members of the Plan."

Session Laws 2011-85, s. 2.6(a), effective January 1, 2012, recodified former G.S. 135-45(a) and (e) as G.S. 135-48.2(a) and (b), respectively. Former G.S. 135-45 itself was formerly codified as G.S. 135-39.12 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(c), effective July 1, 2008, but was renumbered as G.S. 135-45 at the direction of the Revisor of Statutes.

CASE NOTES

Applicability of Administrative Procedure Act to Dispute. — State employee's dispute with the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees), an administrative agency, seeking to recover costs of surgery should have been brought under the Administrative Procedure Act, G.S.

150B-1 et seq. *Vass v. Board of Trustees*, 89 N.C. App. 333, 366 S.E.2d 1 (1988), modified and aff'd, 324 N.C. 402, 379 S.E.2d 26 (1989).

Cited in *Vass v. Board of Trustees*, 108 N.C. App. 251, 423 S.E.2d 796 (1992); *Carl v. State*, 192 N.C. App. 544, 665 S.E.2d 787, 2008 N.C. App. LEXIS 1630 (2008).

OPINIONS OF ATTORNEY GENERAL

Medical Child Support Enforcement Provisions. — The medical child support enforcement provisions of House Bill 1563, 1993 (Reg. Sess. 1994) N.C. Session Laws c. 644, are inapplicable to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees) and the governmental entities whose employees and retirees, along with their dependents, are eligible for coverage under the

Plan or its HMO option. Medical child support orders nonetheless may be enforced directly against State employees and retirees who fail to enroll, or maintain coverage for, their eligible dependent children under the State Health Plan in accordance with the provisions of G.S. 50-13.4(f), 50-13.9 and 50-13.11. See opinion of Attorney General to Patricia Crawford, Associate General Counsel, University of North Carolina at Chapel Hill, — N.C.A.G. — (August 10, 1995).

§ 135-48.3. Right to amend.

The General Assembly reserves the right to alter, amend, or repeal this Article.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 62; 2008-168, ss. 3(a), (u); 2011-85, s. 2.6(k); 2012-173, s. 5.

G.S. 135-45.16 as G.S. 135-48.3. Former G.S. 135-45.16 itself was formerly codified as G.S. 135-40.14. It was recodified as G.S. 135-39.28 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(u), effective July 1, 2008, but was renumbered as G.S. 135-45.16 at the direction of the Revisor of Statutes.

Editor's Note.

Session Laws 2011-85, s. 2.6(k), effective January 1, 2012, recodified former

§ 135-48.4. Conflict with federal law.

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

History.

2018-84, s. 7.

Editor's Note.

Session Laws 2018-84, s. 12, made this section effective June 25, 2018.

§ 135-48.5. Health benefit trust funds created.

(a) There are hereby established two health benefit trust funds, to be known as the Public Employee Health Benefit Fund and the Health Benefit Reserve Fund for the payment of hospital and medical benefits. As used in this section, the term “health benefit trust funds” refers to the fund type described under G.S. 143C-1-3(a)(10).

All premiums, fees, charges, rebates, refunds or any other receipts including, but not limited to, earnings on investments, occurring or arising in connection with health benefits programs established by this Article, shall be deposited into the Public Employee Health Benefit Fund. Disbursements from the Fund shall include any and all amounts required to pay the benefits and administrative costs of such programs as may be determined by the Executive Administrator and Board of Trustees.

Any unencumbered balance in excess of prepaid premiums or charges in the Public Employee Health Benefit Fund at the end of each fiscal year shall be used first, to provide an actuarially determined Health Benefit Reserve Fund for incurred but unrepresented claims, second, to reduce the premiums required in providing the benefits of the health benefits programs, and third to improve the plan, as may be provided by the General Assembly. The balance in the Health Benefits Reserve Fund may be transferred from time to time to the Public Employee Health Benefit Fund to provide for any deficiency occurring therein.

The Public Employee Health Benefit Fund and the Health Benefit Reserve Fund shall be deposited with the State Treasurer and invested as provided in G.S. 147-69.2 and 147-69.3.

(b) Disbursement from the Public Employee Health Benefit Fund may be made by warrant drawn on the State Treasurer by the Executive Administrator, or the Executive Administrator and Board of Trustees may by contract authorize the Claims Processors to draw the warrant.

(c) Repealed by Session Laws 2012-173, s. 3(b), effective January 1, 2013.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 43, 63; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1997-468, s. 3; 1998-1, s. 4(d); 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (l); 2011-85, s. 2.5(e); 2012-173, s. 3(b).

Editor's Note.

Session Laws 2011-85, s. 2.5(e), effective January 1, 2012, recodified former G.S. 135-44.5 as G.S. 135-48.5. Former G.S. 135-44.5 itself was formerly codified as G.S. 135-39.6. It was recodified as

G.S. 135-38.8 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(l), effective July 1, 2008, but was renumbered as G.S. 135-44.5 at the direction of the Revisor of Statutes.

Session Laws 2012-173, s. 3(f), effective January 1, 2013, provides: "Any unencumbered administrative fees collected by the Plan under Part 6 of Article 3B of Chapter 135 of the General Statutes are transferred to the Public Employee Health Benefit Fund created under G.S. 135-48.5(a)."

§§ 135-48.6, 135-48.7. Reserved for future codification purposes.

§ 135-48.8. Statements of public interest.

(a) The State of North Carolina deems it to be in the public interest for North Carolina firefighters, rescue squad workers, and members of the National Guard, and certain of their dependents, who are not eligible for any other type of comprehensive group health insurance or other comprehensive group health benefits, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six consecutive months, to be given the opportunity to participate in the benefits provided by the State Health Plan for Teachers and State Employees. Coverage under the Plan shall be voluntary for eligible firefighters, rescue squad workers, and members of the National Guard who elect participation in the Plan for themselves and their eligible dependents.

(b) The State of North Carolina deems it to be in the public interest for local government units to be allowed to join the State Health Plan for Teachers and State Employees and to participate in the Plan.

History.

2008-168, s. 3(c); 2009-16, ss. 2(f), 5(h); 2009-281, s. 1; 2009-313, s. 2; 2010-194, s. 18(b); 2011-85, s. 2.6(a); 2014-75, s. 2; 2015-112, s. 1.

Editor's Note.

Session Laws 2011-85, s. 2.6(a), effective January 1, 2012, recodified former G.S. 135-45(c) as G.S. 135-48.8. Former G.S. 135-45(a) and (e) are recodified as

G.S. 135-48.2. Former G.S. 135-45(d) and (d1) are recodified as G.S. 135-48.32 and 135-48.33, respectively. The remainder of G.S. 135-45 is repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-45 itself was for-

merly codified as G.S. 135-39.12 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(c), effective July 1, 2008, but was renumbered as G.S. 135-45 at the direction of the Revisor of Statutes.

§ 135-48.9. Reserved for future codification purposes.

§ 135-48.10. Confidentiality of information and medical records; provider contracts.

(a) Any information described in this section that is in the possession of the State Health Plan for Teachers and State Employees or its Claims Processor under the Plan or the Predecessor Plan shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public. This section shall apply to all information concerning individuals, including the fact of coverage or noncoverage, whether or not a claim has been filed, medical information, whether or not a claim has been paid, and any other information or materials concerning a plan participant, including Claim Payment Data and any documents or other materials derived from the Claim Payment Data. This information may, however, be released to the State Auditor or to the Attorney General in furtherance of their statutory duties and responsibilities, or to such persons or organizations as may be designated and approved by the State Treasurer. Any information so released shall remain confidential as stated above and any party obtaining such information shall assume the same level of responsibility for maintaining such confidentiality as that of the State Health Plan for Teachers and State Employees.

(b) The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record under Chapter 132 of the General Statutes. No provision of law, however, shall be construed to prevent or restrict the release of any information in a Plan contract to the State Treasurer, the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Board of Trustees, and the Plan's Executive Administrator solely and exclusively for their use in the furtherance of their duties and responsibilities.

and after

History.

1981, c. 355; 1981 (Reg. Sess., 1982), c. 1398, ss. 3, 4; 1983, c. 922, s. 21.10; 1985, c. 732, s. 38; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1998-1, s. 4(h); 2007-323, s. 28.22A(c); 2008-107, s. 10.13(m); 2008-168, s. 1(a), (c), (d); 2009-16, s. 5(f); 2009-83, s. 1; 2010-194, s. 18(a); 2011-85,

ss. 1.9(a), 2.4(a), 2.10; 2011-326, s. 15(r); 2016-104, s. 2.

Editor's Note.

Session Laws 2011-85, s. 2.4(a), effective January 1, 2012, recodified subsections (a) and (b) of former G.S. 135-43 as G.S. 135-48.10. Subsection (c) of former G.S. 135-43 is recodified as G.S. 135-

48.57. Former G.S. 135-43 itself was formerly codified as G.S. 135-37. It was recodified as G.S. 135-37.1 by Session Laws 2008-168, s. 1(d), effective July 1, 2008, but was renumbered as G.S. 135-43 at the direction of the Revisor of Statutes.

Former G.S. 135-43(b) was amended by Session Laws 2011-85, s. 2.10, in the coded bill drafting format provided by G.S. 120-20.1. The amendment failed to account for amendments by Session Laws 2011-326, s. 15(r), effective June 27, 2011, which inserted “and after” in subsection (b). Subsection (b) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2011-85, s. 1.9(b), provides: “Contracts with the State Health Plan retain the trade secret protections provided under G.S. 132-1.2.”

Session Laws 2011-96, s. 5, provides: “Treasurer’s access to records. — Notwithstanding G.S. 135-43, the Department of the State Treasurer shall have immediate access to all records, includ-

ing confidential records, of the State Health Plan for Teachers and State Employees in order to plan for the January 1, 2012, transfer of the State Health Plan to the Department of State Treasurer. The Department of the State Treasurer shall assume the same level of responsibility for maintaining the confidentiality of the records as the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees.”

Session Laws 2016-104, s. 9, made the amendment to subsection (a) of this section by Session Laws 2016-104, s. 2, applicable to contracts entered into on or after July 22, 2016.

Effect of Amendments.

Session Laws 2016-104, s. 2, effective July 22, 2016, in subsection (a), inserted “including Claim Payment Data and any documents or other materials derived from the Claim Payment Data” in the second sentence. See editor’s note for applicability.

§ 135-48.11. Reserved for future codification purposes.

§ 135-48.12. Committee on Actuarial Valuation of Retired Employees’ Health Benefits.

(a) There is established the Committee on Actuarial Valuation of Retired Employees’ Health Benefits. The Committee shall be responsible for collecting data and reviewing assumptions for the sole purpose of conducting required actuarial valuations of State supported retired employees’ health benefits under other post-employment benefit accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

(b) The Committee on Actuarial Valuation of Retired Employees’ Health Benefits shall consist of five members serving ex officio, as follows:

- (1) The State Budget Officer, who shall serve as the Chair;
- (2) Repealed by Session Laws 2013-373, s. 1, effective October 1, 2013.
- (3) The State Controller;
- (4) The State Treasurer; and
- (5) The Executive Administrator for the State Health Plan for Teachers and State Employees.

(c) A majority of the members of the Committee then serving shall constitute a quorum.

(d) Each member shall be entitled to one vote on the Committee. Three affirmative votes shall be necessary for a decision by the members at any meeting of the Committee.

(e) The Committee shall keep in convenient form such data as is necessary for actuarial valuation of retired employees' health benefits under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Department of State Treasurer, Retirement Systems Division, the State Health Plan for Teachers and State Employees, and any other State agency, department, or university institution, local public school agency, or local community college institution shall provide any necessary data upon request of the Committee for the purpose of conducting its responsibilities.

(f) The Committee shall designate either the actuary under contract with the Department of State Treasurer, Retirement Systems Division, or the actuary under contract with the State Health Plan for Teachers and State Employees as the technical adviser to the Committee on matters regarding the actuarial valuation of retired employees' health benefits created by the provisions of this Chapter. The technical advisor shall perform such actuarial valuation and other duties as are required under this Chapter.

(g) The Committee shall secure an annual calendar-year actuarial valuation of retired employees' health benefits under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

(h) The Committee shall keep a record of all of its proceedings which shall be open to public inspection.

(i) The Committee shall adopt a funding policy and shall include information about the State's contribution policy, including the basis for determining contributions in the annual actuarial valuation.

History.

2007-467, s. 1; 2007-323, s. 28.22A(o); 2008-168, s. 1(a), (c), (f); 2011-85, ss. 2.4(b), 2.10; 2013-373, s. 1; 2017-125, s. 3.

Editor's Note.

Session Laws 2011-85, s. 2.4(b), effective January 1, 2012, recodified former G.S. 135-43.4 as G.S. 135-48.12. Former G.S. 135-43.4 itself was formerly codified as G.S. 135-38.1. It was recodified under

Part 1A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 1(f), effective July 1, 2008, but was renumbered as G.S. 135-43.4 at the direction of the Revisor of Statutes.

Session Laws 2017-125, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2017-125, s. 3, effective July 20, 2017, added subsection (i).

§§ 135-48.13, 135-48.14. Reserved for future codification purposes.

§ 135-48.15. Whistle-blower protections related to the State Health Plan.

(a) **Statement of Public Policy.** — It is the policy of this State that persons shall be encouraged to report verbally or in writing to the State Health Plan, Attorney General, or other appropriate authority evidence of activity related to the State Health Plan and involving the following:

(1) A violation of State or federal law, rule, or regulation.

- (2) Fraud.
- (3) Misappropriation of State resources.
- (4) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

Further, it is the policy of this State that persons shall be free of intimidation or harassment when reporting matters of public concern related to the State Health Plan, including offering testimony to or testifying before appropriate legislative panels.

(b) **Protection From Retaliation.** — No employer shall sue, discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in subsection (a) of this section, unless the employee knows or has reason to believe that the report is inaccurate. No other employee of an employer shall retaliate against another employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in subsection (a) of this section. No person shall sue, terminate a contract, threaten, or otherwise discriminate against a reporting person regarding the reporting person's compensation or terms of contract because the reporting person, or a person acting on behalf of the reporting person, reports or is about to report, verbally or in writing, any activity described in subsection (a) of this section, unless the reporting person knows or has reason to believe that the report is inaccurate.

(c) **Relief for Violation.** — Any person injured by a violation of subsection (b) of this section may maintain an action in superior court for damages, an injunction, or other remedies provided in this section against the person who committed the violation within one year after the occurrence of the alleged violation of this Article.

(d) **Remedies.** — A court, in rendering a judgment in an action brought pursuant to this section, may order an injunction, damages, reinstatement of the employee, the payment of back wages or payments owed under a contract, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorneys' fees, or any combination of these. If an application for a permanent injunction is granted, the person maintaining the action shall be awarded costs and reasonable attorneys' fees. If in an action for damages the court finds that the person maintaining the action was injured by a willful violation of subsection (b) of this section, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorneys' fees against the individual or individuals found to be in violation of subsection (b) of this section.

(e) **Unrelated Unfavorable Action.** — It shall not be a violation of this Article for a person to discharge or take any other

unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee.

History.

2012-192, s. 3.

Cross References.

As to prohibition on contract provisions restricting whistle-blowing related to State Health Plan, see G.S. 22B-4.

Editor's Note.

Session Laws 2012-192, s. 4, made this section effective October 1, 2012, and applicable to causes of action arising on or after that date.

§ 135-48.16. Fraud detection and audit programs.

(a) **Access to Persons and Records.** — In the course of conducting an investigation or an audit under G.S. 135-48.30(a)(9), the Plan, or authorized representatives who are assisting the State Health Plan Division staff, shall have ready access to the following:

- (1) Persons, books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employing unit. The Plan shall have the authority to examine and make copies of the information described in this subdivision only insofar as it directly relates to a specific investigation or audit. The review of State tax returns shall be limited to matters of official business, and the Plan's report shall not violate the confidentiality provisions of the tax laws. A confidentiality agreement may be put in place with an agency providing documentation to the Plan.
- (2) Persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization that pertain to any benefits received, disbursed, or otherwise handled pursuant to a grant or contract from the federal government that is administered by the State Health Plan, the State, or its political subdivisions. Providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to the beneficiary.

Authorized representatives who are assisting the State Health Plan Division staff must have a HIPAA business associate agreement with the State Health Plan and enter into a HIPAA data sharing agreement with any vendor whose records they are copying.

(b) **Records of Providers of Social and Medical Services.** — Providers of social and medical services who provide ready access to the Plan under subdivision (2) of subsection (a) of this section shall make copies of records they maintain for services provided to a

beneficiary available to the Plan or to the authorized representatives who are assisting the State Health Plan Division staff. The Plan, or authorized representatives who are assisting the State Health Plan Division staff, shall request records in writing by providing the name of each beneficiary from whom records are sought, the purpose of the request, the authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge and the Plan, or authorized representatives who are assisting the State Health Plan Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided.

(c) **Fraud Detection and Audit Reports and Work Papers.** — The Plan shall maintain for 10 years a complete file of all compliance investigative reports, fraud investigative reports, and reports of other examinations, investigations, surveys, and reviews issued under the Plan's authority under G.S. 135-48.30(a)(9). Fraud or compliance investigation work papers and other evidence or related supportive material directly pertaining to the work of the State Health Plan Division of the Department of State Treasurer shall be retained according to an agreement between the Plan and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel policies to the contrary, pertinent work papers and other supportive material relating to issued fraud or compliance investigation reports may be, at the discretion of the Executive Administrator of the Plan, and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to, and inspection of, such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

History.

2017-135, s. 6.

Editor's Note.

Session Laws 2017-135, s. 10, made
this section effective July 20, 2017.

§§ 135-48.17 through 135-48.19. Reserved for future codification purposes.

PART 2.

ADMINISTRATIVE STRUCTURE.

§ 135-48.20. Board of Trustees established.

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

(b) The Board of Trustees of the State Health Plan for Teachers and State Employees shall consist of 10 members.

(c) The State Treasurer shall be an ex officio member of the Board and shall serve as its Chair, but shall only vote in order to break a tie vote.

(d) The Director of the Office of State Budget and Management shall be an ex officio nonvoting member of the Board.

(e) Two members shall be appointed by the Governor. Terms shall be for two years. Vacancies shall be filled by the Governor.

(f) Two members shall be appointed by the State Treasurer. Terms shall be for two years. Vacancies shall be filled by the State Treasurer.

(g) Two members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. Terms shall be for two years. Vacancies shall be filled in accordance with G.S. 120-122.

(h) Two members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Terms shall be for two years. Vacancies shall be filled in accordance with G.S. 120-122.

(i) In making appointments, the appointing authorities shall ensure that one of the appointees under subsection (e) of this section, one of the appointees under subsection (f) of this section, and one of the appointees under subsection (g) of this section, and one of the appointees under subsection (h) of this section are one of the following:

- (1) An employee of a State department, agency, or institution;
- (2) A teacher employed by a North Carolina public school system;
- (3) A retired employee of a State department, agency, or institution; or
- (4) A retired teacher from a North Carolina public school system.

In making appointments to the Board under this section, each appointing authority shall consult with all other appointing authorities prior to making its own appointments to ensure that the Board includes members of each of the groups listed in subdivisions (1) through (4) of this subsection.

(j) In making appointments, the appointing authorities shall appoint individuals from the following categories:

- (1) Individuals with expertise in actuarial science or health economics.
- (2) Repealed by Session Laws 2018-84, s. 9, effective June 25, 2018.
- (3) Individuals with expertise in health benefits and administration.
- (4) Individuals with expertise in health law and policy.
- (5) Physicians who are licensed to practice medicine in this State.

In making appointments to the Board under this section, each appointing authority shall consult with all other appointing authorities prior to making its own appointments to ensure that each of the areas of expertise listed in subdivisions (1) through (5) of this subsection is represented by at least one member of the Board.

(k) Each appointing authority may remove any member appointed by that appointing authority.

(l) The members of the Board of Trustees shall receive one hundred dollars (\$100.00) per day, except employees eligible to enroll in the Plan, whenever the full Board of Trustees holds a public session, and travel allowances under G.S. 138-6 when traveling to and from meetings of the Board of Trustees or hearings under G.S. 135-48.24, but shall not receive any subsistence allowance or per diem under G.S. 138-5, except when holding a meeting or hearing where this section does not provide for payment of one hundred dollars (\$100.00) per day.

(m) No member of the Board of Trustees may serve more than three consecutive two-year terms.

(n) **Immunity.** — Except to the extent provided under Article 31A of Chapter 143 of the General Statutes and to the extent of insurance coverage purchased pursuant to G.S. 58-32-15, a person serving on the Board of Trustees shall be immune individually from civil liability for monetary damages for any act, or failure to act, arising out of that service, except where any of the following apply:

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

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 1; 1985, c. 732, ss. 2-5, 8, 11, 42, 59, 60; 1985 (Reg. Sess., 1986), c. 1020, s. 1; 1987, c. 857, s. 2; 1995, c. 490, s. 56; 2002-126, s. 28.16(a); 2007-323, s.

28.22A(b); 2008-168, ss. 1(a), 2(a), (e); 2011-85, ss. 2.5(a), 2.10; 2011-96, s. 6(a); 2017-135, s. 4; 2018-84, s. 9.

Editor's Note.

Session Laws 2011-85, s. 2.5(a), effec-

tive January 1, 2012, recodified former G.S. 135-44 as G.S. 135-48.20. Former G.S. 135-44 itself was formerly codified as G.S. 135-39. It was recodified as G.S. 135-38.2 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(e), effective July 1, 2008, but was renumbered as G.S. 135-44 at the direction of the Revisor of Statutes.

Session Laws 2011-96, s. 6(a), which amended this section, was contingent on Senate Bill 323, 2011 Regular Session becoming law. Senate Bill 323, 2011 Regular Session was enacted as Session Laws 2011-85.

Session Laws 2011-96, s. 6(c), as amended by Session Laws 2012-194, s. 38, provides: “Notwithstanding the two-year term limitation in G.S. 135-48.20(m), as enacted by Senate Bill 323 of the 2011 Regular Session, the terms of

initial appointees under G.S. 135-48.20 shall be as follows and shall begin January 1, 2012:

“(1) Two and one-half years. — Appointees under G.S. 135-48.20(i).

“(2) Three and one-half years. — Appointees not under G.S. 135-48.20(i).”

Effect of Amendments.

Session Laws 2017-135, s. 4, effective July 20, 2017, added subsection (n).

Session Laws 2018-84, s. 9, effective June 25, 2018, in subsection (j), substituted “categories” for “areas of expertise” in the introductory paragraph, inserted “Individuals with expertise in” at the beginning of subdivisions (1), (3) and (4), added “or health economics” at the end of subdivision (1), deleted former subdivision (2), which read “Health economics” and added subdivision (5).

CASE NOTES

Cited in *Vass v. Board of Trustees*, 89 N.C. App. 333, 366 S.E.2d 1 (1988).

§ 135-48.21. Board officers, quorum, meetings.

(a) Besides the Chair, the Board of Trustees shall elect from its own membership such officers as it sees fit.

(b) A majority of the voting members of the Board of Trustees in office shall constitute a quorum. Decisions of the Board of Trustees shall be made by a majority vote of the Trustees present, except as otherwise provided in this Article.

(c) The Board shall meet at least quarterly. Meetings may also be called by the Chair, or at the written request of three members.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1987, c. 857, s. 3; 2008-168, ss. 1(a), 2(a), (f); 2009-16, s. 5(c); 2011-85, ss. 2.5(b), 2.10.

Editor’s Note.

Session Laws 2011-85, s. 2.5(b), effective January 1, 2012, recodified former

G.S. 135-44.1 as G.S. 135-48.21. Former G.S. 135-44.1 itself was formerly codified as G.S. 135-39.2. It was recodified as G.S. 135-38.3 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(f), effective July 1, 2008, but was renumbered as G.S. 135-44.1 at the direction of the Revisor of Statutes.

§ 135-48.22. Board powers and duties.

The Board of Trustees shall have the following powers and duties:

- (1) Approve benefit programs, as provided in G.S. 135-48.30(a)(2).
- (2) Approve premium rates, co-pays, deductibles, and coinsurance percentages and maximums for the Plan, as provided in G.S. 135-48.30(a)(2).

- (2a) Approve the benefit program, premium rates, co-pays, deductibles, and coinsurance percentages and maximums for the coverage offered under G.S. 135-48.40(e).
- (3) Oversee administrative reviews and appeals, as provided in G.S. 135-48.24.
- (4) Approve large contracts, as provided in G.S. 135-48.33(a).
- (5) Consult with and advise the State Treasurer as required by this Article and as requested by the State Treasurer.
- (6) Develop and maintain a strategic plan for the Plan.

History.

2011-85, s. 2.10; 2012-173, s. 4(a); 2014-100, s. 35.16(b).

Premium Adjustments.

For premiums for partially contributory coverage and contributory coverage, see Session Laws 2011-85, s. 1.2(a) and (b), and related provisions, noted under G.S. 135-48.40.

Deductible, Coinsurance, and Co-payment Adjustments.

For adjustments to deductibles, coinsurance maximums, and co-payments under the Basic and Standard PPO Plans, see Session Laws 2011-85, s. 1.3(a), and related provisions, noted under G.S. 135-48.30.

Editor's Note.

The references in subdivisions (1) and (2) to G.S. 135-48.30(a)(2) were substituted for G.S. 135-48.30(2) at the direction of the Revisor of Statutes.

Session Laws 2011-85, s. 3.1(a), provides: "The State Treasurer and the Board of Trustees of the State Health Plan for Teachers and State Employees shall do the following:

"(1) Examine the issue of moving to a calendar year, including the costs and mechanics of doing so.

"(2) Find savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources and use those savings to offer a premium-free plan option no later than July 1, 2013.

"(3) Strive to keep all premiums low by finding savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources."

Session Laws 2011-85, s. 3.1(b), provides: "The State Health Plan for Teachers and State Employees shall issue a Request for Proposals for a Medicare Advantage Plan no later than June 30, 2012."

Session Laws 2013-360, s. 35.18, pro-

vides: "The Board of Trustees of the State Health Plan for Teachers and State Employees shall adopt new plan changes, beyond those already approved as of June 1, 2013, that are expected to reduce the average annual percentage increase in employer premiums needed over the next four years by at least one. The plan changes may include one or more of the following: changes to out-of-pocket requirements, changes to employee or retiree premiums, new plan options, changes in the services and products covered, changes to the provider network structure, changes to provider rates or payment methodology, incentives to Plan members to adopt or maintain healthy behaviors, incentives to Plan members to control utilization, any type of integrated health management program, fraud detection, utilization management, or changes in plan administration."

Session Laws 2013-360, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2013.'"

Session Laws 2013-360, s. 38.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2013-2015 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2013-2015 fiscal biennium."

Session Laws 2013-360, s. 38.5 is a severability clause.

Session Laws 2014-100, s. 35.16(e), made subdivision (2a) of this section, as added by Session Laws 2014-100, s. 35.16(b), effective January 1, 2015, and applicable to plan years beginning on or after that date.

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.7, is a severability clause.

§ 135-48.23. Executive Administrator.

(a) The Plan shall have an Executive Administrator. The Executive Administrator position is exempt from the provisions of Chapter 126 of the General Statutes as provided in G.S. 126-5(c1).

(b) The Executive Administrator shall be appointed by the State Treasurer. The term of employment and salary of the Executive Administrator shall be set by the State Treasurer.

The Executive Administrator may be removed from office by the State Treasurer, and any vacancy in the office of Executive Administrator may be filled by the State Treasurer.

(c) Repealed by Session Laws 2018-84, s. 8(a), effective June 25, 2018.

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

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

(d) Repealed by Session Laws 2018-85, s. 6, effective June 25, 2018.

History.

1985, c. 732, s. 10; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1987, c. 857, s. 5; 1991, c. 427, s. 2; 2000-141, s. 2; 2001-446, s. 6; 2004-124, s. 31.27(a); 2005-276, ss. 29.33(c), 29.34(a); 2007-323, s. 28.22A(l); 2008-168, ss. 1(a), 2(a), (h), 2.2; 2011-85, ss. 2.1(a), 2.5(c), 2.10; 2013-382, s. 9.1(c); 2017-57, s. 35.22; 2018-84, s. 8(a); 2018-85, s. 6.

Editor's Note.

Session Laws 2011-85, s. 2.5(c), effective

January 1, 2012, recodified former G.S. 135-44.2 as G.S. 135-48.23. Former G.S. 135-44.2 itself was formerly codified as G.S. 135-39.4A. It was recodified as G.S. 135-38.5 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(h), effective July 1, 2008, but was renumbered as G.S. 135-44.2 at the direction of the Revisor of Statutes.

Session Laws 2001-446, s. 8, provides: "Nothing in this act obligates the General Assembly to appropriate funds to

implement this act.”

Session Laws 2005-276, s. 29.33(d), provides: “The Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan may, after consultation with the Joint Legislative Commission on Governmental Operations, negotiate an extension of the current claims processing contract. The extension shall not exceed three years beyond June 30, 2007, the expiration date of the current claims processing contract. In negotiating the extension, the Executive Administrator may include as part of the extension amendments to the terms of the current claims processing contract, as well as inclusion of optional plans or programs authorized under G.S. 135-39.5B, as amended by this section. Amendments to the terms of the current claims processing contract may also include changes in reimbursement levels, services, and other terms as deemed appropriate by the Executive Administrator. As used in this subsection, ‘current claims processing contract’ means the claims processing contract in effect on July 1, 2005, and expiring June 30, 2007. Consultation with the Joint Legislative Commission on Governmental Operations pursuant to this subsection meets the requirements of Article 3 of Chapter 135 of the General Statutes pertaining to consultation with the Committee on Employee Hospital and Medical Benefits.”

Session Laws 2005-276, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2005’.”

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-16, s. 5(g), provides: “The Executive Administrator of the Plan shall include in the development of its Request for Proposal (RFP) for an independent audit of the Plan, an audit of claims paid by the State Health Plan for Teachers and State Employees. One purpose of the audit is to determine whether savings to the Plan and to Plan members could be achieved if claims payments and processing were more efficiently and effectively administered. The audit shall encompass Plan years beginning in 2005, or earlier, through 2008 and shall look at claims administration and payment under the former Indemnity Plan as compared to the present PPO Plan. In developing the RFP, the Executive Administrator shall consult with the Fiscal Research Division staff

and the Director of the Program Evaluation Division of the General Assembly to ensure that all of the following are addressed by the independent audit.

“(1) Estimated or actual savings that could be achieved if changes recommended by the independent auditor were enacted by the General Assembly, and how those savings should be allocated to the benefit of Plan members.

“(2) The governance structure of the Plan and whether it should be under the supervision and oversight of the Governor or a State agency.

“(3) The extent to which the failure or inability to share confidential or otherwise protected information with the Board of Directors and the General Assembly contributes to financial weaknesses in the Plan, and how such data sharing should be strengthened.

“(4) The role of the Board of Directors of the Plan and whether the role should be strengthened or otherwise changed.

“(5) Past, present, and potential areas of overpayments, overutilization, underutilization, or abuse that contributes to increasing costs of Plan benefits, including deductibles, co-payments, dependent premiums, and co-insurance maximums.

“(6) Safeguards to ensure the prompt reporting of claims data and trends to the actuaries under contract with the Plan and the General Assembly.

“(7) Any other matters the Executive Administrator, Fiscal Research Division Staff, the Director of the Program Evaluation Division, or the contracting entity believe would be useful in helping to strengthen the financial integrity of the Plan and Plan benefits.

“It is the intent of the General Assembly that savings identified by the independent audit and realized through enactment by the General Assembly, and overpayments identified by the audit or by the Plan, will be allocated by the General Assembly to minimize benefit reductions and maintain affordable contributions, deductibles, and co-payments by Plan members and to maintain the fiscal integrity of the Plan itself.

“The Executive Administrator shall provide the RFP developed in accordance with this section to the Division of Purchase and Contract not later than July 1, 2009. A copy of the audit report submitted to the Plan by the contracting entity shall be provided to the Committee on Employee Hospital and Medical Benefits.”

Session Laws 2011-85, s. 2.1(b), provides: “The State Treasurer shall have

the power to designate an interim Executive Administrator prior to appointing an Executive Administrator under this section.”

Session Laws 2013-382, s. 9.1(b), provides: “The following entities and positions created by Chapter 126 of the General Statutes are hereby renamed by this act:

“(1) The State Personnel Commission is renamed the ‘North Carolina Human Resources Commission.’

“(2) The Office of State Personnel is renamed the ‘North Carolina Office of State Human Resources.’

“(3) The State Personnel Director is renamed the ‘Director of the North Carolina Office of State Human Resources.’”

Session Laws 2013-382, s. 9.1(c), provides in part: “Modification of References. — The Revisor of Statutes shall delete any references in the General Statutes to the State Personnel Act, State Personnel Commission, the State Personnel Director, and the Office of State Personnel (or any derivatives thereof) and substitute references to the North Carolina Human Resources Act, the State Human Resources Commission, the Director of the Office of State Human Resources, and the Office of Human Resources (or the appropriate derivative thereof) to effectuate the renaming set forth in this section wherever conforming changes are necessary.”

Session Laws 2013-382, s. 9.2, provides: “No action or proceeding pending on the effective date of this section, brought by or against the State Personnel Commission, the Director of the Office of State Personnel, or the Office of State Personnel, shall be affected by any provision of this section, but the same may be prosecuted or defended in the new name of the Commission, Director, and Office. In these actions and proceedings, the renamed Commission, Director, or Office shall be substituted as a party upon proper application to the courts or other public bodies.”

Session Laws 2013-382, s. 9.3, provides: “Any business or other matter undertaken or commanded by the former State Personnel Commission, State Personnel Director, or Office of State Personnel regarding any State program, office, or contract or pertaining to or connected with their respective functions, powers, obligations, and duties that are pending

on the date this act becomes effective may be conducted and completed by the Commission, Director, or Office in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the formerly named commission, director, or office.”

Session Laws 2017-57, s. 1.1, provides: “This act shall be known as the ‘Current Operations Appropriations Act of 2017.’”

Session Laws 2017-57, s. 39.6, is a severability clause.

Effect of Amendments.

Session Laws 2017-57, s. 35.22, effective July 1, 2017, in subsection (b), deleted “after consultation with the Board of Trustees” following “State Treasurer” at the end of the sentence and substituted “State Treasurer” for “State Treasurer after consultation with the Board of Trustees” in the second sentence; rewrote subsection (c); added the subsection designations (c1) and (c2); in subsection (c1) added “The State Treasurer” at the beginning of the first sentence, substituted “State Treasurer” for “Executive Administrator”, and made a stylistic change in the second sentence, and added the third sentence; and substituted “with the consent of” for “after consultation with” in subsection (c2).

Session Laws 2018-84, s. 8(a), effective June 25, 2018, in subsection (a), deleted “and a Deputy Executive Administrator” at the end of the first sentence, substituted “position is” for “and the Deputy Executive Administrator positions are” in the second sentence; and deleted subsection (c), which read “The State Treasurer shall appoint the Deputy Executive Administrator. The term of employment and salary of the Deputy Executive Administrator shall be set by the State Treasurer. The Deputy Executive Administrator may be removed from office by the State Treasurer. Any vacancy in the office of the Deputy Executive Administrator may be filled by the State Treasurer.”

Session Laws 2018-85, s. 6, effective June 25, 2018, deleted subsection (d) which formerly read “The Executive Administrator shall quarterly make reports and recommendations on the Plan to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.”

§ 135-48.24. Administrative review.

(a) If, after exhaustion of internal appeal handling as outlined in the contract with the Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the attention of the Executive Administrator and Board of Trustees, which shall promptly decide whether the subject matter of the appeal is a determination subject to external review under Part 4 of Article 50 of Chapter 58 of the General Statutes. The Executive Administrator and Board of Trustees shall inform the aggrieved person and the aggrieved person's provider of the decision and shall provide the aggrieved person notice of the aggrieved person's right to appeal that decision as provided in this subsection. If the Executive Administrator and Board of Trustees decide that the subject matter of the appeal is not a determination subject to external review, then the Executive Administrator and Board of Trustees may make a binding decision on the matter in accordance with procedures established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written summary of the decisions made pursuant to this section to all employing units, all health benefit representatives, all relevant health care providers affected by a decision, and to any other parties requesting a written summary and approved by the Executive Administrator and Board of Trustees to receive a summary immediately following the issuance of a decision. A decision by the Executive Administrator and Board of Trustees that a matter raised on internal appeal is a determination subject to external review as provided in subsection (b) of this section may be contested by the aggrieved person under Chapter 150B of the General Statutes. The person contesting the decision may proceed with external review pending a decision in the contested case under Chapter 150B of the General Statutes.

(b) The State Treasurer, in consultation with the Board of Trustees, shall adopt and implement utilization review and internal grievance procedures that are substantially equivalent to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes. As used in this section, "determination" is a decision by the State Treasurer, or the Plan's designated utilization review organization administrated by or under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(c) Repealed by Session Laws 2011-398, s. 49, effective January 1, 2012, and applicable to contested cases commenced on or after that date.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 53; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1991, c. 427, s. 6; 2001-446, s. 5(e); 2008-168, ss. 1(a), 2(a), (n); 2011-85, ss. 2.5(g), 2.10; 2011-398, s. 49.

Editor's Note.

Session Laws 2011-85, s. 2.5(g), effective January 1, 2012, recodified former G.S. 135-44.7 as G.S. 135-48.24. Former

G.S. 135-44.7 itself was formerly codified as G.S. 135-39.7. It was recodified as G.S. 135-38.10 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(n), effective July 1, 2008, but was renumbered as G.S. 135-44.7 at the direction of the Revisor of Statutes.

Session Laws 2001-446, s. 8, provides: "Nothing in this act obligates the General Assembly to appropriate funds to implement this act."

CASE NOTES

Language in this section that Board of Trustees "may make a binding decision" concerning a dispute between an aggrieved individual and a claims administrator of a medical plan is not an express and unequivocal exemption of the Board from the requirements of the Administrative Procedure Act; instead, the use of the term "binding" in the statute was intended to mean only that the Board's decision would be binding upon the parties absent further review according to law. *Vass v. Board of*

Trustees, 324 N.C. 402, 379 S.E.2d 26 (1989).

Case Commenced Prior to 1986 Governed by Chapter 150A. — A contested case commences when the dispute is presented to the board; therefore, where a contested case was commenced prior to Jan. 1, 1986, the dispute was governed by Chapter 150A and it was error to resolve this dispute according to Chapter 150B. *Vass v. Board of Trustees*, 108 N.C. App. 251, 423 S.E.2d 796 (1992).

§ 135-48.25. Rules.

The State Treasurer, in consultation with the Board of Trustees, may adopt rules to implement this Article. The State Treasurer shall provide to all employing units, all health benefit representatives, all relevant health care providers affected by a rule, and to any other persons requesting a written description and approved by the State Treasurer written notice and an opportunity to comment not later than 30 days prior to adopting, amending, or rescinding a rule, unless immediate adoption of the rule without notice is necessary in order to fully effectuate the purpose of the rule. Rules of the Board of Trustees shall remain in effect until amended or repealed by the State Treasurer. The State Treasurer shall provide a written description of the rules adopted under this section to all employing units, all health benefit representatives, all relevant health care providers affected by a rule, and to any other persons requesting a written description and approved by the State Treasurer on a timely basis. Rules adopted by the State Treasurer to implement this Article are not subject to Article 2A of Chapter 150B of the General Statutes.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 54; 1991, c. 427, s. 7; 1997-278, s. 3; 1997-468, s. 5; 1998-1, s. 4(f); 2001-253, s. 1(r); 2008-168, ss. 1(a), 2(a), (o); 2011-85, ss. 2.5(h), 2.10.

Editor's Note.

Session Laws 2011-85, s. 2.5(h), effec-

tive January 1, 2012, recodified former G.S. 135-44.8 as G.S. 135-48.25. Former G.S. 135-44.8 itself was formerly codified as G.S. 135-39.8. It was recodified as G.S. 135-38.11 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(o), effective July 1, 2008, but was renumbered as G.S. 135-44.8 at the direction of the Revisor of Statutes.

§ 135-48.26. Reserved for future codification purposes.

§ 135-48.27. Reports to the General Assembly; General Assembly access to information.

In addition to the reports required by G.S. 135-48.23(d), the State Treasurer, the Executive Administrator, and Board of Trustees shall report to the General Assembly at such times and in such forms as shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Employees of the Legislative Services Commission designated by the Legislative Services Officer (i) shall have access to all records related to the Plan of the State Treasurer, the Board of Trustees, the Executive Administrator, the Claims Processor, and the Plan and (ii) shall be entitled to attend all meetings, including executive sessions, of the Board of Trustees.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 55, 55.1; 1985 (Reg. Sess., 1986), c. 1020, s. 7; 2008-168, ss. 1(a), (c), 2(c); 2011-85, ss. 2.4(d), 2.10; 2012-194, s. 30.

Editor's Note.

Session Laws 2011-85, s. 2.4(d), effective January 1, 2012, recodified former

G.S. 135-43.6 as G.S. 135-48.27. Former G.S. 135-43.6 itself was formerly codified as G.S. 135-39.9. It was recodified as G.S. 135-37.4 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(c), effective July 1, 2008, but was placed in Part 1 and renumbered as G.S. 135-43.6 at the direction of the Revisor of Statutes.

§ 135-48.28. Auditing of the Plan.

The State Health Plan for Teachers and State Employees and the Claims Processor shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 913, s. 24; 1985, c. 732, s. 46; 1985 (Reg. Sess., 1986), c. 1020, p. 20; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2008-168, ss. 1(a), (c), 2(g); 2011-85, ss. 2.4(c), 2.10.

Editor's Note.

Session Laws 2011-85, s. 2.4(c), effective January 1, 2012, recodified former

G.S. 135-43.5 as G.S. 135-48.28. Former G.S. 135-43.5 itself was formerly codified as G.S. 135-39.1. It was recodified as G.S. 135-38.4 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(g), effective July 1, 2008, but was renumbered as G.S. 135-43.5 at the direction of the Revisor of Statutes.

Session Laws 2009-16, s. 5(g), provides: "The Executive Administrator of the Plan shall include in the develop-

ment of its Request for Proposal (RFP) for an independent audit of the Plan, an audit of claims paid by the State Health Plan for Teachers and State Employees. One purpose of the audit is to determine whether savings to the Plan and to Plan members could be achieved if claims payments and processing were more efficiently and effectively administered. The audit shall encompass Plan years beginning in 2005, or earlier, through 2008 and shall look at claims administration and payment under the former Indemnity Plan as compared to the present PPO Plan. In developing the RFP, the Executive Administrator shall consult with the Fiscal Research Division staff and the Director of the Program Evaluation Division of the General Assembly to ensure that all of the following are addressed by the independent audit.

“(1) Estimated or actual savings that could be achieved if changes recommended by the independent auditor were enacted by the General Assembly, and how those savings should be allocated to the benefit of Plan members.

“(2) The governance structure of the Plan and whether it should be under the supervision and oversight of the Governor or a State agency.

“(3) The extent to which the failure or inability to share confidential or otherwise protected information with the Board of Directors and the General Assembly contributes to financial weaknesses in the Plan, and how such data sharing should be strengthened.

“(4) The role of the Board of Directors

of the Plan and whether the role should be strengthened or otherwise changed.

“(5) Past, present, and potential areas of overpayments, overutilization, underutilization, or abuse that contributes to increasing costs of Plan benefits, including deductibles, co-payments, dependent premiums, and co-insurance maximums.

“(6) Safeguards to ensure the prompt reporting of claims data and trends to the actuaries under contract with the Plan and the General Assembly.

“(7) Any other matters the Executive Administrator, Fiscal Research Division Staff, the Director of the Program Evaluation Division, or the contracting entity believe would be useful in helping to strengthen the financial integrity of the Plan and Plan benefits.

“It is the intent of the General Assembly that savings identified by the independent audit and realized through enactment by the General Assembly, and overpayments identified by the audit or by the Plan, will be allocated by the General Assembly to minimize benefit reductions and maintain affordable contributions, deductibles, and co-payments by Plan members and to maintain the fiscal integrity of the Plan itself.

“The Executive Administrator shall provide the RFP developed in accordance with this section to the Division of Purchase and Contract not later than July 1, 2009. A copy of the audit report submitted to the Plan by the contracting entity shall be provided to the Committee on Employee Hospital and Medical Benefits.”

§ 135-48.29. Reserved for future codification purposes.

PART 3. PLAN OPERATION.

§ 135-48.30. Powers and duties of the State Treasurer.

(a) The State Treasurer shall have the following powers and duties:

- (1) Administer and operate the State Health Plan for Teachers and State Employees in accordance with G.S. 135-48.2 and the provisions of this Article.
- (2) Set benefits, premium rates, co-pays, deductibles, and coin-surance percentages and maximums, subject to approval by the Board of Trustees. In setting premium rates, the State Treasurer may set a partially contributory rate of zero dollars, subject to approval by the Board of Trustees.

- (3) Set the allowable charges for medical and prescription drug benefits, as necessary.
- (4) Design and implement coordination of benefits policies.
- (5) May offer wellness incentives.
- (6) Set administrative and medical policies that are not in direct conflict with this Article.
- (7) Adopt and implement, in consultation with the Board of Trustees, utilization review and internal grievance procedures that are substantially equivalent to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes.
- (8) Implement and administer pharmacy and medical utilization management programs and programs to detect and address utilization abuse of benefits.
- (9) Establish and operate fraud detection and audit programs.
- (10) Expend funds for any independent audit.
- (11) Establish procedures to require prior medical approval and implement the procedures after consultation with the Board of Trustees.
- (12) Prepare and submit to the Governor and the General Assembly cost estimates for the Plan, including those required by Article 15 of Chapter 120 of the General Statutes.
- (13) Disclose to the Governor and the General Assembly changes or additions to the health benefits programs and health care cost containment programs offered under the Plan, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.
- (14) Secure and maintain tax qualification of the Plan under any applicable provisions of the Internal Revenue Code.
- (15), (16) Repealed by Session Laws 2012-173, s. 3(c), effective January 1, 2013.
- (17) Optionally offer Medicare-related options under G.S. 135-48.38.

(b) The State Treasurer may delegate his or her powers and duties under this section to the Executive Administrator, the Board of Trustees, and employees of the Plan. In delegating powers or duties, however, the State Treasurer maintains the responsibility for the performance of those powers or duties.

History.

2011-85, s. 2.10; 2012-173, s. 3(c), 4(b).

Deductible, Coinsurance, and Co-payment Adjustments.

Session Laws 2011-85, s. 1.3(a), provides: "Effective July 1, 2011, the Exec-

utive Administrator shall make the following changes to deductibles, coinsurance maximums, and co-payments under the Basic and Standard PPO Plans:

"(1) Basic Plan (70/30):

"a. Increase the in-network annual de-

ductible to nine hundred thirty-three dollars (\$933.00) for member-only coverage and to one thousand eight hundred sixty-six dollars (\$1,866) for the out-of-network annual deductible for member-only coverage. The aggregate maximum annual deductible for employee-child and employee-family coverage shall be three times the member-only annual deductibles.

“b. Increase the in-network coinsurance maximum to three thousand seven hundred ninety-three dollars (\$3,793) for member-only coverage and to seven thousand five hundred eighty-six dollars (\$7,586) for member-only out-of-network maximum coinsurance. The aggregate maximum coinsurance for employee-child and employee-family coverage shall be three times the member-only coinsurance maximums.

“c. Increase the in-network urgent care co-payment to eighty-seven dollars (\$87.00) per covered individual.

“d. Increase the in-network primary care co-payment to thirty-five dollars (\$35.00) per covered individual.

“e. Increase the in-network specialist co-payment to eighty-one dollars (\$81.00) per covered individual, except that for mental health and substance abuse services, chiropractic services, and physical therapy, occupational therapy, and speech therapy services, the in-network specialist co-payment shall be sixty-four dollars (\$64.00) per covered individual.

“f. Increase the in-network and out-of-network inpatient co-payment to two hundred ninety-one dollars (\$291.00) per covered individual.

“g. Increase the in-network and out-of-network emergency room co-payment to two hundred ninety-one dollars (\$291.00) per covered individual.

“h. Increase prescription drug co-payments as required under G.S. 135-45.6(b)(1) as amended by this section.

“i. Except as otherwise provided in this act, co-payments and coinsurance for coverage not otherwise listed in this subdivision shall remain as applicable in the 2010-2011 benefit year.

“(2) Standard Plan (80/20):

“a. Increase the in-network annual deductible to seven hundred dollars (\$700.00) for member-only coverage and to one thousand four hundred dollars (\$1,400) for the member-only out-of-network annual deductible. The aggregate maximum annual deductible for employee-child and employee-family coverage

shall be three times the member-only annual deductibles.

“b. Increase the in-network coinsurance maximum to three thousand two hundred ten dollars (\$3,210) for member-only coverage and to six thousand four hundred twenty dollars (\$6,420) for member-only out-of-network maximum coinsurance. The aggregate maximum coinsurance for employee-child and employee-family coverage shall be three times the member-only coinsurance maximums.

“c. Increase the in-network urgent care co-payment to eighty-seven dollars (\$87.00) per covered individual.

“d. Increase the in-network primary care co-payment to thirty dollars (\$30.00) per covered individual.

“e. Increase the in-network specialist co-payment to seventy dollars (\$70.00) per covered individual, except that for mental health and substance abuse services, chiropractic services, and physical therapy, occupational therapy, and speech therapy services, the in-network specialist co-payment shall be fifty-two dollars (\$52.00) per covered individual.

“f. Increase the in-network and out-of-network inpatient co-payment to two hundred thirty-three dollars (\$233.00) per covered individual.

“g. Increase the in-network and out-of-network emergency room co-payment to two hundred thirty-three dollars (\$233.00) per covered individual.

“h. Increase prescription drug co-pays as required under G.S. 135-45.6(b)(1) as amended by this act.

“i. Except as otherwise provided in this act, co-payments and coinsurance for coverage not otherwise listed in this subdivision shall remain as applicable in the 2010-2011 benefit year.”

Session Laws 2011-85, s. 2.11(b), effective January 1, 2012, provides:

“Sections 1.2 and 1.3(a) of this act are repealed.”

Session Laws 2011-96, s. 2(e), provides: “Credits toward deductibles and coinsurance maximums that Plan members earn for services incurred during the months of July and August of 2011 shall be carried forward and applied toward meeting the new deductibles and coinsurance maximums for the period beginning September 1, 2011. If a Plan member fully meets his or her deductible or coinsurance maximum during the months of July and August of 2011, then that Plan member shall receive credit for the amount of the deductible or coinsurance maximum that the Plan member

met during that time, but shall then be subject to meeting any additional amounts required by the new deductible and coinsurance maximums effective September 1, 2011.”

Premium Adjustments.

For premium rates for partially contributory coverage and premium adjustments for contributory coverage, see Session Laws 2011-85, s. 1.2(a) and (b), and related provisions, noted under G.S. 135-48.40.

Editor’s Note.

The subsection (a) designation was added at the direction of the Revisor of Statutes.

Session Laws 2009-16, s. 2(g), provides: “Premium Increases. — Premium rates for contributory coverage established in accordance with G.S. 135-44.6 shall be increased to eight and ninetenths percent (8.9%) for contributory coverage for the 2009-2010 fiscal year and shall be increased by an additional eight and ninetenths percent (8.9%) over the premium rate for contributory coverage for the 2010-2011 fiscal year.”

Session Laws 2011-85, s. 2.12, provides: “In repealing a specific, detailed provision of Article 3A of Chapter 135 of

the General Statutes and not placing that detailed provision into Article 3B of Chapter 135 of the General Statutes, it is not necessarily the intent of the General Assembly to prohibit the State Treasurer or the State Health Plan from having that authority.”

Session Laws 2011-85, s. 3.1(a), provides: “The State Treasurer and the Board of Trustees of the State Health Plan for Teachers and State Employees shall do the following:

“(1) Examine the issue of moving to a calendar year, including the costs and mechanics of doing so.

“(2) Find savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources and use those savings to offer a premium-free plan option no later than July 1, 2013.

“(3) Strive to keep all premiums low by finding savings through wellness programs, Medicare Advantage plans, alternative plan designs, or other resources.”

Session Laws 2011-85, s. 3.1(b), provides: “The State Health Plan for Teachers and State Employees shall issue a Request for Proposals for a Medicare Advantage Plan no later than June 30, 2012.”

§ 135-48.31. Reserved for future codification purposes.

§ 135-48.32. Contracts to provide benefits.

(a) The Plan benefits shall be provided under contracts between the Plan and the claims processors selected by the Plan. The contracts necessarily will conform to applicable State law.

(b) Unless otherwise directed by the Plan, each Claims Processor shall provide the Plan with a Claims Data Feed, which includes all Claim Payment Data, at a frequency agreed to by the Plan and the Claims Processor. The frequency shall be no less than monthly. The Claims Processor is not required to disclose Claim Payment Data that reflects rates negotiated with or agreed to by a noncontracted third party but, upon request, shall provide to the Plan sufficient documentation to support the payment of claims for which Claim Payment Data is withheld on such basis.

(c) Any provision of any contract between a Claims Processor and a health care provider, subcontractor, or third party that would prevent or prohibit the Claims Processor from disclosing Claim Payment Data to the Plan, in accordance with this section, shall be void and unenforceable, but only to the extent the provision prevents and prohibits disclosure to the Plan.

(d) The Plan may use and disclose Claim Payment Data solely for the purpose of administering and operating the State Health Plan

for Teachers and State Employees in accordance with G.S. 135-48.2 and the provisions of this Article. The Plan shall not make any use or disclosure of Claim Payment Data that would compromise the proprietary nature of the data or, as applicable, its status as a trade secret, or otherwise misappropriate the data.

(e) The Plan may not use a provider's Claim Payment Data to negotiate rates, fee schedules, or other master charges with that provider or any other provider.

(f) The Plan may disclose Claim Payment Data to a third party to use on the Plan's behalf as agreed upon between the Plan and the Claims Processor. The Plan must obtain the agreement of the Claims Processor for each third party to whom the Plan seeks to disclose Claim Payment Data and for each use the third party will make of the data. The Plan may not disclose Claim Payment Data to any third party without first entering into a contract with the third party that contains restrictions on the use and disclosure of the Claim Payment Data by the third party that are at least as restrictive as the provisions of this section.

(g) A Claims Processor who discloses Claim Payment Data in accordance with this section shall not incur any civil liability and shall not be subject to equitable relief in connection for the disclosure.

History.

2008-168, s. 3(c); 2009-16, ss. 2(f), 5(h); 2009-281, s. 1; 2009-313, s. 2; 2010-194, s. 18(b); 2011-85, ss. 2.6(a), 2.10; 2016-104, s. 3.

2009 Health Benefit Changes.

Session Laws 2009-16, s. 2(a), provides: "Eliminate PPO Plus Option. — Effective July 1, 2009, the PPO Plus option (90/10 in-network coverage) under the State Health Plan for Teachers and State Employees ('Plan') is eliminated. The Executive Administrator shall provide notice to all members of the Plan that this option will no longer be available as of July 1, 2009. Employees enrolled in the Plan's Plus option shall have the choice of enrolling in the Basic or Standard Plan options for the 2009-2010 benefit year."

Session Laws 2009-16, s. 2(h), provides: "Pharmacy Benefit Savings. — The Plan shall direct its pharmacy benefit manager (PBM), within the terms of the Plan's PBM contract, to achieve the sum of eighteen million dollars (\$18,000,000) in savings in pharmacy benefit costs in the 2009-2010 fiscal year, and the sum of twenty million dollars (\$20,000,000) in savings in pharmacy benefit costs in the 2010-2011 fiscal year through reduced reimbursements paid to

pharmacies for prescription drugs. If the savings achieved in each six-month period of the fiscal year do not exceed one hundred five percent (105%) of the savings amount specified in this section for that fiscal year, there shall be no further adjustment to reimbursements paid to pharmacies for that six-month period. If the total savings achieved, by fiscal year, exceeds one hundred five percent (105%) of the specified savings amount in each six-month period of the fiscal year, the Plan shall adjust pharmacy reimbursement reductions accordingly. The Plan shall review savings achieved twice annually to ensure compliance with this section. The Plan shall calculate the savings to be achieved based on Plan enrollment and estimated cost and utilization trends incorporated in the Plan's Financial Projections as of March 20, 2009. The total savings by fiscal year achieved in this section may be increased or decreased without adjustment based on a change in total enrollment provided that the rate of savings achieved on a per-member per-month basis remains constant. Not later than 60 days immediately following each six-month period, the Plan shall report the amount of savings achieved and any adjustments made for that period to the Committee

on Employee Hospital and Medical Benefits.”

Session Laws 2009-16, s. 7(a)-(f), as amended by Session Laws 2009-571, s. 1, as amended by Session Laws 2011-266, s. 1.33(a), provides: “(a) State Health Plan Blue Ribbon Task Force. — There is established the Blue Ribbon Task Force on the State Health Plan for Teachers and State Employees (Task Force). The purpose of the Task Force is to review the governance of the State Health Plan for Teachers and State Employees (Plan) and to make recommendations for changes that will ensure the ongoing financial stability of the Plan, increase and maintain high participation rates for dependent coverage under the Plan, study and compare coverage and costs of the Plan to coverage and costs of other State health plans in the region, and address issues of cost, quality, and access to health care coverage under the Plan. In conducting its review of the Plan the Task Force shall consider all of the following:

“(1) The feasibility of transferring the ongoing day-to-day oversight of the Plan to an independent board or to a State agency.

“(2) Tiered premium rates for member-only coverage for employees and future retirees based on income or ability to pay.

“(3) Ways to increase participation in dependent coverage including supplements from the State or other methods for reducing dependent premiums.

“(4) The benefits of implementing a closed prescription drug formulary.

“(5) Whether it is advisable to move the Plan to a calendar year, the costs involved in the move, and the benefits that accrue to the Plan and the members as a result of moving to a calendar year.

“(6) Any other matters the Task Force considers relevant to its purpose.

“(b) The Task Force shall consist of 15 members, appointed as follows:

“(1) Six members by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives, one shall be a public schoolteacher, one shall be a State or covered local government retiree other than a retired public schoolteacher, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.

“(2) Six members by the President Pro Tempore of the Senate, three of whom shall be members of the Senate, one shall be a State employee who is not a

public schoolteacher, one shall be a retired State public school employee, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.

“(3) One member by the Governor with expertise in the business of health insurance or in administering health care services other than an insurance company or third-party administrator or contractor of the Plan.

“(4) The chair of the Board of Trustees of the State Health Plan or the chair’s designee.

“(5) The Commissioner of Insurance or the Commissioner’s designee.

“(c) The cochairs of the Task Force shall convene the first meeting as soon as possible after appointments have been made. The Task Force may engage the services of a consultant to provide independent analysis of Plan costs and recommendations on how to strengthen the Plan’s financial stability, benefit structure and coverage, and the most effective and efficient location for Plan administration.

“(d) The Task force shall terminate on or before July 1, 2011.

“(e) A majority of the Task Force members shall constitute a quorum for the transaction of business. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one Task Force member as chair. Appointments shall be made as soon as possible after this act becomes law. Task Force members shall receive no compensation for their service but shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6, as applicable.

“(f) Repealed by Session Laws 2011-266, 1.33(a), effective July 1, 2011.”

Editor’s Note.

Session Laws 2011-85, s. 2.6(a), effective January 1, 2012, recodified former G.S. 135-45(d) as G.S. 135-48.32. Former G.S. 135-45(a) and (e) are recodified as G.S. 135-48.2. Former G.S. 135-45(c) is recodified as G.S. 135-48.8. Former G.S. 135-45(d1) is recodified as G.S. 135-48.33. The remainder of G.S. 135-45 is repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-45 itself was formerly codified as G.S. 135-39.12 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(c), effective July 1, 2008, but was renumbered as G.S. 135-45 at the direction of the Revisor of Statutes.

Session Laws 2010-3, s. 2, provides: “The Executive Administrator of the State Health Plan for Teachers and State Employees shall consult with the Committee on Employee and Hospital Medical Benefits prior to implementing any program to verify tobacco usage by members of the Plan.”

Session Laws 2016-104, s. 9, made the

rewriting of this section by Session Laws 2016-104, s. 3, applicable to contracts entered into on or after July 22, 2016.

Effect of Amendments.

Session Laws 2016-104, s. 3, effective July 22, 2016, rewrote the section. See editor’s note for applicability.

§ 135-48.33. Contracting provisions; large contract review by Board of Trustees and Attorney General, auditing, no cost plus contracts.

(a) The Board of Trustees must approve all Plan contracts in excess of five hundred thousand dollars (\$500,000), including contracts with an initial cost of less than five hundred thousand dollars (\$500,000), but that may exceed five hundred thousand dollars (\$500,000) during the term of the contract.

(b) The Plan shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this Article to the Attorney General or the Attorney General’s designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the Plan under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Plan shall not award a cost plus percentage of cost agreement or contract for any purpose.

History.

2008-168, s. 3(c); 2009-16, ss. 2(f), 5(h); 2009-281, s. 1; 2009-313, s. 2; 2010-194, s. 18(b); 2011-85, ss. 2.6(a), 2.10; 2011-326, s. 15(s).

Editor’s Note.

Session Laws 2011-85, s. 2.6(a), effective January 1, 2012, recodified former G.S. 135-45(d1) as G.S. 135-48.33. Former G.S. 135-45(a) and (e) are recodified as G.S. 135-48.2. Former G.S. 135-45(c) is recodified as G.S. 135-48.8. Former

G.S. 135-45(d) is recodified as G.S. 135-48.32. Former G.S. 135-45(d) is recodified as G.S. 135-48.32. The remainder of G.S. 135-45 is repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-45 itself was formerly codified as G.S. 135-39.12 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(c), effective July 1, 2008, but was renumbered as G.S. 135-45 at the direction of the Revisor of Statutes.

§ 135-48.34. Contracts not subject to Article 3 of Chapter 143 of the General Statutes.

The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-48.2, are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes, but are subject to the requirements of G.S. 135-48.33.

History.

2011-85, s. 2.10.

§ 135-48.35. Contract disputes not contested case under the Administrative Procedure Act, Chapter 150B of the General Statutes.

A dispute involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan is not a contested case under Article 3 of Chapter 150B of the General Statutes.

History.

2001-192, s. 2; 2008-168, ss. 1(a), (c), 2(d); 2011-85, s. 2.4(e).

Editor's Note.

Session Laws 2011-85, s. 2.4(e), effective January 1, 2012, recodified former G.S. 135-43.7 as G.S. 135-48.35. Former

G.S. 135-43.7 itself was formerly codified as G.S. 135-39.11. It was recodified as G.S. 135-37.5 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(d), effective July 1, 2008, but was placed in Part 1 and renumbered as G.S. 135-43.7 at the direction of the Revisor of Statutes.

§ 135-48.36. Reserved for future codification purposes.

§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.

(a) The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery against any third party who was overpaid. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. If, prior to the Plan exercising its rights under this section, a Plan member utilizes or otherwise disposes of any amounts that were recovered from a liable third party to which the Plan is entitled under this section, then the Plan may pursue alternative judicial remedies against the Plan member to recover the amount to which

the Plan is entitled, including the pursuit of a judgment and lien against real property.

(c1) The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered by a Plan member against any liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

(e) The priority of any lien held by the State Health Plan for Teachers and State Employees shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien.

History.

2004-124, s. 31.25; 2006-264, s. 66(a); 2008-168, ss. 1(a), 3(a), (t); 2011-85, ss. 2.6(j), 2.10; 2018-52, ss. 3, 5(a).

Editor's Note.

Session Laws 2011-85, s. 2.6(j), effective January 1, 2012, recodified former G.S. 135-45.15 as G.S. 135-48.37. Former G.S. 135-45.15 itself was formerly codified as G.S. 135-40.13A. It was recodified as G.S. 135-39.27 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(t), effective July 1, 2008, but was renumbered as G.S. 135-45.15 at the direction of the Revisor of Statutes.

Session Laws 2006-264, s. 66(a), which rewrote this section, was effective August 27, 2006, and applicable to payments made by the Plan after July 20, 2004, for which reimbursement is sought on or after August 27, 2006.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 5(e), provides, in part: "Priority of the State Health Plan for Teachers and State Employees' lien over nongovernmental liens and rights created under this section shall apply only to nongovernmental liens and rights that have attached to the applicable property on or after the effective date of this act [June 25, 2018]."

Effect of Amendments.

Session Laws 2018-52, s. 3, effective June 25, 2018, in subsection (c), added

the second sentence, and designated the last paragraph as subsection (c1); and substituted “recovered by a Plan member against any” for “recovered against the” in subsection (c1).

Session Laws 2018-52, s. 5(a), effective June 25, 2018, added subsection (e). For applicability, see editor’s note.

CASE NOTES

Recovery Against Plan Member’s Attorney. — Summary judgment for plaintiff on its former G.S. 135-45.15 (now codified at G.S. 135-48.37) claim was affirmed since: (1) plaintiff had the right to first recovery of up to 50 percent of any amounts recovered by a member for injuries that were inflicted by a third party and for which plaintiff provided treatment benefits; (2) G.S. 135-45.15 placed an affirmative duty on defendant, who represented the member, to use any settlement proceeds to first satisfy plaintiff’s lien; and (3) defendant’s failure to comply with the statute subjected him to liability for the amount of the lien. *State Health Plan for Teachers & State Emples. v. Ellison*, 227 N.C. App. 114, 744 S.E.2d 473, 2013 N.C. App. LEXIS 468 (2013).

Plain language of former G.S. 135-45.15, now codified at G.S. 135-48.37, similarly to G.S. 44-50, places a duty upon an injured party’s attorney to direct settlement funds recovered by an injured The State Health Plan for Teachers and State Employees (State Health Plan) member to the State Health Plan in satisfaction of its statutory lien; by establishing this duty, the statute necessarily also creates a cause of action by which the State Health Plan may enforce its lien under the statute against an attorney who violates its requirements by failing to disburse his client’s settlement proceeds in accordance with the statute. *State Health Plan for Teachers & State Emples. v. Ellison*, 227 N.C. App. 114, 744 S.E.2d 473, 2013 N.C. App. LEXIS 468 (2013).

§ 135-48.37A. Employing unit cooperation in collection of amounts owed to Plan.

(a) Any payment of benefits or other amount to, or premiums or claims paid on behalf of, any Plan member that is later determined to be an overpayment, an erroneous payment, or a benefit or amount for which the Plan member was ineligible shall be repaid by the Plan member to the Plan. If the Plan member is an employee of an employing unit, then any amounts to be recouped under this subsection shall be offset against the net wages of the Plan member.

(b) If a Plan member owes an amount to the Plan under this section, has been notified of this amount owed by the Plan member in writing, and has not entered into a payment plan acceptable to the Plan within 30 days after the written notice, then the Plan shall notify the Plan member’s employer of the amount owed. Upon receipt of this notice from the Plan, an employing unit shall offset the amount owed against not less than ten percent (10%) of the net wages of the Plan member until the Plan notifies the employing unit that the amount owed has been paid in full. The Plan’s notice to the employing unit shall be prima facie evidence that the amount owed is valid and, notwithstanding any other provision of law to the contrary, the employing unit has no obligation to verify the amount owed. The employing unit shall provide no more than 30 days’ but not less than 14 days’ written notice to the Plan member prior to beginning the offset. The employing unit shall remit all amounts

offset under this subsection to the Plan in intervals corresponding with the employing unit's regular pay periods.

(c) If an employing unit fails to adhere to the provisions of this section, the Plan shall, after notice to the employing unit of its failure to cooperate, be entitled to seek recovery of any amounts due directly from the employing unit.

(d) No amount due under this section may be forgiven by the Board, the Plan, the Executive Administrator, the State Treasurer, or an employing unit. The Plan and the employing unit shall have a duty to pursue the repayment in full of these funds by all lawful means available, including the filing of a civil action in the General Court of Justice.

(e) Nothing in this section shall be construed to limit the Plan's ability to pursue alternative judicial remedies against a Plan member or a former Plan member, including the pursuit of a judgment and lien against real property.

History.

2018-52, s. 2(a).

Editor's Note.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from

compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 2(d), made this section effective June 25, 2018, and applicable to all amounts owed by a Plan member for which notice is sent on and after that date, regardless of the date the benefit, claim, or premium amount which the Plan member was ineligible, the overpayment, or the erroneous payment was made.

§ 135-48.38. Persons eligible for Medicare; optional participation in other Medicare products.

(a) Benefits payable for covered expenses under this Plan will be reduced by any benefits payable for the same covered expenses under Medicare, so that Medicare will be the primary carrier except where compliance with federal law specifies otherwise.

(b) For those participants eligible for Medicare, the Plan will be administered on a "carve out" basis. The provisions of the Plan are applied to the charges not paid by Medicare (Parts A & B). In other words, those charges not paid by Medicare would be subject to the deductible and coinsurance of the Plan just as if the charges not paid by Medicare were the total bill.

(c) For those individuals eligible for Part A (at no cost to them), benefits under this program will be reduced by the amounts to which the covered individuals would be entitled to under Parts A and B of Medicare, even if they choose not to enroll for Part B.

(d) Notwithstanding the foregoing provisions of this section or any other provisions of the Plan, the State Treasurer may enter into negotiations with the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, in order to secure a more favorable coordination of the Plan's benefits with those provided by Medicare, including but not limited to, measures by which the Plan would provide Medicare benefits for all of its Medicare-eligible members in return for adequate payments from the federal government in providing such benefits. Should such negotiations result in an agreement favorable to the Plan and its Medicare-eligible members, the State Treasurer may, after consultation with the Board of Trustees, implement such an agreement which shall supersede all other provisions of the Plan to the contrary related to its payment of claims for Medicare-eligible members.

(e) Notwithstanding subsections (a), (b), and (c) of this section, the State Treasurer may contract for coverage in lieu of current Plan medical and prescription drug benefits for Medicare retirees or to supplement Medicare benefits and may, after consultation with the Board of Trustees, implement such an agreement, which shall supersede all other provisions of the Plan to the contrary related to its payment of claims for Medicare-eligible members.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985 (Reg. Sess., 1986), c. 1020, s. 18; 1987, c. 857, s. 21; 1989, c. 752, s. 22(o); 2008-168, ss. 1(a), 3(a), (o); 2011-85, ss. 2.6(g), 2.10.

Editor's Note.

Session Laws 2011-85, s. 2.6(g), effective January 1, 2012, recodified former

G.S. 135-45.10 as G.S. 135-48.38. Former G.S. 135-45.10 itself was formerly codified as G.S. 135-40.10. It was recodified as G.S. 135-39.22 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(o), effective July 1, 2008, but was renumbered as G.S. 135-45.10 at the direction of the Revisor of Statutes.

§ **135-48.39.** Reserved for future codification purposes.

PART 4.

ELIGIBILITY AND ENROLLMENT.

§ **135-48.40.** **Categories of eligibility.**

(a) **Noncontributory Coverage.** — The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-48.43:

- (1) **(Effective until January 1, 2021)** Retired teachers, State employees, members of the General Assembly, and retired

State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. Except as otherwise provided in this subdivision, on and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.

- (1) **(Effective January 1, 2021)** Retired employees, as defined in G.S. 135-48.1(18), and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. Except as otherwise provided in this subdivision, on and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.

(2) Surviving spouses of:

- a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
- b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(b) **Partially Contributory Coverage.** — The following persons are eligible for coverage under the Plan, on a partially contributory basis, subject to the provisions of G.S. 135-48.43:

- (1) All permanent full-time employees of an employing unit who meet either of the following conditions:

- a. Paid from general or special State funds.
 - b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage. Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.
- (1a) All retirees who (i) are employed by an employing unit that elects to be covered by this subdivision, (ii) do not qualify for coverage under subdivision (1) of this subsection, and (iii) are determined to be “full-time” by their employing unit in accordance with section 4980H of the Internal Revenue Code and the applicable regulations, as amended. The employing unit shall pay the employer premiums for retirees who enroll under this subdivision.
 - (2) Repealed by Session Laws 2013-324, s. 2, effective July 23, 2013.
 - (3) **(Effective until January 1, 2021)** Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers’ Retirement System prior to January 1, 1985. Except as otherwise provided in this subdivision, on and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.
 - (3) **(Effective January 1, 2021)** Retired employees, as defined in G.S. 135-48.1(18), and retired State law enforcement officers who retired under the Law Enforcement Officers’ Retirement System prior to January 1, 1985. Except as otherwise provided in this subdivision, on and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or

retiree. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.

- (4) Surviving spouses of:
 - a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
 - b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.
- (5) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.
- (6) Members of the General Assembly.
- (7) Notwithstanding the provisions of subsection (e) of this section, employees on official leave of absence while completing a full-time program in school administration in an approved program as a Principal Fellow in accordance with Article 5C of Chapter 116 of the General Statutes.
- (8) Notwithstanding the provisions of G.S. 135-48.44, employees formerly covered by the provisions of this section, other than retired employees eligible for coverage on a noncontributory basis, who have been employed for 12 or more months by an employing unit, or who have completed a contract term of employment of 10 or 11 months and whose employing unit is a local school administrative unit, and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination. An employee formerly covered by the provisions of this section shall not be eligible for coverage under this subdivision if the employee is provided health benefit coverage on a non-contributory basis by a subsequent employer.
- (9) Any member enrolled pursuant to subdivision (1) or (2) of this subsection who is on approved leave of absence with pay or receiving workers' compensation.
- (10) Employees on approved Family and Medical Leave.

(c) **One-Half Contributory Coverage.** — The following persons are eligible for coverage under the Plan, on a one-half contributory basis, subject to the provisions of G.S. 135-48.43:

- (1) A school employee in a job-sharing position as described in G.S. 115C-326.5. If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total employer premiums. Individual employees shall pay the balance of the total premiums not paid by the employing unit.
- (2) **(Effective until January 1, 2021)** Employees and members of the General Assembly with 10 but less than 20 years of retirement service credit provided the employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total employer premiums. Individual retirees shall pay the balance of the total premiums not paid by the State, unless prohibited by law. The total premium is the sum of the Plan's total employer premium contribution rate plus the employee or retiree's contribution for individual and dependent coverage.
- (2) **(Effective January 1, 2021)** Retired employees, as defined in G.S. 135-48.1(18), with 10 but less than 20 years of retirement service credit provided the employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total employer premiums. Individual retirees shall pay the balance of the total premiums not paid by the State.

(d) **Fully Contributory Coverage.** — The following persons shall be eligible for coverage under the Plan, on a fully contributory basis, subject to the provisions of G.S. 135-48.43:

- (1) Former members of the General Assembly who enroll before October 1, 1986.
- (2) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility.
- (3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.
- (4) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

- (5) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.
- (6) All permanent part-time employees (designated as half-time or more) of an employing unit who meet the conditions outlined in sub-subdivision (b)(1)a. of this section and who are not covered by the provisions of subdivision (b)(1) of this section.
- (7) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of subdivision (b)(8) of this section, Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 90 days of the member's death.
- (8) Blind persons licensed by the State to operate vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, who are:
 - a. Operating such a vending facility;
 - b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and
 - c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage.
- (9) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, Disability Income Plan beneficiaries, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.
- (10) Any eligible dependent child of the deceased retiree, teacher, State employee, member of the General Assembly,

former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. An eligible surviving dependent child can remain covered until age 26 or indefinitely if certified as incapacitated under G.S. 135-44.41(b) [135-48.41(b)].

- (11) **(Effective until January 1, 2021)** Retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit, provided the teachers and State employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007.
- (11) **(Effective January 1, 2021)** Retired employees, as defined in G.S. 135-48.1(18), with less than 10 years of retirement service credit, provided the teachers and State employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007.
- (12) Notwithstanding the provisions of G.S. 135-48.44, former employees covered by the provisions of this section and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to this section, following expiration of the former employees' coverage provided by this section. Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under this section.
- (13) The following persons, their eligible spouses, and eligible dependent children, provided that the person seeking coverage as a subscriber (i) is not eligible for another comprehensive group health benefit plan and (ii) has been without coverage under a comprehensive group health benefit plan for at least six consecutive months:
 - a. Firefighters.
 - b. Rescue squad workers.
 - c. Persons receiving a pension from the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund.
 - d. Members of the North Carolina National Guard.
 - e. Retirees of the North Carolina National Guard with 20 years of service.

For the purposes of this subdivision, Medicare benefits, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, and other Uniformed Ser-

vices benefits shall be considered comprehensive group health benefit plans. The Plan may require certification of persons seeking coverage under this subdivision.

(e) **Other Contributory Coverage.** — Any employee of an employing unit is eligible for coverage under this section on a contributory basis, subject to the provisions of G.S. 135-48.43 and of this section, if (i) the employee's employing unit determines that the employee is a full-time employee and (ii) the employee does not qualify for coverage under subdivision (1), (1a), (5), (6), (7), (8), (9), or (10) of G.S. 135-48.40(b). For the purposes of this subsection, the full-time status of an employee shall be determined by the employing unit, in its sole discretion, in accordance with Section 4980H of the Internal Revenue Code and the applicable regulations, as amended. The coverage offered and the contribution required for coverage under this section shall be determined by the Treasurer and approved by the Board of Trustees. Such coverage shall do all of the following:

- (1) Be designed to meet the requirements of minimum essential coverage under the Patient Protection and Affordable Care Act, P.L. 111-148, and the applicable regulations, as amended (Affordable Care Act).
- (2) Provide no greater coverage than a bronze-level plan, as defined under the Affordable Care Act.
- (3) Minimize the required employer contribution in an administratively feasible manner.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(l); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a), (b), 3; 2001-487, s. 86(a); 2002-174, s. 4; 2003-358, s. 4; 2004-124, s. 31.21(b); 2004-199, s. 34(b); 2005-276, s. 29.31(e); 2006-174, ss. 1, 2, 3; 2007-323, s. 28.22A(g1), (o); 2007-345, s. 12; 2008-168, ss. 1(a), 3(a), (f); 2008-194, s. 6(b); 2009-16, s. 3(b); 2009-281, s. 1; 2009-570, s. 43.2; 2009-571, s. 3(a), (d); 2010-72, s. 3(a); 2010-136, ss. 1, 2; 2011-85, ss. 1.6(b), 2.6(c), 2.10; 2011-96, s. 2(a); 2013-324, ss. 1, 2; 2014-100, s. 35.16(a), (c); 2015-100, ss. 3, 4(a); 2015-241, s. 30.25(a); 2016-56, s. 8; 2017-57, s. 35.21(d); 2017-135, s. 2.

Subdivisions (a)(1), (b)(3), (c)(2), and (d)(11) Set Out Twice.

The first version of subdivision (a)(1), (b)(3), (c)(2), and (d)(11) set out above is effective until January 1, 2021. The second version of subdivision (a)(1), (b)(3), (c)(2), and (d)(11) set out above is effective January 1, 2021.

Local Modification.

Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1;

Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Editor's Note.

Session Laws 2011-85, s. 2.6(c), effective January 1, 2012, recodified former subsections (a), (a1), (b), and (c) of G.S. 135-45.2 as subsections (a)-(d) of G.S. 135-48.40, respectively. The remainder of G.S. 135-45.2 was recodified as G.S. 135-48.41. Former G.S. 135-45.2 itself was formerly codified as G.S. 135-40.2. It was recodified as G.S. 135-39.14 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(f), effective July 1, 2008, but was renumbered as G.S. 135-45.2 at the direction of the Revisor of Statutes.

In subdivision (d)(10), as amended by Session Laws 2011-85, s. 2.10, the bracketed reference was added at the direction of the Revisor of Statutes.

Session Laws 2013-324, s. 7, made the amendment to subdivision (b)(1) by Session Laws 2013-324, s. 1, applicable to plan years beginning on or after January 1, 2015.

Session Laws 2014-100, s. 35.16(a), repealed Session Laws 2013-324, s. 1, which amended subdivision (b)(1) of this section, effective January 1, 2015. Since the amendment by Session Laws 2013-324 was effective January 1, 2015, that amendment never took effect.

Session Laws 2014-100, s. 35.16(e), made subsection (e) of this section, as added by Session Laws 2014-100, s. 35.16(c), effective January 1, 2015, and applicable to plan years beginning on or after that date.

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.7, is a severability clause.

Session Laws 2015-241, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2015.'"

Session Laws 2015-241, s. 33.6, is a severability clause.

Session Laws 2016-56, s. 10, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.6, is a severability clause.

Effect of Amendments.

Session Laws 2015-241, s. 30.25(a), effective January 1, 2016, added subdivision (b)(1a); and substituted "subdivision (1), (1a), (5), (6), (7), (8), (9), or (10)" for "subdivision (1), (5), (6), (7), (8), (9), or (10)" in the first sentence of subsection (e).

Session Laws 2016-56, s. 8, effective June 30, 2016, in subdivision (d)(13)c., substituted "Firefighters" for "Firemen."

Session Laws 2017-57, s. 35.21(d), effective January 1, 2021, substituted "Retired employees, as defined in G.S. 135-48.1(18)" for "Retired teachers, State employees, members of the General Assembly" or variants in subdivisions (a)(1), (b)(3), (c)(2), and (d)(11).

Session Laws 2017-135, s. 2, effective July 20, 2017, in subdivision (c)(2), added "unless prohibited by law." at the end of the third sentence, made a stylistic change, and added the last sentence.

§ 135-48.41. Additional eligibility provisions.

(a) A foster child is covered as a dependent child (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the claims processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a

claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of the child, are not eligible participants.

(b) A dependent child shall not be eligible for coverage under the Plan if the dependent child is eligible for employer based health care outside of the State Health Plan for Teachers and State Employees, other than a parent's claim. Coverage of a dependent child may be extended beyond the 26th birthday if the dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-48.40(d)(7).

(c) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes or who are approved for those benefits but not in receipt of the benefits due to lump-sum payouts of vacation, bonus, and sick leave, provided the former employee has at least five years of contributory retirement service with an employing unit of a State-supported retirement system, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory or partially contributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter.

(e) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(f) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina State Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the State Health Plan for Teachers and State Employees. In addition, each association, orga-

nization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member. This subsection applies only to those individuals employed prior to July 1, 1983, as provided in G.S. 135-27(d).

(g) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time during an annual enrollment period.

(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the State Treasurer or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan or in any representation or attestation to the Plan.

The State Treasurer may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the State Treasurer to make an exception as allowed for under this subsection.

(i) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost.

(j) If a retiree has been hired by an employing unit and is eligible for coverage under subdivision (1), (1a), (5), (6), (7), (8), (9), or (10) of G.S. 135-48.40(b) or under G.S. 135-48.40(e), then the hired retiree shall not, during the time of employment, be eligible for retiree coverage under G.S. 135-48.40(a)(1), G.S. 135-48.40(b)(3), G.S. 135-48.40(c)(2), or G.S. 135-48.40(d)(11).

(k) If a retiree is a prisoner serving an active sentence in the State prison system and covered under G.S. 148-19, then the incarcerated retiree shall not, during the time of incarceration, be eligible for retiree coverage under G.S. 135-48.40(a)(1), 135-48.40(b)(3), 135-48.40(c)(2), or 135-48.40(d)(11).

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(l); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a), (b), 3; 2001-487, s. 86(a); 2002-174, s. 4; 2003-358, s. 4; 2004-124, s. 31.21(b); 2004-199, s. 34(b); 2005-276, s. 29.31(e); 2006-174, ss. 1, 2, 3; 2007-323, s. 28.22A(g1), (o); 2007-345, s. 12; 2008-168, ss. 1(a), 3(a), (f); 2008-194, s. 6(b); 2009-16, s. 3(b); 2009-281, s. 1; 2009-570, s. 43.2; 2009-571, s. 3(a), (d); 2010-72, s. 3(a); 2010-136, ss. 1, 2; 2011-85, ss. 1.7(b), 2.6(c), 2.10; 2011-96, s. 3(b); 2011-294, s. 1; 2012-173, s. 2(a); 2014-100, s. 35.16A(a); 2015-100, s. 4(b); 2015-241, s. 30.25(b); 2017-135, s. 8.

Editor's Note.

Session Laws 2011-85, s. 2.6(c), effective January 1, 2012, recodified former subsections (d)-(k) of G.S. 135-45.2 as subsections (a) and (c)-(i) of G.S. 135-48.41, respectively. The remainder of G.S. 135-45.2 was recodified as G.S. 135-48.40. Former G.S. 135-45.2 itself was formerly codified as G.S. 135-40.2. It was recodified as G.S. 135-39.14 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(f), effective July 1, 2008, but was renumbered as G.S. 135-45.2 at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2009-16, s. 3(e), provides: "Eligibility Audit. — The Executive Administrator shall provide for an audit of dependent eligibility under the Plan. The audit shall be designed to determine whether all dependents currently covered under the Plan are eligible for coverage under current law. Upon identification of an individual who is enrolled as a dependent but not eligible, the Plan shall disenroll the ineligible dependent effective within 10 days of sending written termination notice to

the employee. The notice shall state the date upon which disenrollment will become effective and the basis on which the determination of dependent ineligibility is made. Notwithstanding any other provision of law, the Executive Administrator may waive requirements to collect from the member reimbursement for claims paid for the ineligible covered individual."

Session Laws 2010-3, s. 1, effective June 1, 2010, and repealed effective July 1, 2011, provides: "Notwithstanding the requirement in G.S. 135-45.2(d)(1) that a dependent child less than 26 years of age be a full-time student to be eligible for coverage, a dependent child enrolled in the North Carolina State Health Plan for Teachers and State Employees as of May 1, 2010, may remain on the Plan through the end of the month following the dependent child's 26th birthday, regardless of the dependent child's status as a full-time student, provided that the dependent child is not eligible for other employer sponsored health benefit coverage as a primary beneficiary or spousal dependent."

Session Laws 2011-96, s. 3(b), which amended this section, was contingent on Senate Bill 323, 2011 Regular Session becoming law. Senate Bill 323, 2011 Regular Session was enacted as Session Laws 2011-85.

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.7, is a severability clause.

Session Laws 2015-241, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2015.'"

Session Laws 2015-241, s. 33.6, is a severability clause.

Session Laws 2017-128, s. 7, provides: "The Executive Administrator and the Board of Trustees of the State Health Plan (Plan) shall not approve resolutions electing to cover retirees under the Plan for local government entities that were authorized under S.L. 2004-124, S.L. 2006-7, S.L. 2005-276, and S.L. 2006-249 to participate in the Plan but that did not opt to cover retirees before January 1, 2017."

Session Laws 2017-128, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2015-241, s. 30.25(b),

effective January 1, 2016, substituted "subdivision (1), (1a), (5), (6), (7), (8), (9), or (10)" for "subdivision (1), (5), (6), (7), (8), (9), or (10)" in subsection (j). Session Laws 2017-135, s. 8, effective July 20, 2017, added subsection (k).

§ 135-48.42. Enrollment.

(a) Except as otherwise required by applicable federal law, new employees must be given the opportunity to enroll or decline enrollment for themselves and their dependents within 30 days from the date of employment or from first becoming eligible on a partially contributory or other contributory basis. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees age 19 and older not enrolling themselves and their dependents age 19 and older within 30 days, or not adding dependents when first eligible as provided herein may enroll during annual enrollment, but may be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the State Treasurer for optional or alternative plans available under the Plan. Children born to covered employees shall be covered at the time of birth so long as the Plan receives notification within 30 days of the date of birth and the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.

(b) Except as otherwise required by applicable federal law, newly acquired dependents (spouse/child) age 19 and older enrolled within 30 days of becoming an eligible dependent will not be subject to the 12-month waiting period for preexisting conditions. A dependent can become first eligible due to marriage, adoption, legal guardianship, entering a foster child relationship, and at the beginning of each legislative session (applies only to enrolled legislators). Effective date for newly acquired dependents if application was made within the 30 days can be the first day of the following month. Effective date for an adopted child can be date of adoption, or date of placement in the adoptive parents' home, or the first of the month following the date of adoption or placement. Firefighters, rescue squad workers, and members of the National Guard, and their eligible dependents, are subject to the same terms and conditions as are new employees and their dependents covered by this subdivision. Enrollments in these circumstances must occur within 30 days of eligibility to enroll.

(c) Eligible employees younger than age 19 and dependents younger than age 19 may be enrolled during annual enrollment and shall not be subject to any waiting period for a preexisting condition.

(d) When an eligible or enrolled member applies to enroll the member's eligible dependent child or spouse, the member shall

provide the documentation required by the Plan to verify the dependent's eligibility for coverage.

(e) Eligible employees and retirees may only change their elections, including adding or removing dependents, during the Plan year due to a qualifying event as defined under federal law. Notwithstanding the preceding sentence, retirees and surviving spouses may disenroll from the Plan during the Plan year without a qualifying event. Retirees and surviving spouses may also disenroll their dependents from the Plan during the Plan year without a qualifying event.

History.

2008-168, s. 3(g); 2009-16, s. 3(c), (g); 2009-281, s. 1; 2011-85, ss. 1.7(c), 2.6(d), 2.10; 2011-96, ss. 2(d)(1), 3(c); 2012-173, s. 2(b); 2013-324, s. 3; 2015-100, ss. 1, 5; 2017-135, s. 3(a).

Editor's Note.

Session Laws 2011-85, s. 2.6(d), effective January 1, 2012, recodified former G.S. 135-45.3 as G.S. 135-48.42. Former G.S. 135-45.3 itself was formerly codified as G.S. 135-39.15 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(g), effective July 1, 2008, but was renumbered as G.S. 135-45.3 at the direction of the Revisor of Statutes.

Session Laws 2011-96, s. 3(c), which amended this section, was contingent on Senate Bill 323, 2011 Regular Session becoming law. Senate Bill 323, 2011 Regular Session was enacted as Session Laws 2011-85.

Session Laws 2013-324, s. 7, made the amendment to subsection (e) by Session Laws 2013-324, s. 3, applicable to plan years beginning on or after January 1, 2014.

Session Laws 2017-135, s. 3(b), made

the amendment to subsection (a) of this section by Session Laws 2017-135, s. 3(b), effective October 1, 2017, and applicable to children born to covered employees on or after that date.

Effect of Amendments.

Session Laws 2017-135, s. 3(a), rewrote the last two sentences of subsection (a), which read: "Children born to covered employees having coverage type (2) or (3), as outlined in G.S. 135-48.43(d) shall be automatically covered at the time of birth without any waiting period for preexisting health conditions. Children born to covered employees having coverage type (1) shall be automatically covered at birth without any waiting period for preexisting health conditions so long as the claims processor receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2) or (3), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born." For effective date and applicability, see editor's note.

§ 135-48.43. Effective dates of coverage.

(a) **Eligible Employees and Retired Employees.** — Employees and retirees who otherwise satisfy the eligibility requirements set forth in G.S. 135-48.40 will be offered coverage with the following effective dates:

- (1) Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof.
- (2) New employees may apply for coverage to be effective on the first day of the month following employment, or on a like date the following month if the employee has enrolled, except that the effective date of coverage for employees who become eligible in accordance with G.S. 135-48.40(e) will be

determined by the employing unit in a manner that is consistent with section 4980H of the Internal Revenue Code and the applicable regulations, as amended.

- (3) Employees not enrolling or adding dependents when first eligible in accordance with G.S. 135-48.42 may enroll later during annual enrollment, except employees who elect to change their coverage in accordance with rules adopted by the State Treasurer for optional alternative plans offered under the Plan.
 - (4) Members of the General Assembly, beginning with the 1985 Session, shall become first eligible with the convening of each Session of the General Assembly, regardless of a Member's service during previous Sessions. Members and their dependents enrolled when first eligible after the convening of each Session of the General Assembly will not be subject to any waiting periods for preexisting health conditions. Members of the 1983 Session of the General Assembly, not already enrolled, shall be eligible to enroll themselves and their dependents on or before October 1, 1983, without being subject to any waiting periods for preexisting health conditions.
- (b) **Waiting Periods and Preexisting Conditions. —**
- (1) New employees and dependents age 19 and older enrolling when first eligible are subject to no waiting period for preexisting conditions under the Plan.
 - (2) Employees age 19 and older not enrolling or not adding dependents age 19 and older when first eligible may enroll later during annual enrollment, but enrollees age 19 or older may be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section. The waiting period under this subdivision is subject to applicable federal law.
 - (3) Retiring employees and dependents enrolled when first eligible after an employee's retirement are subject to no waiting period for preexisting conditions under the Plan. Retiring employees not enrolled or not adding dependents age 19 and older when first eligible after an employee's retirement may enroll at a later time during annual enrollment, but may be subject to a 12-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.
 - (4) Employees and dependents enrolling or reenrolling within 12 months after a termination of enrollment or employment that were not enrolled at the time of this previous termination, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting

conditions. Employees and dependents transferring from optional prepaid alternative plans available under the Plan; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with subdivision (3) of this subsection; formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules adopted by the State Treasurer in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll.

- (5) To administer the 12-month waiting period for preexisting conditions for employees age 19 and older and dependents age 19 and older under this Article, the Plan must give credit against the 12-month period for the time a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 63 days before the effective date of coverage. As used in this subdivision, a "previous plan" means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement. Waiting periods for preexisting conditions administered under this Article are subject to applicable federal law.
- (c) **Dependents of Employees and Retired Employees. —**
 - (1) Dependents of employees and retired employees who have family coverage under the Predecessor Plan will continue to be covered subject to the terms hereof.
 - (2) Employees who have dependents may apply for family coverage at the time they enroll as provided in subdivisions

(a)(2) and (a)(3) of this section and such dependents will be covered under the Plan beginning the same date as such employees.

- (3) Employees and retired employees may change from one category of coverage to a different category of coverage without a waiting period for preexisting conditions, and, as applicable, dependents will be covered under the Plan the first of the month or the first of the second month following the dependent's eligibility for coverage, provided written application is submitted to the Health Benefits Representative within 30 days of becoming eligible.
- (4) Employees or retired employees who wish to change to employee only coverage shall give written notice to their Health Benefits Representative within 30 days after any change in the status of dependents, (resulting from death, divorce, etc.) that requires a change in contract category. The effective date will be the first of the month following the dependent's ineligibility event. If notification was not made within the 30 days following the dependent's ineligibility event, the dependent will be retroactively removed the first of the month following the dependent's ineligibility event, and the coverage category change will be the first of the month following written notification, except in cases of death, in which case the coverage category change will be made retroactive to the first of the month following the death.
- (5) Employees not adding dependents age 19 and older when first eligible may enroll later during annual enrollment, but dependents may be subject to a 12-month waiting period for preexisting health conditions except as provided in subdivision (a)(3) of this section.
- (6) Employees or retired employees who wish to change to employee only coverage even though their dependents continue to be eligible, shall give written notification to their Health Benefits Representative. Except as otherwise required by applicable federal law, the date of this category change will be the first of the month following written notification or any first of the month thereafter as desired by the employee.
- (7) The effective date for newborns or adopted children will be date of birth, date of adoption, or placement with adoptive parent provided member is currently covered under employee and family or employee and child coverage. If the member wishes to add a newborn or adopted child and is currently enrolled in employee only coverage, the member must submit application for coverage and a coverage type change within 30 days of the child's birth or date of

adoption or placement. Effective date for the coverage category change is the first of the month in which the child is born, adopted, or placed. Adopted children may also be covered the first of the month following placement or adoption.

(d) **Categories of Coverage Available.** — There are four categories of coverage which an employee or retiree may elect.

- (1) **Employee Only.** — Covers enrolled employees only. Maternity benefits are provided to employee only.
- (2) **Employee and Child.** — Covers enrolled employee and all eligible dependent children. Maternity benefits are provided to the employee only.
- (3) **Employee and Family.** — Covers employee and spouse, and all eligible dependent children. Maternity benefits are provided to employee or enrolled spouse.
- (4) **Employee and Spouse.** — Covers employee and spouse only. Maternity benefits are provided to the employee or the employee's enrolled spouse.

(e) Firefighters, rescue squad workers, and members of the National Guard are subject to the same terms and conditions of this section as are employees. Eligible dependents of firefighters, rescue squad workers, and members of the National Guard are subject to the same terms and conditions of this section as are dependents of employees.

(f) If any provision of this section is in conflict with applicable federal law, federal law shall control to the extent of the conflict.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(b), 20; 1987, c. 857, s. 13; 1991, c. 427, ss. 10-12; 1996, 2nd Ex. Sess., c. 18, s. 28.23(b); 1997-512, ss. 28-31, 40; 1999-237, s. 28.29(g); 2007-323, s. 28.22A(h); 2008-168, ss. 1(a), 3(a), (h); 2009-16, ss. 3(d), 5(a); 2009-281, s. 1; 2011-85, ss. 1.7(d), 2.6(e), 2.10; 2011-96, ss. 2(d)(2), 3(d); 2012-173, s. 2(c); 2013-324, s. 4; 2014-100, s. 35.16(a), (d).

Local Modification.

Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Mitchell: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and towns of Biltmore Forest: 2004-124,

s. 31.26, as amended by 2007-405, s. 1; Black Creek: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Black Mountain: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Blowing Rock: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Ocean Isle Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Sunset Beach: 2004-124, s. 31.26, as amended by 2007-405, s. 1; Tabor City: 2004-124, s. 31.26, as amended by 2007-405, s. 1.

Editor's Note.

Session Laws 2011-85, s. 2.6(e), effective January 1, 2012, recodified former G.S. 135-45.4 as G.S. 135-48.43. Former G.S. 135-45.4 itself was formerly codified as G.S. 135-40.3. It was recodified as G.S. 135-39.16 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(h), effective July 1, 2008, but was renumbered as G.S. 135-45.4 at the direction of the Revisor of Statutes.

This section was amended by Session Laws 2008-168, s. 3(h), in the coded bill

drafting format provided by G.S. 120-20.1. In the second sentence of subdivision (b)(4) the word “prepaid” following “transferring from optional” was not struck through. Subdivision (b)(4) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2011-96, s. 3(d), which amended this section, was contingent on Senate Bill 323, 2011 Regular Session becoming law. Senate Bill 323, 2011 Regular Session was enacted as Session Laws 2011-85.

Session Laws 2013-324, s. 7, made the amendment to subdivision (a)(2) by Session Laws 2013-324, s. 4, applicable to plan years beginning on or after January 1, 2015, and made the amendments to the rest of the section by s. 4 applicable to plan years beginning on or after January 1, 2014.

Session Laws 2014-100, s. 35.16(a), repealed the amendment to subdivision (a)(2) of this section by Session Laws 2013-324, s. 4, effective August 7, 2014. Since the amendment by Session Laws 2013-324 was effective January 1, 2015, that amendment never took effect.

Session Laws 2014-100, s. 35.16(e), made the amendment to subdivision (a)(2) by Session Laws 2014-100, s. 35.16(d), effective January 1, 2015, and applicable to plan years beginning on or after that date.

Session Laws 2014-100, s. 1.1, provides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 2014.’”

Session Laws 2014-100, s. 38.7, is a severability clause.

§ 135-48.44. Cessation of coverage.

(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

- (1) The last day of the month in which an employee or retired employee dies. Provided such surviving spouse or eligible dependent children were covered under the Plan at the time of death of the former employee or retired employee, or were covered on September 30, 1986, any such surviving spouse or eligible dependent children may then elect to continue coverage under the Plan by submitting written application to the Claims Processor and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on the last day of the month in which such surviving spouse or eligible dependent children die, except as provided by this Article.
- (2) The last day of the month in which an employee’s employment with the State is terminated as provided in subsection (d) of this section.
- (3) The last day of the month in which a divorce becomes final.
- (4) The last day of the month, or as soon thereafter as administratively feasible, in which the Plan approves cancellation of coverage for an employee or retired employee.
- (5) The last day of the month in which a covered individual enters active military service.
- (6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact regarding eligibility or enrollment information or in a

claim for reimbursement of medical services under the Plan. The State Treasurer may make an exception to the provisions of this subdivision when persons subject to this subdivision have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subdivision shall be construed to obligate the State Treasurer to make an exception as allowed for under this subdivision.

- (7) The last day of the month in which an employee who is Medicare-eligible selects Medicare to be the primary payer of medical benefits. Coverage for a Medicare-eligible spouse of an employee shall also cease the last day of the month in which Medicare is selected to be the primary payer of medical benefits for the Medicare-eligible spouse. Such members are eligible to apply for conversion coverage.
- (8) The last day of the month in which a covered individual is found to be ineligible for coverage.
- (9) The last day of the month for which a premium is paid in full.

(b) Coverage under this Plan as a dependent child ceases when the child ceases to be a dependent child as defined by G.S. 135-48.1 except, coverage may continue under this Plan for a period of not more than 36 months after loss of dependent status on a fully contributory basis provided the dependent child was covered under the Plan at the time of loss of dependent status.

(c) Coverage under the Plan as a surviving dependent child whether covered as a dependent of a surviving spouse, or as an individual member (no living parent), ceases when the child ceases to be a dependent child as defined by G.S. 135-48.1, except coverage may continue under the Plan on a fully contributory basis for a period of not more than 36 months after loss of dependent status.

(d) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in subdivisions (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to a State-supported Retirement System.

- (1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis. Employees who were covered under the Plan at termination of employment may be continued for a period of not more than 18 months

or 29 months if determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.

- (2) In the event of approved leave of absence without pay, other than for active duty in the Armed Forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost.
- (3) If employment is terminated in the second half of a calendar month and the covered individual has made the required contribution for any coverage in the following month, that coverage will be continued to the end of the calendar month following the month in which employment was terminated.
- (4) Employees paid for less than 12 months in a year, who are terminated at the end of the work year and who have made contributions for the non-work months, will continue to be covered to the end of the period for which they have made contributions, with the understanding that if they are not employed by another State-covered employer under this Plan at the beginning of the next work year, the employee will refund to the ex-employer the amount of the employer's cost paid for them during the non-paycheck months.
- (5) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave of absence without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by the employee's paying one hundred percent (100%) of the cost.

(e) A legally divorced spouse and any eligible dependent children of a covered employee or retired employee may continue coverage under this Plan for a period of not more than 36 months following the first of the month after a divorce becomes final on a fully contributory basis, provided the former spouse and any eligible dependent children were covered under the Plan at the time a divorce became final.

(f) A legally separated spouse of a covered employee or retired employee may continue coverage under this Plan for a period not to exceed 36 months from the separation date on a fully contributory basis, provided the separated spouse was covered under the Plan at the time of separation and provided the covered employee's or retired employee's actions result in the loss of coverage for the separated spouse. Eligible dependent children may also continue coverage if covered under the Plan at time of separation, provided the employee's or retired employee's actions result in the loss of coverage for the dependent children.

(g) Whenever this section gives a right to continuation coverage, such coverage must be elected within the time allowed by applicable federal law.

(h) Continuation coverage under this Plan shall not be continued past the occurrence of any one of the following events:

- (1) The termination of the Plan.
- (2) Failure of a Plan member to pay monthly in advance any required premiums.
- (3) A person becomes a covered employee or a dependent of a covered employee under any group health plan and that group health plan has no restrictions or limitations on benefits.
- (4) A person becomes eligible for Medicare benefits on or after the effective date of the continuation coverage.
- (5) The person was determined to be no longer disabled, provided the 18-month coverage was extended to 29 months due to having been determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.
- (6) The person reaches the maximum applicable continuation period of 18, 29, or 36 months.

(i) Notice requirements concerning continuation coverage shall be developed by the Plan.

(j) The spouse and any eligible dependent children of a covered employee may continue coverage under the Plan on a fully contributory basis for a period not to exceed 36 months from the date the employee becomes eligible for Medicare benefits which results in a loss of coverage under the Plan, provided that the spouse and eligible dependent children were covered under the Plan at the time the employee became eligible for Medicare benefits which results in a loss of coverage under the Plan.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34; 1985 (Reg. Sess., 1986), c. 1020, ss. 19, 29(m)-(x); 1987, c. 738, s. 29(o); 1989, c. 752, s. 22(p); 1991, c. 427, s. 42; 1995, c. 278, s. 2; 1997-512, ss. 32-35; 2000-184, s. 4; 2008-168, ss. 1(a), 3(a), (q); 2008-187, s. 49.5; 2009-16, s. 3(f); 2011-85, ss. 2.6(h), 2.10; 2011-183, s. 103; 2012-194, s. 31; 2015-100, s. 2; 2017-135, s. 1.

Editor's Note.

Session Laws 2011-85, s. 2.6(h), effective January 1, 2012, recodified former G.S. 135-45.12 as G.S. 135-48.44. Former G.S. 135-45.12 itself was formerly codified as G.S. 135-40.11. It was recodified as G.S. 135-39.24 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(q), effective July 1,

2008, but was renumbered as G.S. 135-45.12 at the direction of the Revisor of Statutes.

Session Laws 2008-187, s. 49.5, was contingent on House Bill 2443, 2007 Regular Session becoming law, which it did. House Bill 2443 was enacted as Session Laws 2008-168.

Session Laws 2009-16, s. 3(f), stated in its prefatory language that "G.S. 135-45.12 is amended by adding the following new subdivision to read: '(8) The last day of the month in which a covered individual is found to be ineligible for coverage.'" The subdivision was added to subsection (a) at the direction of the Revisor of Statutes.

Effect of Amendments.

Session Laws 2017-135, s. 1, effective July 20, 2017, added "regarding eligibility or enrollment information or" in the first sentence of subdivision (a)(6).

CASE NOTES

Cited in *Carolinas Med. Ctr. v. Empls & Carriers Listed in Exhibit A*, 172 N.C. App. 549, 616 S.E.2d 588, 2005 N.C. App. LEXIS 1773 (2005).

§ 135-48.45. Conversion.

(a) Upon a cessation of group coverage under the Plan and/or eligibility for group coverage under the Plan, an employee or dependent shall be entitled to a conversion to nongroup coverage without the necessity of a physical examination. Such conversion coverage shall include hospitalization, surgical, and medical benefits as contained in the major medical and alternative plan conversion provisions of Article 53 of Chapter 58 of the General Statutes. The State Treasurer in his or her sole discretion shall approve the conversion coverage, which shall be administered by the Claims Processor through an insurance contract arranged by the Claims Processor, or administered as otherwise directed by the State Treasurer. An eligible employee or dependent must apply for conversion coverage within 30 days after termination of group eligibility.

(b) The State Treasurer shall provide for the continuation of conversion privilege exercised under the predecessor plan, on a fully contributory basis. The State Treasurer shall consult with the Board of Trustees before taking action under this subsection.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 21.6; 1985, c. 732, ss. 30, 56; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 2008-168, ss. 1(a), 3(a), (r); 2011-85, ss. 2.6(i), 2.10.

Editor's Note.

Session Laws 2011-85, s. 2.6(i), effective January 1, 2012, recodified former

G.S. 135-45.13 as G.S. 135-48.45. Former G.S. 135-45.13 itself was formerly codified as G.S. 135-40.12. It was recodified as G.S. 135-39.25 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(r), effective July 1, 2008, but was renumbered as G.S. 135-45.13 at the direction of the Revisor of Statutes.

§ 135-48.46. Settlement agreements by employing units.

(a) No employing unit may enter into any settlement agreement with an employee or former employee regarding health benefits covered under the Plan unless the employing unit has received written authorization from the Plan's Executive Administrator.

(b) No settlement agreement between an employing unit and an employee or former employee may reinstate health benefit coverage under the Plan more than one year prior to the date of the settlement agreement.

(c) Any settlement agreement provision in violation of this section shall be void ab initio.

History.

2018-52, s. 8(a).

Editor's Note.

Session Laws 2018-52 provides in its

preamble: “Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

“Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

“Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect

FAIRness as a baseline in the operation of these programs; and

“Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,”

Session Laws 2018-52, s. 1, provides: “This act shall be known and cited as the ‘Financial Accountability, Integrity, and Recovery Act of 2018.’”

Session Laws 2018-52, s. 8(b), made this section effective June 25, 2018, and applicable to any settlement agreements entered into on or after that, including any settlement agreements which may be under negotiation on or before that date.

§ 135-48.47. (See editor’s note) Participation in State Health Plan by local government employees and dependents.

(a) **Eligibility.** — The employees and dependents of employees of local government units are eligible to participate in the State Health Plan, as provided in this section.

Employees and dependents participating under this section are not guaranteed participation in the Plan, and participation is contingent on their respective local government units (i) electing to participate in the Plan and (ii) complying with the provisions of this section and this Article, as well as any policies adopted by the Plan.

(b) **Participation Requirements.** — A local government unit may elect to participate in the State Health Plan. Participation shall be governed by the following:

- (1) In order to participate, a local government unit must do the following:
 - a. Pass a valid resolution expressing the local government’s desire to participate in the Plan.
 - b. Enter into a memorandum of understanding with the Plan that acknowledges the conditions of this section and this Article.
 - c. Provide at least 90 days’ notice to the Plan prior to entry and complete the requirements of this subdivision at least 60 days prior to entry.
- (2) In order to participate, a local government unit and its employees must meet the federal requirements to participate in a governmental plan. The Plan may refuse participation to persons who would jeopardize the Plan’s qualification as a governmental plan under federal law.
- (2a) The Plan shall admit any local government unit that meets the administrative and legal requirements of this section, regardless of the claims experience of the local government unit group or the financial impact on the Plan.

- (3) A local government unit shall determine the eligibility of its employees and employees' dependents.
- (3a) The premiums employees pay to the local government unit for their own coverage shall conform to the premiums in the structure set by the Plan. The premiums employees pay to the local government unit for coverage of their dependents may be determined by the local government unit but may not exceed the premiums set by the Plan.
- (4) Premiums for coverage and Plan options shall be the same as those offered to State employees and dependents on a fully contributory basis.
- (5) The local government unit shall pay all premiums for all covered individuals directly to the Plan or the Plan's designee.

(c) **Enrollment Limitation.** — Local governments may elect to participate until the number of employees and dependents of employees of local governments enrolled in the Plan reaches 16,000, after which time no additional local governments may join the Plan. Any local government electing to participate must have less than 1,000 employees and dependents enrolled in health coverage at the time the local government provides notice to the Plan of its desire to participate.

(d) Local governments participating in the Plan as of April 1, 2016, may elect to withdraw from participating in the Plan effective January 1, 2017. Notice of withdrawal must be given by the local government to the Plan no later than September 15, 2016.

History.

2014-75, s. 3; 2014-105, s. 1; 2015-112, s. 2; 2016-104, ss. 4, 5(a), 6.

Local Government Units Previously Participating in State Health Plan.

Session Laws 2015-112, s. 3, provides: "Notwithstanding any prior session law, any action taken by a Board of Trustees of the State Health Plan for Teachers and State Employees or of the predecessor plan to the current State Health Plan, or any other law, any local government unit that participates in the State Health Plan as of the effective date of this act [June 24, 2015] may elect to be subject to the new requirements in G.S. 135-48.47, as enacted by this act. Local government units electing to participate in the Plan under G.S. 135-48.47 shall cease monthly contributions to the Retiree Health Benefit Fund in the month in which coverage begins under G.S. 135-48.47. Local government units shall not be entitled to a refund of any prior contributions to the Retiree Health Benefit

Fund. Nothing in this section, nor an election to participate in the State Health Plan under G.S. 135-48.47, shall impact any existing debt to the Retiree Health Benefit Fund owed by any local government unit."

Section 31.26(j) of S.L. 2004-124, as amended by Section 29.32 of S.L. 2005-276, and by S.L. 2007-405, authorized participation in the State Health Plan by Bladen, Cherokee, Mitchell, Rutherford, Washington, and Wilkes Counties, and the Towns of Biltmore Forest, Black Creek, Black Mountain, Blowing Rock, Forest City, Ocean Isle Beach, Sunset Beach, and Tabor City. Section 5 of S.L. 2006-249 authorized the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan to allow up to four additional local government employers to participate in the State Health Plan. Montgomery County and the Towns of Elizabethtown and Matthews were added by Section 3 of S.L. 2014-75 and by S.L. 2014-105 in enacting and amending this section.

Session Laws 2016-104, s. 9, made the amendment to subsection (b) of this section by Session Laws 2016-104, s. 4, applicable to premiums paid on or after January 1, 2017. Session Laws 2016-104, s. 9, made the amendments to subsection (c) and the addition of subsection (d) of this section by Session Laws 2016-104, ss. 5(a) and 6, applicable to contracts entered into on or after July 22, 2016.

Session Laws 2016-104, s. 5(b), provides: “In admitting additional local governments as permitted by subsection (a) of this section, the Plan shall use the following transition schedule:

“(1) Through June 30, 2017, the Plan may admit local governments until the number of employees and dependents of employees of local governments enrolled in the Plan reaches 13,500.

“(2) Through January 31, 2018, the Plan may admit local governments until the number of employees and dependents of employees of local governments enrolled in the Plan, plus the estimated number of employees and dependents of employees of local governments that completed the Plan’s Notice of Participation and Information Sheet prior to April 1, 2016, but that are not yet enrolled in the Plan reaches 16,000.

“(3) After January 31, 2018, only the limitations of G.S. 135-48.47 will apply.

“Notwithstanding the schedule above, the Plan may admit a local government that completed the Plan’s Notice of Participation and Information Sheet prior to April 1, 2016, unless the limitation of 16,000 is reached.”

Session Laws 2017-128, s. 7, provides: “The Executive Administrator and the Board of Trustees of the State Health Plan (Plan) shall not approve resolutions electing to cover retirees under the Plan for local government entities that were authorized under S.L. 2004-124, S.L. 2006-7, S.L. 2005-276, and S.L. 2006-249 to participate in the Plan but that did not opt to cover retirees before January 1, 2017.”

Session Laws 2017-128, s. 9, is a severability clause.

Effect of Amendments.

Session Laws 2016-104, s. 4, effective January 1, 2017, in subdivision (b)(3), substituted “dependents” for “dependents and what portion of the premiums employees with pay to the local government unit”; and added subdivision (b)(3a). See editor’s note for applicability.

Session Laws 2016-104, ss. 5(a), 6., effective July 22, 2016, in subsection (c), substituted “16,000” for “10,000” and added subsection (d). See editor’s note for applicability.

§ 135-48.48. Reserved for future codification purposes.

§ 135-48.49. IRC Sections 6055 and 6056 regulatory reporting.

The Plan shall be responsible for reporting coverage for retirees and coverage for direct bill members, except for individuals participating in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, as required by Section 6055 of the Internal Revenue Code. The Plan shall provide employing units with access to Plan data necessary for employing units to meet filing requirements under Sections 6055 and 6056 of the Internal Revenue Code. The Plan may facilitate the availability of a reporting solution; however, the employing unit is responsible for paying all costs associated with the use of any reporting solution made available by the Plan.

History.

2016-104, s. 7.

section effective July 22, 2016, and applicable to contracts entered into on or after that date.

Editor’s Note.

Session Laws 2016-104, s. 9, made this

PART 5.
COVERAGE MANDATES AND EXCLUSIONS;
OTHER MANDATES.

§ 135-48.50. Coverage mandates.

The Plan shall provide coverage subject to the following coverage mandates:

- (1) **Abortion coverage.** — The Plan shall not provide coverage for abortions for which State funds could not be used under G.S. 143C-6-5.5. The Plan shall, however, provide coverage for subsequent complications or related charges arising from an abortion not covered under this subdivision.
- (2) **Immunizations.** — The Plan shall pay one hundred percent (100%) of allowable medical charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by a credentialed provider as determined by the claims processor.
- (3) **Insulin.** — Prescription benefits shall be provided for insulin even though a prescription is not required.
- (4) **Mental health parity.** — Benefits for the treatment of mental illness and chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally. Nothing in this subdivision, however, shall prohibit the Plan from requiring the most cost-effective treatment setting to be utilized by a person undergoing necessary care and treatment for chemical dependency.
- (5) [Reserved.]
- (6) **Permissive coverage extension.** — If a covered service becomes excluded from coverage under the Plan, the Executive Administrator and Claims Processor may, in the event of exceptional situations creating undue hardships or adverse medical conditions, allow persons enrolled in the Plan to remain covered by the Plan's previous coverage for up to three months after the effective date of the change in coverage, provided the persons so enrolled had been undergoing a continuous plan of specific treatment initiated within three months prior to the effective date of the change in coverage.
- (7) **Reconstructive surgery.** — Charges for cosmetic surgery or treatment required for correction of damage caused by accidental injury sustained by the covered individual while

coverage under this plan is in force on his or her account or to correct congenital deformities or anomalies shall not be excluded if they otherwise qualify as covered medical expenses. Reconstructive breast surgery following mastectomy, as those terms are defined in G.S. 58-51-62, shall be covered.

History.

2011-85, s. 2.10; 2011-145, s. 29.23(c); 2012-194, s. 32.

Editor's Note.

Session Laws 2011-85, s. 2.10 enacted G.S. 135-48.50 in the coded bill drafting format provided by G.S. 120-20.1, with two subdivisions reserved. In both locations, the word "reserved" was underlined. Later during the 2011 Regular Session, Session Laws 2011-145, s. 29.23(c), inserted the current language in subdivision (1), but the word "reserved" was not lined out, resulting in superfluous language. Session Laws 2012-194, s. 32, removed the superfluous language "Reserved."

Session Laws 2011-145, s. 29.23(b), provides: "Effective until January 1, 2012, the provisions of G.S. 135-45.8(21) and (22) do not apply to complications or related charges from an abortion not

covered under G.S. 143C-6-5.5, as enacted by subsection (a) of this section."

Session Laws 2011-145, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2011.'"

Session Laws 2011-145, s. 32.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2011-2013 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2011-2013 fiscal biennium."

Session Laws 2011-145, s. 32.5 is a severability clause.

Subdivision (5) has been set out as [Reserved] at the direction of the Revisor of Statutes. The word "Reserved" was in subdivisions (1) and (5) of this section as enacted, but were removed by the 2012 amendment to correct that error.

§ 135-48.51. Coverage and operational mandates related to Chapter 58 of the General Statutes.

The following provisions of Chapter 58 of the General Statutes apply to the State Health Plan:

- (1) G.S. 58-3-191, Managed care reporting and disclosure requirements.
- (2) G.S. 58-3-221, Access to nonformulary and restricted access prescription drugs.
- (3) G.S. 58-3-223, Managed care access to specialist care.
- (4) G.S. 58-3-225, Prompt claim payments under health benefit plans.
- (5) G.S. 58-3-235, Selection of specialist as primary care provider.
- (6) G.S. 58-3-240, Direct access to pediatrician for minors.
- (7) G.S. 58-3-245, Provider directories.
- (8) G.S. 58-3-250, Payment obligations for covered services.
- (9) G.S. 58-3-265, Prohibition on managed care provider incentives.
- (10) G.S. 58-3-280, Coverage for the diagnosis and treatment of lymphedema.
- (11) G.S. 58-3-285, Coverage for hearing aids.
- (12) G.S. 58-50-30, Right to choose services of certain providers.

(13) G.S. 58-67-88, Continuity of care.

History.

2011-85, s. 2.10; 2012-129, s. 2; 2013-296, s. 3; 2013-324, s. 5.

§ 135-48.52. General limitations and exclusions.

The Plan shall not provide coverage for or pay any benefits for any of the following:

- (1) Charges to the extent paid, or which the individual is entitled to have paid, or to obtain without cost, in accordance with any government laws or regulations except Medicare. If a charge is made to any such person which he or she is legally required to pay, any benefits under this Plan will be computed in accordance with its provisions, taking into account only such charge. "Any government" includes the federal, State, provincial, or local government, or any political subdivision thereof, of the United States, Canada, or any other country.
- (2) Charges for services rendered in connection with any occupational injury or disease arising out of and in the course of employment with any employer, if (i) the employer furnishes, pays for or provides reimbursement for such charges, or (ii) the employer makes a settlement payment for such charges, or (iii) the person incurring such charges waives or fails to assert his or her rights respecting such charges.
- (3) Charges for any services rendered as a result of injury or sickness due to an act of war, declared or undeclared, which act shall have occurred after the effective date of a person's coverage under the Plan.
- (4) Charges for any services with respect to which there is no legal obligation to pay. For the purposes of this item, any charge which exceeds the charge that would have been made if a person were not covered under this Plan shall, to the extent of such excess, be treated as a charge for which there is no legal obligation to pay; and any charge made by any person for anything which is normally or customarily furnished by such person without payment from the recipient or user thereof shall also be treated as a charge for which there is no legal obligation to pay.
- (5) Charges during a continuous hospital confinement which commenced prior to the effective date of the person's coverage under this Plan.
- (6) Charges for services unless a claim is filed within 18 months from the date of service.
- (7) Charges for sexual dysfunction or hair growth drugs or for nonmedically necessary drugs used for cosmetic purposes.

History.

2011-85, s. 2.10.

§ **135-48.53.** Reserved for future codification purposes.

§ **135-48.54. Optional participation for charter schools operated by private nonprofit corporations.**

(a) Repealed by Session Laws 2018-84, s. 11(a), effective June 25, 2018.

(b) No later than two years after both parties have signed the written charter under G.S. 115C-218.15, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing and filed with the Plan and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service.

(b1) A charter school making an election to become a participating employing unit in the Plan under this section shall provide notice of the intent to make that election six months prior to making the election; provided that the Plan shall not prohibit a charter school from becoming a participating employing unit solely because that charter school did not provide this notice.

(c) A board's election to become a participating employer in the Plan under this section is irrevocable and shall require all eligible employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to become a participating employer in the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan on account of employment with a charter school.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to become a participating employer in the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection.

History.

1998-212, s. 9.14A(e); 2008-168, ss. 1(a), 3(a), (i); 2011-85, ss. 2.6(f), 2.10; 2014-101, s. 7; 2018-84, s. 11(a).

Local Modification.

Clover Garden Charter School: 2003-354, s. 1; Corvian Community School: 2013-279, s. 1.

Editor's Note.

Session Laws 2011-85, s. 2.6(f), effective January 1, 2012, recodified former G.S. 135-45.5 as G.S. 135-48.54. Former G.S. 135-45.5 itself was formerly codified as G.S. 135-40.3A. It was recodified as G.S. 135-39.17 under Part 3A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 3(i), effective July 1, 2008, but was renumbered as G.S. 135-45.5 at the direction of the Revisor of Statutes.

Session Laws 2003-69, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3(b) and G.S. 135-40.3A(b), the board of directors of any charter school that received State Board of Education approval under G.S. 115C-238.29D on or after January 1, 2002, and the board of directors of River Mill Academy in Alamance County may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2004-164, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of (i) New Century High School in Saxapahaw; (ii) Lake Norman Charter School in Huntersville; (iii) Exploris Middle School in Raleigh, a charter school division of Exploris; (iv) Magellan Charter School in Raleigh; (v) American Renaissance Charter School in Statesville; and (vi) Healthy Start Academy in Durham may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2005-317, s. 1, provides:

"Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of Success Institute, a charter school in Statesville, and Piedmont Community Charter School in Gastonia may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Session Laws 2010-137, s. 1, provides: "Notwithstanding the time limitation contained in G.S. 135-5.3 and G.S. 135-45.5, the Board of Directors of Brevard Academy, a charter school located in Brevard, may elect to become a participating employer in the Teachers and State Employees Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the State Health Plan for Teachers and State Employees in accordance with Article 3A of Chapter 135. The elections authorized by this act shall be made no later than 30 days after the effective date of this act [July 21, 2010] and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-45.5."

Session Laws 2012-192, s. 1, provides: "Notwithstanding the time limitation contained in G.S. 135-48.54(a), the Boards of Directors of (i) Sterling Montessori Academy and Charter School, located in Morrisville, North Carolina, and (ii) the Casa Esperanza Montessori Charter School, located in Raleigh, North Carolina, may elect to become participating employing units in the State Health Plan for Teachers and State Employees in accordance with Article 3B of Chapter 135 of the General Statutes. The election authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-48.54."

G.S. 115C-238.29D, enacted by Session Laws 1998-212, s. 2, and referenced in subsections (a) and (b) of this section, has been renumbered as G.S. 115C-218.5

at the direction of the Revisor of Statutes, pursuant to Session Laws 2014-101, s. 7.

Session Laws 2014-101, s. 8, provides, in part: "Except as otherwise provided, this act is effective when it becomes law [August 6, 2014] and applies beginning with the 2014-2015 school year."

Session Laws 2015-112, s. 4, provides: "Notwithstanding the time limitation contained in G.S. 135-48.54, the Board of Directors of Pioneer Springs Community School, a charter school located in Charlotte, may elect to become a participating employing unit in the State Health Plan for Teachers and State Employees in accordance with Article 3B of Chapter 135 of the General Statutes. The election authorized by this act shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-48.54."

Session Laws 2016-106, s. 1, provides: "Notwithstanding the time limitation contained in G.S. 135-48.54, the Board of Directors of Longleaf School of the Arts, a charter school located in Raleigh, may elect to become a participating employing unit in the State Health Plan for Teachers and State Employees in accordance with Article 3B of Chapter 135 of the General Statutes. The election authorized by this act shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-48.54."

Session Laws 2018-84, s. 11(b), provides: "Notwithstanding the time limitation contained in G.S. 135-48.54, as amended by Section 11(a) of this act, any charter school that has been chartered in accordance with Article 14A of Chapter 115C of the General Statutes that has not voluntarily elected to become a participating employing unit in the State Health Plan for Teachers and State Employees (Plan) as of the effective date of

this act [June 25, 2018] may elect to become a participating employing unit in the Plan within two years of the effective date of this act [June 25, 2018]. The election authorized by this section shall be made in accordance with all other requirements of G.S. 135-48.54. A charter school making an election to become a participating employing unit in the Plan under this section shall provide notice of the intent to make that election six months prior to making the election; provided that the Plan shall not prohibit a charter school from becoming a participating employing unit solely because that charter school did not provide this notice."

Effect of Amendments.

Session Laws 2018-84, s. 11(a), effective June 25, 2018, deleted subsection (a), which read "The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after October 28, 1998, and shall be filed with the Plan and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, membership in the Plan is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, membership in the Plan is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under [former] G.S. 115C-238.29D in 1997 or 1998."; and deleted the last sentence in subsection (b), which read "This subsection applies to charter schools that receive State Board of Education approval under [former] G.S. 115C-238.29D [or G.S. 115C-218.5] after 1998."; and added subsection (b1).

§ 135-48.55. Interest charged to charter schools and local government units on late premiums.

The total amount of premiums due the Plan from charter schools and local government units as employing units, including amounts withheld from the compensation of Plan members, that is not remitted to the Plan by the fifteenth day of the month following the due date of remittance shall be assessed interest of one and one-half percent (1 ½%) of the amount due the Plan, per month or fraction thereof, beginning with the sixteenth day of the month following the

due date of the remittance. The interest authorized by this section shall be assessed until the premium payment plus the accrued interest amount is remitted to the Plan. The remittance of premium payments under this section shall be presumed to have been made if the remittance is postmarked in the United States mail on a date not later than the fifteenth day of the month following the due date of the remittance.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 52; 1991, c. 427, s. 5; 1997-468, s. 4; 1998-1, s. 4(e); 1999-237, s. 28.29(h); 2003-69, s. 2; 2004-124, s. 31.21(c); 2005-276, s. 29.31(e); 2007-323, s. 28.22A(m), (m1), (o); 2007-345, ss. 11, 12; 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (m); 2009-281, s. 1; 2009-571, s. 3(c); 2011-85, s. 2.5(f); 2014-75, s. 4.

Editor's Note.

Session Laws 2011-85, s. 2.5(f), effective January 1, 2012, recodified former

G.S. 135-44.6(e) as G.S. 135-48.55. G.S. 135-44.6(d) was recodified as G.S. 135-48.58, and the remainder of G.S. 135-44.6 was repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-44.6 itself was formerly codified as G.S. 135-39.6A. It was recodified as G.S. 135-38.9 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(m), effective July 1, 2008, but was renumbered as G.S. 135-44.6 at the direction of the Revisor of Statutes.

§ 135-48.56. Education of covered active and retired employees.

It is the intent of the General Assembly that active employees and retired employees covered under the Plan and its successor Plan shall have several opportunities in each fiscal year to attend presentations conducted by Plan management staff providing detailed information about benefits, limitations, premiums, co-payments, and other pertinent Plan matters. To this end, the Plan's management staff shall conduct multiple presentations each year to Plan members and association groups representing active and retired employees across all geographic regions of the State. Regional meetings shall be held in locations that afford reasonably convenient access to Plan members. The presentations shall be designed not only to present information about the Plan but also to hear and respond to Plan members' questions and concerns.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50, 51; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5; 1989, c. 752, s. 22(a); 1991, c. 427, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.3; 1997-468, s. 2; 1997-519, s. 3.15; 1998-1, s. 4(c); 2000-141, s. 3; 2001-253, ss. 1(a), 1(q); 2001-487, s. 85.5; 2006-249, s. 4(b); 2007-323, s. 28.22(i); 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (k), (j); 2009-16, s. 5(b); 2011-85, s. 2.5(d); 2011-326, s. 27.

Editor's Note.

Session Laws 2011-85, s. 2.5(d), as amended by Session Laws 2011-326, s. 27, effective January 1, 2012, recodified former G.S. 135-44.4(26) as G.S. 135-48.56. The remainder of G.S. 135-44.4 was repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-44.4 itself was formerly codified as G.S. 135-39.5. It was recodified as G.S. 135-38.7 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(j), effective July 1, 2008, but was renumbered as G.S. 135-44.4 at the

direction of the Revisor of Statutes.

Legal Periodicals.

For 1997 legislative survey, see 20 Campbell L. Rev. 469 (1997).

§ 135-48.57. Payments for county or city ambulance service.

Allowable payments for services provided by a county or city ambulance service shall be paid directly or shall be co-payable to the county or city ambulance service provider. As used in this subsection, “county or city ambulance service” means ambulance services provided by a county or county-franchised ambulance service supplemented by county funds, or a municipally owned and operated ambulance service or by an ambulance service supplemented by municipal funds.

History.

1981, c. 355; 1981 (Reg. Sess., 1982), c. 1398, ss. 3, 4; 1983, c. 922, s. 21.10; 1985, c. 732, s. 38; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1998-1, s. 4(h); 2007-323, s. 28.22A(c); 2008-107, s. 10.13(m); 2008-168, s. 1(a), (c), (d); 2009-16, s. 5(f); 2009-83, s. 1; 2010-194, s. 18(a); 2011-85, s. 2.4(a).

Editor’s Note.

Session Laws 2011-85, s. 2.4(a), effective

January 1, 2012, recodified subsection (c) of former G.S. 135-43 as G.S. 135-48.57. Subsections (a) and (b) of former G.S. 135-43 are recodified as G.S. 135-48.10. Former G.S. 135-43 itself was formerly codified as G.S. 135-37. It was recodified as G.S. 135-37.1 by Session Laws 2008-168, s. 1(d), effective July 1, 2008, but was renumbered as G.S. 135-43 at the direction of the Revisor of Statutes.

§ 135-48.58. Premiums for firefighters, rescue squad workers, and members of National Guard.

In setting premiums for firefighters, rescue squad workers, and members of the National Guard, and their eligible dependents, the Plan shall establish rates separate from those affecting other members of the Plan. These separate premium rates shall include rate factors for incurred but unreported claim costs, for the effects of adverse selection from voluntary participation in the Plan, and for any other actuarially determined measures needed to protect the financial integrity of the Plan for the benefit of its served employees, retired employees, and their eligible dependents.

History.

1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 52; 1991, c. 427, s. 5; 1997-468, s. 4; 1998-1, s. 4(e); 1999-237, s. 28.29(h); 2003-69, s. 2; 2004-124, s. 31.21(c); 2005-276, s. 29.31(e); 2007-323, s. 28.22A(m), (m1), (o); 2007-345, ss. 11, 12; 2008-107, s. 10.13(a); 2008-168, ss. 1(a), 2(a), (m); 2009-281, s. 1; 2009-571, s. 3(c); 2011-85, ss. 2.5(f), 2.10.

Editor’s Note.

Session Laws 2011-85, s. 2.5(f), effective

January 1, 2012, recodified former G.S. 135-44.6(d) as G.S. 135-48.58. G.S. 135-44.6(e) was recodified as G.S. 135-48.55, and the remainder of G.S. 135-44.6 was repealed by Session Laws 2011-85, s. 2.9, effective January 1, 2012. Former G.S. 135-44.6 itself was formerly codified as G.S. 135-39.6A. It was recodified as G.S. 135-38.9 under Part 2A of Article 3A of Chapter 135 by Session Laws 2008-168, s. 2(m), effective July 1, 2008, but was renumbered as G.S. 135-

44.6 at the direction of the Revisor of Statutes.

§ **135-48.59**. Reserved for future codification purposes.

PART 6.

LONG-TERM CARE BENEFITS.

§§ **135-48.60 through 135-48.62**. Repealed by Session Laws 2012-173, s. 3(d), effective January 1, 2013.

History.

§ 135-48.60: 1997-468, s. 7; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2008-168, ss. 1(a), 4(a)-(c); 2011-85, ss. 2.7, 2.10; repealed by 2012-173, s. 3(d), effective January 1, 2013. § 135-48.61: 1997-468, s. 7; 2008-168, ss. 1(a), 4(a), (d), (e); 2011-85, ss. 2.7, 2.10, repealed by 2012-173, s. 3(d), effective January 1, 2013. § 135-48.62: 1997-468, s. 7; 2008-168, ss. 1(a), 4(a); 2011-85, s. 2.7, repealed by 2012-173, s. 3(e), effective January 1, 2013.

Editor's Note.

Former G.S. 135-48.60 pertained to undertaking. Former G.S. 135-48.61 pertained to long-term care benefits. Former G.S. 135-48.62 pertained to conversion.

Session Laws 2012-173, s. 3(e), provides: "An employee, retired employee, or dependent enrolled under long-term care under Part 6 of Article 3B of Chapter 136 of the General Statutes at the time of that Part's repeal shall be entitled to a conversion to a nongroup plan of long-term care benefits. The Executive Administrator and Board of Trustees of the Plan shall determine how those conversion rights shall be administered."

Session Laws 2012-173, s. 3(f), provides: "Any unencumbered administrative fees collected by the Plan under Part 6 of Article 3B of Chapter 135 of the General Statutes are transferred to the Public Employee Health Benefit Fund created under G.S. 135-48.5(a)."

§ **135-49**. Reserved for future codification purposes.

ARTICLE 4.

CONSOLIDATED JUDICIAL RETIREMENT ACT.

§ **135-50**. Short title and purpose.

(a) This Article shall be known and may be cited as the "Consolidated Judicial Retirement Act."

(b) The purpose of this Article is to improve the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, public defender, the Director of Indigent Defense Services, and clerk of superior court, within the General Court of Justice.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 2, 3; 2005-276, s. 29.30A(a); 2005-345, s. 42; 2007-323, s. 28.21B(a); 2008-107, s. 26.24(a).

Cross References.

As to source of payment of employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security

for public employees, see G.S. 143-34.1.

Open Enrollment — Contributory Death Benefit.

Session Laws 2007-388, s. 1, provides: “Notwithstanding any section of law or any rules and regulations adopted by the Boards of Trustees to the contrary, the Retirement Systems Division of the Department of State Treasurer shall allow for an open enrollment period in the Contributory Death Benefit for Retired Members of the Teachers’ and State Employees’ Retirement System, the Local Governmental Employees’ Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System. This open enrollment period shall begin February 1, 2008, and end May 31, 2008. The Retirement Systems Division shall send notice by U.S. mail of the open enrollment period to all retirees who elected not to be covered under this benefit or who failed to make any election at the time of their retirement and shall send a second notice by U.S. mail to any such retiree who fails to make an election within 60 days of the notification of the open enrollment period. Notice, at minimum, shall consist of notification of the open enrollment period and the consequences of failure to respond within the specified time frames, informational materials explaining the benefit program and the associated costs, and a preprinted personalized enrollment application to facilitate the enrollment process indicating each individual retiree’s contribution rate. The contribution rate for retirees electing coverage during the open enrollment period shall be increased by eleven and one-tenth percent (11.1%) the rate established for retirees who elected coverage when first eligible, at retirement. For retirees electing coverage during this open enrollment period, coverage shall become effective the first of the month following the month in which the election of coverage is received by the Retirement Systems Division but not before

February 1, 2008. Contribution rates for coverage shall be based upon the retiree’s nearest age as of the effective date of coverage and shall begin by deduction from the retiree’s net monthly retirement allowance in the month in which coverage becomes effective. Coverage elected by retirees during this open enrollment period shall be subject to all other laws and rules and regulations adopted by the Board of Trustees governing the Contributory Death Benefit for Retired Members.”

Editor’s Note.

In Session Laws 1999-237, s. 28.22(d), the General Assembly authorized the Board of Trustees of the Consolidated Judicial Retirement System to adopt a fixed amortization period of nine years for purposes of the unfunded accrued liability for the Retirement System beginning with the valuation for December 31, 1998.

Session Laws 1999-237, s. 1.1, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 1999.’”

Session Laws 1999-237, s. 30.2, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium.”

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(a), which had proposed to amend subsection (b) of this section by adding “and to membership on the Utilities Commission” at the end.

Legal Periodicals.

For note, “Gregory v. Ashcroft: The Plain Statement Rule and Judicial Supervision of Federal-State Relations,” see 70 N.C.L. Rev. 1563 (1992).

CASE NOTES

Purpose. — The Consolidated Judicial Retirement Act, G.S. 135-50 et seq., was established for the purpose of improving the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, and

clerk of superior court by providing, as set forth in G.S. 135-54, retirement allowances and other benefits under the provisions of the Act for justices and judges, district attorneys, and clerks of superior court of the General Court of Justice of North Carolina, and their survivors. State Emples. Ass’n of N.C., Inc.

v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 135-51. Scope.

(a) This Article provides consolidated retirement benefits for all justices and judges, district attorneys, and solicitors who are serving on January 1, 1974, and who become such thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who become such after that date; and for all public defenders who are serving on July 1, 2007, and who become public defenders after that date; and for the Director of Indigent Defense Services who is serving on July 1, 2008, and those who become Director of Indigent Defense Services after that date.

(b) For justices and judges of the appellate and superior court divisions of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the case may be, of Chapter 7A of the General Statutes.

For district attorneys and judges of the district court of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

For clerks of superior court of the General Court of Justice who so served prior to January 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

(c) The retirement benefits of any person who becomes a justice or judge, district attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after January 1, 1975, or public defender on or after July 1, 2007, or the Director of Indigent Defense Services on or after July 1, 2008, shall be determined solely in accordance with the provisions of this Article.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 4; 2005-276, s. 29.30A(b); 2005-345, s. 42; 2007-323, s. 28.21B(b); 2008-107, s. 26.24(b).

Editor's Note.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(b), which had proposed to amend subsection

(a) of this section by substituting "after that date; and for all members of the Utilities Commission who are serving on September 1, 2005, and who become members of the Utilities Commission after that date" for "thereafter" at the end and by inserting "or a member of the Utilities Commission on or after September 1, 2005" in subsection (c).

§ 135-52. Application of Article 1; administration.

(a) References in Article 1 of this Chapter to the provisions of "this Chapter" shall not necessarily apply to this Article. However, except as otherwise provided in this Article, the provisions of Article 1 are applicable and shall apply to and govern the administration of

the Retirement System established hereby. Not in limitation of the foregoing, the provisions of G.S. 135-5(h), 135-5(n), 135-9, 135-10, 135-12 and 135-17 are specifically applicable to the Retirement System established hereby.

(b) The provisions of this Article shall be administered by the Board of Trustees of the Teachers' and State Employees' Retirement System.

History.

1973, c. 640, s. 1.

CASE NOTES

Cited in Wells v. Consolidated Judicial Retirement Sys., 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-53. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contributions" with respect to any member shall mean the sum of all the amounts deducted from the compensation of the member pursuant to G.S. 135-68 since he last became a member and credited to his account in the annuity savings fund, plus any amount standing to his credit pursuant to G.S. 135-67(c) as a result of a prior period of membership, plus any amounts credited to his account pursuant to G.S. 135-28.1(b) or 135-56(b), together with regular interest on all such amounts computed as provided in G.S. 135-7(b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the bases of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (2a) "Average final compensation" shall mean the average annual compensation of a member during the 48 consecutive calendar months of membership service producing the highest such average.
- (3) "Beneficiary" shall mean any person in receipt of a retirement allowance or other benefit as provided in this Article.
- (4) "Board of Trustees" shall mean the Board of Trustees established by G.S. 135-6.
- (4a) "Clerk of superior court" shall mean the clerk of superior court provided for in G.S. 7A-100(a).
- (5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior court, or public de-

fender, or the Director of Indigent Defense Services. Effective July 1, 2009, "compensation" also means payment of military differential wages. "Compensation" shall not include local supplementation as authorized under G.S. 7A-300.1 for Judicial Department employees.

- (5a) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- (6) "Creditable service" shall mean for any member the total of his prior service plus his membership service.
- (6a) "Director of Indigent Defense Services" shall mean the Director of Indigent Defense Services as provided for in G.S. 7A-498.6.
- (6b) "District attorney" shall mean the district attorney or solicitor provided for in G.S. 7A-60.
- (7) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (8) "Final compensation" shall mean for any member the annual equivalent of the rate of compensation most recently applicable to him.
- (9) "Judge" shall mean any justice or judge of the General Court of Justice and the administrative officer of the courts.
- (10) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.
- (11) "Member" shall mean any person included in the membership of the Retirement System as provided in this Article.
- (12) "Membership service" shall mean service as a judge, district attorney, clerk of superior court, public defender, or the Director of Indigent Defense Services rendered while a member of the Retirement System.
- (13) "Previous system" shall mean, with respect to any member, the retirement benefit provisions of Article 6 and Article 8 of Chapter 7A of the General Statutes, to the extent that such Article or Articles were formerly applicable to the member, and in the case of judges of the district court division, district attorney, public defender, the Director of Indigent Defense Services, and and clerk of superior court of the General Court of Justice, the Teachers' and State Employees' Retirement System.
- (14) "Prior service" shall mean service rendered by a member, prior to his membership in the Retirement System, for which credit is allowable under G.S. 135-56.
- (14a) "Public defender" means a public defender provided for in G.S. 7A-498.7, the appellate defender provided for in G.S. 7A-498.8, the capital defender, and the juvenile defender.

- (15) “Regular interest” shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7(b).
- (16) “Retirement” under this Chapter shall mean the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member’s retirement to become effective in any month, the member must perform no work in a position covered by this Article or by an Optional Retirement Program established under G.S. 135-5.1 or G.S. 135-5.4 at any time during the same month immediately following the effective first day of retirement.
- (17) “Retirement allowance” shall mean the periodic payments to which a beneficiary becomes entitled under the provisions of this Article.
- (18) “Retirement System” shall mean the “Consolidated Judicial Retirement System” of North Carolina, as established in this Article.
- (19) “Year” as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year, unless otherwise defined by regulation of the Board of Trustees.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 5-10; 1999-237, s. 28.24(f); 2005-276, s. 29.30A(c); 2005-345, s. 42; 2007-323, s. 28.21B(c); 2008-107, s. 26.24(c); 2009-66, s. 6(g); 2010-31, s. 29.7(e); 2013-288, s. 4(c); 2014-97, ss. 4(c), 6; 2018-85, s. 4.

Editor’s Note.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(c), which had proposed to amend this section by inserting references to Utilities Commissioners in subdivisions (5), (12) and (13) of this section and by adding subdivision (14a), a definition of “Utilities Commissioner.”

This section was amended by Session Laws 2007-323, s. 28.21B(c), in the coded bill drafting format provided by G.S. 120-20.1. In subdivision (13), the word “and” before “clerk of superior court” was omitted, not stricken through, and an additional word “and” was inserted, underlined, resulting in the word “and” appearing twice. In Session Laws 2008-

107, s. 26.24(c), subdivision (13) was again amended in the coded bill drafting format and the extra “and” was omitted, but not stricken through. Subdivision (13) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2007.’”

Session Laws 2007-323, s. 32.5 is a severability clause.

Subdivision (6b), as enacted by Session Laws 2008-107, s. 26.24(c), was redesignated as subdivision (6a), and former subdivision (6a) was redesignated as present subdivision (6b), at the direction of the Revisor of Statutes.

Session Laws 2016-94, s. 36.1A(a), provides: “Funds for Merit-Based Bonuses.

— Of the funds appropriated in this act from the General Fund and Highway Fund to the Compensation Bonus Reserves, nonrecurring funds for the 2016-2017 fiscal year are authorized generally to provide employing agencies with funds to award one-time merit-based bo-

nuses to State-funded personnel in accordance with eligibility policies adopted by the employing agencies. The eligibility policy shall not provide an across-the-board bonus for this purpose. Notwithstanding G.S. 135-1(7a) and G.S. 135-53(5), merit-based bonuses awarded under this Part are not compensation under Chapter 135 of the General Statutes.”

Session Laws 2016-94, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2016.’”

Session Laws 2016-94, s. 39.4, pro-

vides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year.”

Session Laws 2016-94, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2018-85, s. 4, effective June 25, 2018, inserted “or by an Optional Retirement Program established under G.S.135-5.1 or G.S.135-5.4” in subdivision (16).

CASE NOTES

Retiree Not Entitled to Tax-Free Pension. — Retiree was not entitled to a tax free pension because he withdrew his contributions to the Consolidated Judicial Retirement System and the Teachers’ and State Employees Retirement System and left public employment before August 12, 1989, and thus he was not vested on that date; although the retiree later returned to public employment, became vested, and repaid the money he had previously withdrawn,

when read together, G.S. 135-4 and G.S. 135-5 made clear that a member who left state service and withdrew contributions in the retirement system had no rights to any benefits within the system except for the right to repay previously withdrawn contributions as provided in G.S. 135-4. The repayment served only to increase the retiree’s years of service creditable. *Cashwell v. Dep’t of State Treasurer, Ret. Sys. Div.*, 196 N.C. App. 80, 675 S.E.2d 73, 2009 N.C. App. LEXIS 452 (2009).

§ 135-54. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for justices and judges, district attorneys, public defenders, the Director of Indigent Defense Services, and clerks of superior court of the General Court of Justice of North Carolina, and their survivors. This Retirement System is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code. Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not apply. The Retirement System so created shall be established as of January 1, 1974.

The Retirement System shall have the power and privileges of a corporation and shall be known as the “Consolidated Judicial Retirement System of North Carolina,” and by such name all of its business shall be transacted.

Consistent with Section 401(a)(1) of the Internal Revenue Code, all contributions from participating employers and participating employees to this Retirement System shall be made to funds held in trust through trust instruments that have the purposes of distributing trust principal and income to retired members and their beneficiaries and of paying other definitely determinable benefits

under this Chapter, after meeting the necessary expenses of administering this Retirement System. Neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan document, consisting of relevant statutory provisions in this Chapter, associated regulations in the North Carolina Administrative Code, substantive and procedural information on the official forms used by the Retirement System, and policies and minutes of the Board of Trustees.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 11; 2005-276, s. 29.30A(d); 2005-345, s. 42; 2007-323, s. 28.21B(d); 2008-107, s. 26.24(d); 2012-130, s. 7(d).

Editor's Note.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(d), which had proposed to amend this section by inserting "and Utilities Commissioners" in the first paragraph.

CASE NOTES

Purpose. — Consolidated Judicial Retirement Act, G.S. 135-50 et seq., was established for the purpose of improving the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, and clerk of superior court, within the General Court of Justice, G.S. 135-50(b), by providing, as

set forth in G.S. 135-54, retirement allowances and other benefits under the provisions of the Act for justices and judges, district attorneys, and clerks of superior court of the General Court of Justice of North Carolina, and their survivors. *State Emples. Ass'n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 135-55. Membership.

- (a) The membership of the Retirement System shall consist of:
- (1) All judges and district attorneys in office on January 1, 1974;
 - (2) All persons who become judges and district attorneys or reenter service as judges and district attorneys after January 1, 1974;
 - (3) All clerks of superior court in office on January 1, 1975;
 - (4) All persons who become clerks of superior court or reenter service as clerks of superior court after January 1, 1975;
 - (5) All public defenders in office on July 1, 2007;
 - (6) All persons who become public defenders or reenter service as public defenders after July 1, 2007;
 - (7) The Director of Indigent Defense Services on July 1, 2008; and

(8) All persons who become the Director of Indigent Defense Services or reenter service as the Director of Indigent Defense Services after July 1, 2008.

(b) The membership of any person in the Retirement System shall cease upon:

- (1) The withdrawal of his accumulated contributions after he is no longer a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court, or
- (2) His retirement under the provisions of the Retirement System, or
- (3) His death.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 12, 13; 2005-276, s. 29.30A(e); 2005-345, s. 42; 2007-323, s. 28.21B(e); 2008-107, s. 26.24(e).

Session Laws 2005-276, s. 29.30A(e), which had proposed to amend this section by inserting subdivisions (a)(5) and (6), adding Utilities Commissioners in office on and after September 1, 2005, to the Retirement System and inserting "Utilities Commissioner" in subdivision (b)(1).

Editor's Note.

Session Laws 2005-345, s. 42, repealed

CASE NOTES

Cited in *Bradshaw v. Administrative Office of Courts*, 83 N.C. App. 122, 349 S.E.2d 621 (1986).

§ 135-56. Creditable service.

(a) Subject to such rules and regulations as the Board of Trustees shall adopt with regard to the verification of a judge's prior service, the prior service of a judge shall consist of his service rendered prior to January 1, 1974, as a justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, judge of the district court division of the General Court of Justice, as administrative officer of the courts, or as a solicitor or district attorney.

(b) When membership ceases as a result of a member's withdrawal of his accumulated contributions, the prior service and previous membership service of the member shall no longer be considered to be creditable service; provided, however, that if a member whose creditable service has been cancelled in accordance with this subsection subsequently returns to membership for a period of five years, he may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the date of repayment and thereby increase his creditable service by the amount of creditable service lost when he withdrew his accumulated contributions.

(c) On and after January 1, 1984, the creditable service of a member who was a member of the former Uniform Solicitorial or Uniform Clerks of Superior Court Retirement Systems at the time of

merger of those Systems into this Consolidated Judicial Retirement System and whose accumulated contributions are transferred from those Systems to this System, includes service that was creditable in the Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems; and membership service with those Retirement Systems is membership service with this Retirement System.

(d) Any member may purchase creditable service for service as a judge, district attorney, or clerk of superior court, when not otherwise provided for in this section, and as a judge of any lawfully constituted court of this State inferior to the superior court, not to include service as a magistrate, justice of the peace or mayor's court judge. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(e) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(f) The creditable service of a member who was a member of the Local Governmental Employees' Retirement System, the Teachers'

and State Employees' Retirement System, or the Legislative Retirement System and whose accumulated contributions and reserves are transferred from that System to this System, includes service that was creditable in the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System, and membership service with those Retirement Systems is membership service with this Retirement System.

(g) If a member who has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-75.1 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System. If a member who has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-75.1 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as a justice, judge, district attorney, or clerk of superior court.

(h) On and after July 1, 2007, the creditable service of a member who was a public defender and a member of the Teachers' and State Employees' Retirement System at the time of transfer of membership from the previous system to this System shall include service as a public defender that was creditable in the previous system immediately prior to July 1, 2007. The accumulated contributions, creditable service, and reserves, if any, of a member as a public defender shall be transferred from the previous system to this System in the same manner as prescribed under G.S. 135-28.1 as it pertained to judges of the district court division of the General Court of Justice.

(i) On and after July 1, 2008, the creditable service of a member who is the Director of Indigent Defense Services and a member of the Teachers' and State Employees' Retirement System at the time of transfer of membership from the previous system to this System shall include service as the Director of Indigent Defense Services beginning July 1, 2004, that was creditable in the previous system immediately prior to July 1, 2008. The accumulated contributions, creditable service, and reserves, if any, of a member as the Director of Indigent Defense Services beginning July 1, 2004, shall be transferred from the previous system to this System in the same manner as prescribed under G.S. 135-28.1 as it pertained to judges of the district court division of the General Court of Justice.

(j) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-75.1A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is

convicted of an offense listed in G.S. 135-75.1A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012.

History.

1973, c. 640, s. 1; 1977, c. 936; 1983 (Reg. Sess., 1984), c. 1031, ss. 14, 15; 1985, c. 649, s. 1; 1989, c. 255, s. 21(a); 1999-237, s. 28.24(c); 2003-284, s. 30.18(f); 2007-179, s. 4(b); 2007-323, s. 28.21B(h); 2008-107, s. 26.24(h); 2012-193, s. 6.

Editor's Note.

Session Laws 2012-193, s. 18, made subsection (j) of this section effective December 1, 2012, and applicable to offenses committed on or after that date.

§ 135-56.01. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Teachers' and State Employees' Retirement System, or the Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Teachers' and State Employees' Retirement System, or the Local Government Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits.

History.

1989 (Reg. Sess., 1990), c. 1066, s. 35(d); 1997-456, s. 27.

Editor's Note.

Former G.S. 135-56A was recodified as this section pursuant to S.L. 1997-456, s.

27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ **135-56.1.** Repealed by Session Laws 1983 (Regular Session, 1984), c. 1031, s. 16.

§ **135-56.2. Creditable service for other employment.**

Any member may purchase creditable service for service as a State teacher or employee, as defined under G.S. 135-1(10) and (25), and for service as an employee of local government, as defined under G.S. 128-21(10). A member, upon the completion of 10 years of membership service, may also purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee as set by the Board of Trustees. As an alternative to transferring any accumulated contributions from the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System, a member may irrevocably elect to transfer these contributions to the Supplemental Retirement Income Plan of North Carolina as determined by the Plan's Board of Trustees and the Department of State Treasurer in accordance with the provisions of G.S. 135-94(a)(4). Notwithstanding the foregoing provisions of this section that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

History. c. 348, s. 1; c. 749, s. 2; 1989, c. 255, s. 1983 (Reg. Sess., 1984), c. 1041; 1985, 21(b).

§ **135-56.3. Repayments and Purchases.**

(a) **Purchase of Service Credits Through Rollover Contributions From Certain Other Plans.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is

eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(b) **Purchase of Service Credits Through Plan-to-Plan Transfers.** — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

History.

2002-71, s. 7.

Editor's Note.

Session Laws 2002-71, s. 9, provides, in part, that s. 7 of the act becomes effective January 1, 2003, except that G.S. 135-56.3(b), as enacted by s. 7, be-

comes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection. The Revisor of Statutes is informed that a favorable letter of determination has been received.

§ 135-57. Service retirement.

(a) Any member on or after January 1, 1974, who has attained his fiftieth birthday and five years of membership service may retire upon electronic submission or written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.

(a1) Repealed by Session Laws 2014-88, s. 3(h), effective July 30, 2014.

(b) Any member who is a justice or judge of the General Court of Justice shall be automatically retired as of the first day of the calendar month coinciding with or next following the later of January 1, 1974, or his attainment of his seventy-second birthday; provided, however, that no judge who is a member on January 1, 1974, shall be forced to retire under the provisions of this subsection at an earlier date than the last day that he is permitted to remain in office under the provisions of G.S. 7A-4.20.

(c) Any member who terminates service on or after January 1, 1974, having accumulated five or more years of creditable service may retire under the provisions of subsection (a) above, provided that he shall not have withdrawn his accumulated contributions prior to the effective date of his retirement, and the requirement of subsection (a) that the member be in service shall not apply.

(c1) Repealed by Session Laws 2014-88, s. 3(h), effective July 30, 2014.

(d) Any member who was in service October 8, 1981, who had attained 50 years of age, may retire upon electronic submission or written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.

History.

1973, c. 640, s. 1; 1981, c. 378, s. 6;
1983, c. 761, s. 230; 1987, c. 513, s. 1;

1991 (Reg. Sess., 1992), c. 873, s. 2;
2007-431, s. 4; 2009-66, ss. 3(e), 12(i), (j);
2011-232, s. 8; 2014-88, s. 3(h).

CASE NOTES

Cited in Wells v. Consolidated Judicial Retirement Sys., 136 N.C. App. 671, 526 S.E.2d 486, 2000 N.C. App. LEXIS 162 (2000).

§ 135-58. Service retirement benefits.

(a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

- (1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and one-half percent (3 ½%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;
- (3) Three percent (3%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court.

(a1) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 on or after July 1, 1990, but before July 1, 1999, after he either has attained his 65th birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2), and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of his final compensation:

- (1) Four and two-hundredths percent (4.02%) of his final compensation, multiplied by the number of years of his credit-

able service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

- (2) Three and fifty-two hundredths percent (3.52%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;
- (3) Three and two-hundredths percent (3.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court.

(a2) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 1999, but before July 1, 2001, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of the member's final compensation:

- (1) Four and two-hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;
- (3) Three and two-hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service, rendered as a judge of the district court, district attorney, or clerk of superior court;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System to this System as provided in G.S. 135-56.

(a3) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2001, but before January 1, 2004, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of the member's final compensation:

- (1) Four and two-hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;
- (3) Three and two-hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service, rendered as a judge of the district court, district attorney, or clerk of superior court;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter using an average final compensation as defined in

G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System to this System as provided in G.S. 135-56.

(a4) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after January 1, 2004, but before July 1, 2007, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

- (1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;
- (3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final

compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(a5) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2007, but before July 1, 2008, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

- (1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;
- (3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, clerk of superior court, or public defender;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this

Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(a6) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after July 1, 2008, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

- (1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court, a judge of the Court of Appeals, or the Director of the Administrative Office of the Courts;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court;
- (3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, clerk of superior court, public defender, or the Director of Indigent Defense Services;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this

Chapter using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56.

(b) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before he either has attained his sixty-fifth birthday or has completed 24 years of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be determined in the same manner and be subject to the same maximum limitation as provided for in subsection (a) above except that the allowance so computed shall be reduced by one quarter of one percent ($\frac{1}{4}$ of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the earlier of

- (1) The member's sixty-fifth birthday or
- (2) The date the member would have completed 24 years of creditable service if he had been in membership service from his retirement date until such date.

For the sole purpose of determining whether a member has completed the required 24 years of creditable service referred to in this subsection (b) or the date on which he would have completed such period of creditable service if he had remained in membership service, in the case of a member of the Teachers' and State Employees' Retirement System who became a member of this Retirement System under circumstances described in G.S. 135-28.1, and who at the time of his retirement hereunder is in service and has retained his membership in the Teachers' and State Employees' Retirement System as provided for in G.S. 135-28.1, his creditable service shall be taken as the sum of his creditable service hereunder plus the amount of creditable service remaining to his credit in such other system as provided for in G.S. 135-28.1.

(c) The foregoing subsections of this section to the contrary notwithstanding, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be less than the retirement allowance to which he would have been entitled under the terms of such previous system if this Article had not been enacted.

(d) Commencing with the payment for the month of January 1974, the retirement allowance of each retired member of a previous system who was in receipt of a retirement allowance thereunder as

of January 1, 1974, shall be paid from the assets of the Retirement System in the same amount as would have been applicable for January 1974, if this Article had not been enacted.

(e) Notwithstanding any other provision to the contrary, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be greater than the retirement allowance to which he would have been entitled under the terms of such previous system if this Article had not been enacted or than the retirement allowance to which he would have been entitled under this Article if he had not been entitled to benefits under the terms of such previous system, whichever is larger.

History.

1973, c. 640, s. 1; 1977, c. 1120, s. 2; 1983 (Reg. Sess., 1984), c. 1031, ss. 17, 18; c. 1109, ss. 13.14, 13.15; 1985, c. 649, s. 7; 1989 (Reg. Sess., 1990), c. 1077, ss. 6, 7; 1999-237, s. 28.24(d), (e); 2001-424, s. 32.29(a), (b); 2003-284, s. 30.18(g), (h); 2005-276, s. 29.30A(f), (g); 2005-345, s. 42; 2007-323, s. 28.21B(f), (g); 2008-107, s. 26.24(f), (g); 2015-241, s. 30.3(g).

Editor's Note.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(f) and (g), which had proposed to amend this section by inserting "but before September 1, 2005," after "January 1, 2004," in the first paragraph of subsection (a4) and adding subsection (a5).

Session Laws 2008-107, s. 26.24(j), provides: "Notwithstanding any other law, the retirement allowance of any member covered by this section shall be

calculated using an Average Final Compensation determined as of June 30, 2008, even though service beginning July 1, 2004, was transferred from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System." Session Laws 2008-107, s. 26.24(g), added subsection (a6).

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

CASE NOTES

Differential in percentages used to calculate retirement benefits does not violate the equal protection clause of U.S. Const., Amend. XIV. The objectives sought by the legislature to be obtained from the present retirement system are valid, and the method chosen

is reasonably calculated to achieve that end. *Gentry v. Uniform Judicial Retirement Sys.*, 378 F. Supp. 1 (M.D.N.C. 1974).

Applied in *Shepherd v. Consolidated Judicial Retirement Sys.*, 89 N.C. App. 560, 366 S.E.2d 604 (1988).

§ 135-59. Disability retirement.

(a) Upon application by or on behalf of the member, any member in service who has completed five or more years of creditable service and who has not attained his sixty-fifth birthday may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of

filing such application, on a disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; and, provided further, that if a member is removed by the Supreme Court for mental or physical incapacity under the provisions of G.S. 7A-376, no action is required by the medical board under this section and, provided further, the medical board shall determine if the member is able to engage in gainful employment and, if so, the member shall still be retired and the disability retirement allowance as a result thereof shall be reduced as in G.S. 135-60(d). Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the Retirement System to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of this retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

(b) Notwithstanding the foregoing, the surviving spouse of a deceased member who has met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was due and payable, and who was the designated beneficiary for a return of accumulated contributions and the final compensation death benefit as provided in G.S. 135-63, shall be paid in lieu of the return of accumulated contributions and the final compensation death benefit a monthly allowance equal to a reduced retirement allowance provided by a fifty percent (50%) joint and survivorship option, plus the allowance payable to a former mem-

ber's surviving spouse, in the manner prescribed under G.S. 135-64 as though the former member had commenced retirement the first day of the month following his death.

History. 940, s. 2; 1985, c. 479, ss. 192(b), 194; 1973, c. 640, s. 1; 1981, c. 689, s. 3; c. 1987, c. 513, s. 1; 2009-66, s. 3(f).

§ 135-60. Disability retirement benefits.

(a) Upon retirement for disability in accordance with G.S. 135-59, a member shall receive a disability retirement allowance computed and payable as provided for service retirement in G.S. 135-58(a2) except that the member's creditable service shall be taken as the creditable service he would have had had he continued in service to the earliest date he could have retired on an unreduced service retirement allowance as a member in the same division of the General Court of Justice in which he was serving on his disability retirement date.

(b) Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained his sixtieth birthday to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained his sixtieth birthday refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, it shall be assumed that he is no longer disabled.

(c) Should the medical board certify to the Board of Trustees that a disability beneficiary prior to his sixty-fifth birthday has recovered to the extent that he would not satisfy the requirements for disability retirement if he were an active member of the Retirement System, or if his disability shall be assumed to have terminated in accordance with subsection (b) above, his disability retirement allowance shall thereupon cease, he shall be restored as a member of the Retirement System, and the period during which he was in receipt of a disability retirement allowance shall not be included in his creditable service.

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

compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 of each year by the percentage change between the December Consumer Price Index in the year prior to retirement and the December Consumer Price Index in the year most recently ended, calculated to the nearest tenth of one percent ($\frac{1}{10}$ of 1%), provided that this percentage change is positive. Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

History. s. 19; 1999-237, s. 28.24(g); 2014-97, s. 1973, c. 640, s. 1; 1981, c. 975, s. 4; c. 4(h).
980, s. 5; 1983 (Reg. Sess., 1984), c. 1031,

§ 135-61. Election of optional allowance.

Any member who retires under the provisions of this Article shall have the right to elect to have his allowance payable under any one of the optional forms provided for in G.S. 135-5(g), subject to the conditions therein contained, in lieu of the allowance that would otherwise be payable.

History.
1973, c. 640, s. 1.

§ 135-62. Return of accumulated contributions.

(a) Should a member cease membership service otherwise than by death or retirement under the provisions of this Article, he shall, upon submission of an application, be paid, not earlier than 60 days from the date of termination of service, his contributions and the accumulated regular interest thereon, provided that he has not in the meantime returned to service as a judge. Upon payment of such accumulated contributions his membership in the Retirement System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered, except as otherwise provided in G.S. 135-56(b). Any such payment of a

member's accumulated contributions shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article.

(b) Repealed by Session Laws 1993, c. 531, s. 7.

History. 1031, s. 20; 1993, c. 531, s. 7; 2014-88, s. 1973, c. 640, s. 1; 1981, c. 672, s. 4; 2(d).
1983, c. 467; 1983 (Reg. Sess., 1984), c.

CASE NOTES

Recovery of Contributions Following Removal for Cause. — Loss of retirement benefits as the result of the removal of a judge from office for cause other than mental or physical incapacity does not mean that the judge forfeits his right to recover the contributions which he paid into the fund. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

§ 135-63. Benefits on death before retirement.

(a) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the sum of (i) the member's accumulated contributions, plus (ii) the member's final compensation; provided, however, that if the member has attained his or her fiftieth birthday with at least five years of membership service at the member's date of death, and if the designated recipient of the death benefits is the member's spouse who survives him or her, and if the spouse so elects, then the lump-sum death benefit provided for herein shall consist only of a payment equal to the member's final compensation and there shall be paid to the surviving spouse an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month coinciding with or next following the death of the member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the amount of the retirement allowance to which the member would have been entitled had the member retired under the provisions of G.S. 135-57(a) on the first day of the calendar month coinciding with or next following the member's date of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the member at his or her date of death exceeds that of the member's spouse. If the retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowance payments made equals the amount of the member's

accumulated contributions at date of death, the excess of such accumulated contributions over the total of the retirement allowances paid to the spouse shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives.

(b) There shall be paid to the surviving unremarried spouse of any former judge who died in service prior to January 1, 1974, and after his forty-ninth birthday an annual retirement allowance which shall commence on January 1, 1974, and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above as if the provisions of this Article had been in effect on the date of death of the former judge, and the final compensation of such former judge had been equal to the rate of annual compensation in effect on December 31, 1973, for the office held by the former judge at the time of his death.

(c) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member not in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the member's accumulated contributions.

(d) Notwithstanding the provisions of G.S. 7A-376, there shall be paid to the surviving spouse of any former judge whose death occurred prior to July 1, 1983, who had not withdrawn his contributions pursuant to G.S. 135-62, an annual retirement allowance which shall commence on July 1, 1983, and shall be continued on the first day of each month thereafter until the death or remarriage of the spouse. If the spouse dies or remarries before the total of the retirement allowance paid equals the amount of the former judge's accumulated contributions, the excess of the accumulated contributions over the total of the retirement allowance paid to the spouse shall be paid in a lump sum to the person the spouse has nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person is living at the time the payment falls due, otherwise to the spouse's legal representative. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above. This subsection does not authorize allowances to surviving spouses of former judges convicted of crimes related to the performance of their judicial duties.

(e) For purposes of this subsection, a participant whose employment is interrupted by reason of service in the Uniformed Services,

as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, shall be deemed to be “in service” until the last day of such service in the Uniformed Services. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed “in service” until the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

History.

1973, c. 640, s. 1; c. 1385; 1983, c. 761, ss. 231, 234; 2009-66, ss. 6(c), 11(a), (b); 2017-129, s. 3(c).

Effect of Amendments.

Session Laws 2017-129, s. 3(c), effec-

tive January 1, 2018, in subsection (a), made gender-neutralizing changes throughout, and deleted “prior to completing 10 years of service” following “electronic submission” near the beginning, and in subsection (c).

§ 135-64. Benefits on death after retirement.

(a) In the event of the death of a former member while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-57, or after a former member’s sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member’s surviving spouse, if any, an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance that was payable to the former member for the month immediately prior to his month of death, or which would have been so payable had an optional mode of payment not been elected under the provisions of G.S. 135-61, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former member at date of death exceeds that of his spouse.

(b) In the event of the death of a former member prior to his sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member’s surviving spouse, if any, an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance to which the former member would have been entitled under the provisions of G.S. 135-58 if he had remained in service from his disability retirement date to his date of death with no change in his final compensation or status and had then retired,

reduced by two percent (2%) thereof for each full year, if any, by which the age of the former member at date of death exceeds that of his spouse.

(c) In the event of the death of a former member while in receipt of a retirement allowance under the provisions of G.S. 135-58, 135-60, or 135-61, if such former member is not survived by a spouse to whom a retirement allowance is payable under the provisions of subsection (a) or subsection (b) above, nor survived by a beneficiary to whom a monthly survivorship benefit is payable under one of the optional modes of payment under G.S. 135-61, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the member at his date of retirement over the total of the retirement allowances paid to him prior to his death.

(d) In the event that a retirement allowance becomes payable to the spouse of a former member under the provisions of subsection (a) or subsection (b) above, or to the designated survivor of a former member under one of the optional modes of payment under G.S. 135-61, and such retirement allowance to the spouse shall terminate on the remarriage or death of the spouse, or on the death of the designated survivor, before the total of the retirement allowances paid to the former member and his spouse or designated survivor combined equals the amount of the member's accumulated contributions at his date of retirement, the excess of such accumulated contributions over the total of the retirement allowances paid to the former member and his spouse or designated survivor combined shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives.

(e) In the event of the death of a retired former judge while in receipt of a retirement allowance under the provisions of G.S. 135-58(d), there shall be paid to the former judge's surviving spouse, if any, an annual retirement allowance payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former judge and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance that was payable to the former judge for the month immediately prior to his month of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former judge at date of death exceeds that of his spouse.

(f) There shall be paid to the surviving unremarried spouse of any former judge who died prior to January 1, 1974, while in receipt of a retirement allowance under the provisions of a previous system, a retirement allowance which shall commence on January 1, 1974, and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the allowance that would have been payable to the former judge for the month of December 1973, if the previous system had been in effect at his date of retirement and if he had survived to January 1, 1974, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former judge at date of death exceeded that of his spouse.

(g) Upon the death of a retired member on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(h) Upon the death of a retired member on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months

of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(i) Upon the death of a retired member on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(j) Upon the death of a retired member on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(k) Upon the death of a retired member on or after January 1, 2015, there shall be paid a death benefit to the person or persons

designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

The death benefit payable under this subsection shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if there is no surviving designated beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

History.

1973, c. 640, s. 1; 1987, c. 824, s. 4; 1995, c. 509, s. 76; 1998-212, s. 28.27(b), (c); 2004-147, ss. 5, 6; 2005-91, ss. 5, 6; 2007-496, s. 4; 2009-66, ss. 11(c), (d); 2014-112, s. 3(b), (c); 2017-129, s. 2(u).

Effect of Amendments.

Session Laws 2017-129, s. 2(u), effective June 30, 2017, in subsection (k), substituted "the member's death re-

quired contributions" for "his death required contributions" and inserted "the North Carolina Teachers' and State Employees' Benefit Trust" in the first sentence, and inserted the present second through fifth sentences in the first paragraph, and substituted "The death benefit payable under this subsection" for "This death benefit" in the first sentence of the second paragraph.

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) **Increases in Benefits Paid to Members Retired prior to July 1, 1978.** — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) **Increases in Benefits Paid to Members Retired prior to July 1, 1979.** — Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) **Increases in Benefits Paid to Members Retired Prior to July 1, 1982.** — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) **Increase in Benefits Paid to Members Retired on or before July 1, 1983.** — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before

July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.** — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable

and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(l) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(r) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(t) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of

beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(u) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by two and six-tenths percent (2.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of two and six-tenths percent (2.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(v) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(w) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(x) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based

upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(y) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(aa) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(bb) From and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2006, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007. Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2006, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2006, and June 30, 2007.

(cc) From and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2007, shall be increased by two and two-tenths

percent (2.2%) of the allowance payable on June 1, 2008. Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2007, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2007, and June 30, 2008.

(dd) From and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2011, shall be increased by one percent (1%) of the allowance payable on June 1, 2012. Furthermore, from and after July 1, 2012, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2011, but before June 30, 2012, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2011, and June 30, 2012.

(ee) From and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2013, shall be increased by one percent (1%) of the allowance payable on June 1, 2014. Furthermore, from and after July 1, 2014, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2013, but before June 30, 2014, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2013, and June 30, 2014.

(ff) On or before October 31, 2016, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2016, and whose retirement commenced on or before September 1, 2016. The payment shall be one and six-tenths percent (1.6%) of the beneficiary's annual retirement allowance payable as of September 1, 2016, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

(gg) From and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2016, shall be increased by one percent (1%) of the allowance payable on June 1, 2017. Furthermore, from and after July 1, 2017, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2016, but before June 30, 2017, shall be increased by a prorated amount of one percent (1%) of the allowance payable as determined by the Board of

Trustees based upon the number of months that a retirement allowance was paid between July 1, 2016, and June 30, 2017.

(hh) On or before October 31, 2018, a one-time cost-of-living supplement payment shall be made to or on account of beneficiaries who are living as of September 1, 2018, and whose retirement commenced on or before September 1, 2018. The payment shall be one percent (1%) of the beneficiary's annual retirement allowance payable as of September 1, 2018, and shall not be prorated for date of retirement commencement. If the beneficiary dies before the payment is made, then the payment shall be payable to the member's legal representative. No beneficiary shall be deemed to have acquired a vested right to any future supplemental payments.

History.

1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b); 1997-443, s. 33.22(e); 1998-153, s. 21(b); 1999-237, s. 28.23(b); 2000-67, s. 26.20(e); 2001-424, s. 32.22(b); 2002-126, s. 28.8(c); 2003-284, s. 30.17(b); 2004-124, s. 31.17(b); 2005-276, s. 29.25(b); 2006-66, s. 22.18(c); 2007-323, s. 28.20(b); 2008-107, s. 26.23(b); 2012-142, s. 25.13(b); 2014-100, s. 35.14(b); 2016-94, s. 36.21(b); 2017-57, s. 35.19A(b); 2018-5, s. 35.28(b).

Editor's Note.

Session Laws 2016-94, s. 36.21(d), provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year."

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2018-5, s. 35.28(d), provides: "Notwithstanding any other provision of law to the contrary, in order to administer the one-time cost-of-living supplement for retirees provided for in subsections (a), (b), and (c) of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the corresponding retirement system or pay costs associated with the administration of the payment directly from the retirement assets."

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year."

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-94, s. 36.21(b), effective July 1, 2016, added subsection (ff).

Session Laws 2017-57, s. 35.19A(b), effective July 1, 2017, added subsection (gg).

Session Laws 2018-5, s. 35.28(b), effective July 1, 2018, added subsection (hh).

§ 135-66. Administration; management of funds.

The State Treasurer shall be the custodian of the assets of this Retirement System and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

History.

1973, c. 640, s. 1; 1979, c. 467, s. 18.

§ 135-67. Assets of Retirement System.

(a) All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of two funds, namely, the annuity savings fund and the pension accumulation fund.

(b) The annuity savings fund shall be the fund to which all members' contributions, and regular interest allowances thereon as provided for in G.S. 135-7(b), shall be credited. From this fund shall be paid the accumulated contributions of a member in accordance with G.S. 135-62, or 135-63.

(c) Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund. In the event that a retired former member should subsequently again become a member of the Retirement System as provided for in G.S. 135-60(c) or 135-71, any excess of his accumulated contributions at his date of retirement over the sum of the retirement allowance payments received by him since his date of retirement shall be transferred from the pension accumulation fund to the annuity savings fund and shall be credited to his individual account in the annuity savings fund.

(d) The pension accumulation fund shall be the fund in which shall be accumulated contributions by the State and amounts transferred from the annuity savings fund in accordance with subsection (c) above, and to which all income from the invested assets of the Retirement System shall be credited. From this fund shall be paid retirement allowances and any other benefits provided for under this Article except payments of accumulated contributions as provided in subsection (b) above.

(e) The regular interest allowance on the members' accumulated contributions provided for in G.S. 135-7(b) shall be transferred each year from the pension accumulation fund to the annuity savings fund.

History.

1973, c. 640, s. 1.

§ 135-68. Contributions by the members.

(a) Each member shall contribute by payroll deduction for each pay period for which he receives compensation six percent (6%) of his compensation for such period.

(b) Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under subsection (a) of this section with respect to the services of such members rendered after the effective date of this subsection.

The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in subdivision (5) of G.S. 135-53. Picked up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed.

History.

1973, c. 640, s. 1; 1983, c. 469, s. 1.

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contri-

butions computed as a set percentage of the employees' salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. *State Emples. Ass'n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 135-69. Contributions by the State.

(a) The State shall contribute annually an amount equal to the sum of the "normal contribution" and the "accrued liability contribution."

(b) The normal contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total compensation of the members for such period. The normal contribution rate shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the Retirement System, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, in excess of the part thereof provided by the members' contributions, to (ii) the total annual compensation of the members of the Retirement System.

(c) The accrued liability contribution for any period shall be determined as a percentage, equal to the accrued liability contribution rate, of the total compensation of the members for such period. The accrued liability contribution rate shall be determined as the percentage represented by the ratio of (i) the level annual contribution necessary to amortize the unfunded accrued liability over a period of 40 years, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, to (ii) the total annual compensation of the members of the Retirement System.

(d) The unfunded accrued liability as of any date shall be determined, in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, as the excess of (i) the then present value of the benefits to be provided under the Retirement System in the future over (ii) the sum of the assets of the Retirement System then currently on hand in the annuity savings fund and the pension accumulation fund, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the State.

(e) The normal contribution rate and the accrued liability contribution rate shall be determined after each annual valuation of the Retirement System and shall remain in effect until a new valuation is made.

(f) The annual contributions by the State for any year shall be at least sufficient, when combined with the amount held in the pension accumulation fund at the start of the year, to provide the retirement allowances and other benefits payable out of the fund during the year then current.

History.

1973, c. 640, s. 1.

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and

Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contributions computed as a set percentage of the employees' salaries, and with sys-

tematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. *State Emples. Ass'n of N.C., Inc. v. State*, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 135-70. Transfer of members to another system.

(a) Any member whose membership service is terminated other than by retirement or death and, who, while still a member of this Retirement System becomes a member of either the Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System, may elect to retain his membership in this Retirement System by not withdrawing his accumulated contributions hereunder. Any such member shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such termination of service while he is a member of such other system and does not withdraw his contributions hereunder.

(a1) The accumulated contributions and creditable service of any member whose service as a member of this Retirement System has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-1(13), of the Teachers' and State Employees' Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Teachers' and State Employees' Retirement System. In order to effect the transfer of a member's creditable service from this Retirement System to the Teachers' and State Employees' Retirement System, there shall be transferred from this Retirement System to the Teachers' and State Employees' Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in this Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

(b) Any member who becomes eligible for benefits under more than one system may file application therefor with each retirement system to the end that each retirement system shall pay appropriate benefits without transfer of funds between the systems.

(c) The Board of Trustees shall effect such rules as it may deem necessary to administer the provisions of the preceding subsections of this section and to prevent any duplication of service credits or benefits that might otherwise occur.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess.,

1984), c. 1031, s. 21; 2003-284, s. 30.18(d).

§ 135-70.1. Transfer of members from the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System.

(a) The accumulated contributions, creditable service, and reserves, if any, of a former teacher or employee, as defined in G.S. 135-1(25), 135-1(10), and 128-21(10), respectively, or a former member of the General Assembly who is a member of the Consolidated Judicial Retirement System for a period of five or more years may, upon application of the member, be transferred from the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System to the Consolidated Judicial Retirement System. The accumulated contributions, creditable service, and reserves of any member whose service as a teacher or employee or member of the General Assembly is terminated other than by retirement or death and who becomes a member of the Consolidated Judicial Retirement System may, upon application of the member, be transferred from the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Local Governmental Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System, to the Consolidated Judicial Retirement System, the accumulated contributions of each member credited in the annuity savings fund in the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, or the Legislative Retirement System shall be transferred and credited to the annuity savings fund in the Consolidated Judicial Retirement System.

(b) The Board of Trustees shall effect such rules as it may deem necessary to administer the preceding subsection and to prevent any duplication of service credits or benefits that might otherwise occur.

History.

1999-237, s. 28.24(h); 2003-284, s. 30.18(e); 2005-276, s. 29.30A(h); 2005-345, s. 42.

Editor's Note.

As enacted by 1999-237, s. 28.24(h), this section was numbered G.S. 135-70A. This section was renumbered as G.S. 135-70.1 at the direction of the Revisor of Statutes.

Session Laws 2005-345, s. 42, repealed Session Laws 2005-276, s. 29.30A(h), which had proposed to amend this section by adding a subsection (a1) concern-

ing the transfer of accumulated contributions, etc., of Utilities Commissioners.

Session Laws 2008-107, s. 26.24(i), provides: "Notwithstanding the provisions of G.S. 135-28.1, G.S. 135-70.1, or any other law, any member covered by this section shall not be eligible to transfer any remaining creditable service from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System until the member has contributed to the Consolidated Judicial System for a period of five years beginning July 1, 2008."

Session Laws 2008-107, s. 1.2, pro-

vides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 135-71. Return to membership of retired former member.

(a) In the event that a retired former member should at any time return to membership service, his retirement allowance shall thereupon cease and he shall be restored as a member of the Retirement System.

(b) Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

- (1) For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
- (2) For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.
- (3) Subdivision (2) of this section shall apply only to restored members whose initial retirement lasted for more than four calendar months. For restored members whose initial retirement lasted for four or fewer calendar months, subdivision (1) shall apply.

(c) Notwithstanding any other provision in this Chapter, the retirement allowance of a justice or judge shall not be affected by the compensation received as an emergency justice or judge or as a senior business court judge.

(d) Notwithstanding the provisions of G.S. 135-70.1 to the contrary, a retired former member and/or beneficiary of the Teachers' and State Employees' Retirement System as defined in G.S. 135-1(6), whose retirement allowance from this System and/or from the Teachers' and State Employees' Retirement System ceases upon a return to membership service under this System, shall be permitted to transfer the accumulated contributions, creditable service, and reserves, if any, from the Teachers' and State Employees' Retirement System to this System on the same basis as provided for members of other retirement systems under G.S. 135-70.1, if the member attains five or more years of total membership service in this System, and completes at least three years of membership service subsequent to the member's return to membership service.

History.

1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 22; c. 1106, s. 3; 1987, c. 738, s. 39(b); 2005-276, s. 29.30A(i); 2016-91, s. 5.

Effect of Amendments.

Session Laws 2016-91, s. 5, effective July 11, 2016, added "or as a senior business court judge" at the end of subsection (c).

§ **135-72.** Repealed by Session Laws 1999-237, s. 28.25, effective July 1, 1999.

§ **135-73. Termination or partial termination; discontinuance of contributions.**

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested.

History.

1987, c. 177, s. 1(a), (b).

Editor's Note.

Session Laws 1987, c. 177, s. 1(c), made this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of

determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended. A favorable letter was received prior to the enactment of c. 177.

§ **135-74. Internal Revenue Code compliance.**

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of

the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars (\$150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code

are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(c1) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 135-58(a6) shall be paid his contributions in a lump sum as provided in G.S. 135-62 by April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53, except by death. If such member fails, following reasonable notification, to complete a refund application by such required date, the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld. For purposes of this subsection, a member shall not be considered to have ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53 if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System. A lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 120-4.21 shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains 70 and one-half years of age or (ii) has ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53, except by death. If such member fails, following reasonable notification, to complete the retirement process as set forth under Chapter 120 of the General Statutes by such required beginning date, the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 120-4.21. For purposes of this subsection, a member shall not be considered to have ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53 if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Govern-

mental Employees' Retirement System, or Consolidated Judicial Retirement System. A retirement benefit shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the exclusion of any after-tax portion from such a rollover distribution in

the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code.

History. s. 1(b); 2012-130, s. 4(d); 2015-164, s. 1989, c. 276, s. 4; 1993, c. 531, s. 8; 10(c).
1995, c. 361, s. 2; 2002-71, s. 8; 2009-66,

§ 135-75. Deduction for payments allowed.

(a) Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(b) Any beneficiary eligible for coverage under the State Health Plan may also authorize, in writing, the monthly deduction from the beneficiary's retirement benefits of a designated lump sum to be paid to the State Health Plan for any dependent whom the beneficiary wishes to cover under the State Health Plan. In the event that the beneficiary's own State Health Plan coverage is contributory, in whole or in part, the beneficiary may also authorize a designated

lump sum to be paid to the State Health Plan on behalf of the beneficiary. In addition, a beneficiary may similarly authorize the deduction for supplemental voluntary insurance benefits, provided that the deduction is authorized by the Department of State Treasurer and is payable to a company with which the Department of State Treasurer has or had an exclusive contractual relationship. Any such authorization shall remain in effect until revoked by the beneficiary.

History.

2002-126, s. 6.4(e); 2012-178, s. 4(d).

§ 135-75.1. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.

(a) Except as provided in G.S. 135-56(g), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- (1) The federal or State offense is committed while serving as a justice, judge, district attorney, or clerk of superior court.
 - (2) The conduct on which the federal or State offense is based is directly related to the member's service as a justice, judge, district attorney, or clerk of superior court.
- (b) The federal offenses covered by this section are as follows:
- (1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Interference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C. § 1962 (Prohibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).

(2) Reserved for future codification purposes.

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

- (1) A felony violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening) or G.S. 14-228 (Buying and selling offices), or Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of Legislative Ethics), Part 1 of Article 21 or Article 22 of Chapter 163A of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns).
- (2) Perjury or false information as follows:
 - a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
 - b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.
 - c. Perjury under Article 23 of Chapter 163A of the General Statutes.

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

History.

2007-179, s. 4(a); 2017-6, s. 3.

Recodification; Technical and Conforming Changes.

Session Laws 2017-6, s. 3, provides, in part: "The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 163A of the General Statutes to be entitled 'Elections and Ethics Enforcement Act,' as enacted by Section 4 of this act. The Revisor may also recodify into the new Chapter 163A of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate." The Revisor was further authorized to make additional technical and con-

forming changes to catchlines, internal citations, and other references throughout the General Statutes to effectuate this recodification. Pursuant to this authority, the Revisor of Statutes substituted "Part 1 of Article 21 or Article 22 of Chapter 163A" for "Article 20 or 22 of Chapter 163" in subdivision (c)(1), and substituted "Article 23 of Chapter 163A" for "Article 22A of Chapter 163" in subdivision (c)(2)c.

Editor's Note.

Session Laws 2007-179, s. 5, made this section effective July 1, 2007, and applicable to offenses committed on or after that date.

Session Laws 2007-179, s. 4(a), enacted this section with a subdivision (b)(1), but no subdivision (b)(2). Subsection (b) has been set out in the form above at the direction of the Revisor of Statutes.

§ 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited.

History.

2012-193, s. 5.

Cross References.

As to forfeiture of retirement benefits in the Legislative Retirement System for certain felonies related to employment or holding office, see G.S. 120-4.33A. As to forfeiture of retirement benefits for certain felonies related to public employment by or holding office in counties, cities, and towns, see G.S. 128-38.4A. As to forfeiture of retirement benefits in the Retirement System for Teachers and State Employees for certain felonies related to employment or holding office, see G.S. 135-18.10A.

Editor's Note.

Session Laws 2012-193, s. 18, made this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

§ 135-75.1B. Prohibition on purchase of forfeited service.

Any member whose retirement benefits have been forfeited under G.S. 135-75.1 or G.S. 135-75.1A is prohibited from subsequently purchasing or repurchasing either those forfeited benefits or any creditable membership service associated with those forfeited benefits.

History.

2018-52, s. 6(c).

Editor's Note.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the administrators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 11, made this section effective June 25, 2018.

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

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

History.

2011-232, s. 10(c); 2013-288, s. 9(d).

Editor's Note.

Session Laws 2011-232, s. 11, made this section effective December 1, 2011, and applicable to acts committed on or after that date.

Session Laws 2013-288, s. 12, made the amendment to this section by Session Laws 2013-288, s. 9(d), applicable to acts committed on or after December 1, 2013.

§ **135-76.** Reserved for future codification purposes.

ARTICLE 4A.

UNIFORM SOLICITORIAL RETIREMENT ACT OF 1974.

§§ **135-77 through 135-83.** Repealed by Session Laws 1983 (Regular Session 1984), c. 1031, s. 24.

Cross References.

For the Consolidated Judicial Retirement Act, see now G.S. 135-50 et seq.

ARTICLE 4B.

UNIFORM CLERKS OF SUPERIOR COURT RETIREMENT ACT OF 1975.

§§ **135-84 through 135-86.** Repealed by Session Laws 1983 (Regular Session, 1984), c. 1031, s. 24.

Cross References.

For the Consolidated Judicial Retirement Act, see now G.S. 135-50 et seq.

§§ **135-87 through 135-89.** Reserved for future codification purposes.

ARTICLE 5.

SUPPLEMENTAL RETIREMENT INCOME ACT OF 1984.

§ **135-90. Short title and purpose.**

(a) This Article shall be known and may be cited as the “Supplemental Retirement Income Act of 1984”.

(b) The purpose of the Article is to attract and hold qualified employees and officials of the State of North Carolina and its political subdivisions by permitting them to participate in a profit sharing or salary reduction form of deferred compensation which will provide supplemental retirement income payments upon retirement, disability, termination, hardship, and death as allowed under Section 401(k), or any other relevant section, of the Internal Revenue Code of 1954 as amended. As used in this Article, the term “profit” means the excess revenue over expenditures prior to the expenditure of the amount which may be optionally made available for employees to be placed in trust by the State and its political

subdivisions on behalf of the employees and officials covered by this Article.

History.

1983 (Reg. Sess., 1984), c. 975.

§ 135-91. Administration.

(a) The provisions of this Article shall be administered by the Department of State Treasurer and the Supplemental Retirement Board of Trustees established in G.S. 135-96. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(b) The Supplemental Retirement Income Plan shall have the power and privileges of a corporation and shall be known as the "Supplemental Retirement Income Plan of North Carolina" and by this name all of its business shall be transacted.

(c) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article. The Department of State Treasurer and Board of Trustees may appoint those agents, contractors, employees and committees as they deem advisable to carry out the terms and conditions of the Plan. In order to promote achievement of long-term investment objectives and to retain key public employees with investment functions, the Board of Trustees shall authorize the State Treasurer to establish market-oriented compensation plans, including salaries and performance-related bonuses, for employees possessing specialized skills or knowledge necessary for the proper administration of the Plan, who shall be exempt from the classification and compensation rules established by the Office of State Human Resources. The design and administration of those compensation plans shall be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation. The compensation and other associated employee benefits shall be apportioned directly from the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall be charged with a fiduciary responsibility for managing all aspects of the Plan, including the receipt, maintenance, investment, and disposition of all Plan assets.

(e) The administrative costs of the Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees.

(f) Each institution of The University of North Carolina shall report the data and other information to the Supplemental Retirement Income Plan pertaining to participants in the Optional Retirement

ment Program as shall be required by the Department of State Treasurer and the Board of Trustees.

(g) Each political subdivision of the State that sponsors a retirement or pension plan with members who are members of the Supplemental Retirement Income Plan shall report the data and other information to the Plan pertaining to members of the retirement or pension plan as shall be required by the Department of State Treasurer and the Board of Trustees.

History.

1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 1; 1989 (Reg. Sess., 1990), c. 948, s. 2; 2008-132, s. 1; 2015-164, s. 9(a).

Editor's Note.

Session Laws 2008-132, s. 4, provides: "Notwithstanding the provisions of G.S. 135-91, G.S. 143B-426.24, or any other provision of law, effective from July 1, 2008, through June 30, 2009, the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan shall be administered by a transitional Board of Trustees. The transitional Board of Trustees shall consist of nine members, as follows:

"(1) The two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement

System by the General Assembly pursuant to G.S. 135-6(b)(4);

"(2) The two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the General Assembly pursuant to G.S. 143B-426.24(2) and (3);

"(3) Two of the members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the Governor pursuant to G.S. 135-6(b)(3), to be determined by the Governor;

"(4) Two of the members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the Governor pursuant to G.S. 143B-426.24(1), to be determined by the Governor;

"(5) The State Treasurer, ex officio, who shall serve as Chair."

§ 135-92. Membership.

(a) The membership eligibility of the Supplemental Retirement Income Plan shall consist of any of the following who voluntarily elect to enroll:

- (1) Members of the Teachers' and State Employees' Retirement System; and
- (2) Members of the Consolidated Judicial Retirement System; and
- (3) Members of the Legislative Retirement System; and
- (4) Members of the Local Governmental Employees' Retirement System; and
- (5) Law enforcement officers as defined under G.S. 143-166.30 and G.S. 143-166.50; and
- (6) Participants in the Optional Retirement Program provided for under G.S. 135-5.1; and
- (7) Members of retirement and pension plans sponsored by political subdivisions of the State so long as such plans are qualified under Section 401(a) of the Internal Revenue Code of 1986 as amended from time to time.

(b) The membership of any person in the Supplemental Retirement Income Plan shall cease upon:

- (1) The withdrawal of a member's accumulated account; or
- (2) Retirement under the provisions of the Supplemental Income Retirement Plan; or
- (3) Death.

History. 403, s. 2; 1989 (Reg. Sess., 1990), c. 948,
1983 (Reg. Sess., 1984), c. 975; 1985, c. s. 1.

§ 135-93. Contributions.

(a) Each member may elect to reduce his compensation by the amount of his contribution to the Supplemental Retirement Income Plan and that amount shall be held in the member's account. Members electing such a reduction in compensation may authorize payroll deductions for making contributions to the Plan.

(b) The State and any of its political subdivisions may make contributions to the Supplemental Retirement Income Plan on behalf of any of its members, provided these contributions are nondiscriminatory in accordance with the Internal Revenue Code of 1954 as amended, and are duly appropriated by their governing bodies, and the contributions are held in the member's account. Employer contributions to the Plan are declared expenditures for a public purpose.

(c) The Department of State Treasurer and Board of Trustees shall establish maximum annual additions that may be made to a member's account and provide for multiple plan reductions in accordance with the Internal Revenue Code of 1954 as amended.

History.
1983 (Reg. Sess., 1984), c. 975.

§ 135-94. Benefits.

(a) The Department of State Treasurer and the Board of Trustees shall establish a schedule of supplemental retirement income benefits for all members of the Supplemental Retirement Income Plan, subject to the following limitations:

- (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), the balance in each member's account shall be fully vested at all times and shall not be subject to forfeiture for any reason.
- (2) All amounts maintained in a member's account shall be invested according to the member's election, as approved by the Department of State Treasurer and Board of Trustees, including but not limited to, a time deposit account, a fixed investment account, or a variable investment account.

Transfers of accumulated funds shall be permitted among the various approved forms of investment.

- (3) The Department of State Treasurer and Board of Trustees shall provide members with alternative payment options, including survivors' options, for the distribution of benefits from the Plan upon retirement, disability, termination, hardship, and death.
- (4) With the consent of the Department of State Treasurer and the Board of Trustees, amounts may be transferred from other qualified plans to the Supplemental Retirement Income Plan, provided that the trust from which such funds are transferred permits the transfer to be made and, the transfer will not jeopardize the tax status of the Supplemental Retirement Income Plan.
- (5) At the discretion of the Department of State Treasurer and Board of Trustees, a loan program may be implemented for members which complies with applicable State and federal laws and regulations.

(b) All provisions of the Plan shall be interpreted and applied by the Department of State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

(c) All benefits under the Plan shall become payable on and after January 1, 1985.

(d) Contributions under the Plan may be made on and after January 1, 1985.

History.

1983 (Reg. Sess., 1984), c. 975; 1993, c. 531, s. 9; 2012-193, s. 15.

the amendments to subdivision (a)(1) by Session Laws 2012-193, s. 15, applicable to offenses committed on or after December 1, 2012.

Editor's Note.

Session Laws 2012-193, s. 18, made

§ 135-95. Exemption from garnishment, attachment.

Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2), G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

History.

1983 (Reg. Sess., 1984), c. 975; 1985, c. 402; 1989, c. 665, s. 2; c. 792, s. 2.6; 2012-193, s. 16.

the amendments to this section by Session Laws 2012-193, s. 16, applicable to offenses committed on or after December 1, 2012.

Editor's Note.

Session Laws 2012-193, s. 18, made

§ 135-96. Supplemental Retirement Board of Trustees.

(a) The Supplemental Retirement Board of Trustees is established to administer the Supplemental Retirement Income Plan established under the provisions of this Article and the North Carolina Public Employee Deferred Compensation Plan established under G.S. 143B-426.24, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan established under G.S. 115C-341.2.

(b) The Board consists of nine voting members, as follows:

- (1) Six persons appointed by the Governor who have experience in finance and investments, one of whom shall be a State employee, and one of whom shall be a retired State or local governmental employee;
- (2) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;
- (3) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and
- (4) The State Treasurer, ex officio, who shall be the Chair.

(c) Effective July 1, 2016:

- (1) The appointments made by the General Assembly pursuant to subdivisions (2) and (3) of subsection (b) of this section shall be for initial terms of three years, to expire June 30, 2019.
- (2) Three of the appointments made by the Governor pursuant to subdivision (1) of subsection (b) of this section shall be for initial terms of one year, to expire June 30, 2017.
- (3) Three of the appointments made by the Governor pursuant to subdivision (1) of subsection (b) of this section shall be for initial terms of two years, to expire June 30, 2018.

Upon the expiration of these initial terms, appointments for all members shall be for terms of three years beginning on the day following the expiration date of the previous member's term.

(c1) A member shall continue to serve until the member's successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve longer than any of the following:

- (1) Two consecutive three-year terms.
- (2) Three consecutive terms of any length, in the event that one or more of the terms is for fewer than three years in duration or the member serves a partial term as result of filling a vacancy.
- (3) Eight consecutive years, regardless of term lengths.

(d) Other than ex officio members, members appointed by the Governor shall serve at the Governor's pleasure. An ex officio

member may designate in writing, filed with the Board, any employee of the member's department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(e) The Board may retain the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs that the Board administers pursuant to this section.

History.

2008-132, s. 2; 2009-378, s. 1; 2013-287, s. 1; 2015-164, s. 1(b).

Editor's Note.

Session Laws 2015-164, s. 1(a), provides: "The terms of office of the present

members of the Supplemental Retirement Board of Trustees shall expire on June 30, 2016. Effective for terms to begin on July 1, 2016, the members of the Board shall be appointed as provided in G.S. 135-96, as amended by this act."

§ 135-97. Immunity.

A person serving on the Supplemental Retirement Board of Trustees shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

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

History.

2013-287, s. 5.

§§ 135-98, 135-99. Reserved for future codification purposes.

ARTICLE 6.

DISABILITY INCOME PLAN OF NORTH CAROLINA.

§ 135-100. Short title and purpose.

(a) This Article shall be known and may be cited as the "Disability Income Plan of North Carolina".

(b) The purpose of this Article is to provide equitable replacement income for eligible teachers and employees who become temporarily

or permanently disabled for the performance of their duty prior to retirement, and to encourage disabled teachers and employees who are able to work to seek gainful employment after a reasonable period of rehabilitation, and to provide for the accrual of retirement and ancillary benefits to the date the eligible teacher or employee meets the requirements for retirement under the provisions of this Chapter.

History.

1987, c. 738, s. 29(q).

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers.

Session Laws 2003-284, ss. 30.20(a) through (i), as amended by Session Laws 2004-78, s. 5, provides: “(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

“(b) The Commission shall be comprised of 13 members as follows:

“(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees.

“(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees.

“(3) The State Treasurer, or the Treasurer’s designee.

“(4) The Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan.

“(5) The Chair of the North Carolina Industrial Commission, or the Chair’s designee.

“(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

“(7) One person appointed by the President of the North Carolina Community

Colleges System who is familiar with disability issues relating to community college employees.

“Any vacancy shall be filled by the officer who made the original appointment.

“(c) The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

“(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission shall terminate the earlier of the delivery of its final report or December 31, 2004.

“(e) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives’ and the Senate’s Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative

Building or the Legislative Office Building.

“(f) The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

“(g) The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

“(h) The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

“(i) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of subsections (a) through (i) of this section.”

Session Laws 2006-248, s. 17.1, provides: “There is established a Study Commission on the State Disability Income Plan and Other Related Plans.”

Session Laws 2006-248, s. 17.2, provides: “The Commission shall be comprised of 13 members as follows:

“(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees, and one at-large.

“(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers’ compensation issues relating to State employees or school employees, and one at-large.

“(3) The State Treasurer or the Treasurer’s designee.

“(4) The Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan.

“(5) The Chair of the North Carolina

Industrial Commission or the Chair’s designee.

“(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

“(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

“Any vacancy shall be filled by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House shall each appoint a co-chair. The Commission shall meet at the call of the co-chairs.”

Session Laws 2006-248, s. 17.3, provides: “The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.”

Session Laws 2006-248, s. 17.4, provides: “The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochair of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochair. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.”

Session Laws 2006-248, s. 17.5, provides: “The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives’ and the Senate’s Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of

the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.”

Session Laws 2006-248, s. 17.6, provides: “The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.”

Session Laws 2006-248, s. 17.7, provides: “The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.”

Session Laws 2006-248, s. 17.8, provides: “The Commission shall submit a

report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2007.”

Session Laws 2006-248, s. 17.9, provides: “Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.”

Editor’s Note.

Session Laws 2003-284, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2003’.”

Session Laws 2003-284, s. 49.3, provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium.”

Session Laws 2003-284, s. 49.5, is a severability clause.

CASE NOTES

Cited in *Willoughby v. Board of Trustees*, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

§ 135-101. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) “Base rate of compensation” shall mean the regular monthly rate of compensation not including pay for shift premiums, overtime, or other types of extraordinary pay; in all cases of doubt, the Board of Trustees shall determine what is “base rate of compensation”.
- (2) “Beneficiary” shall mean any person in receipt of a disability allowance or other benefit as provided in this Article.
- (3) “Benefits” shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death on or after the first day of a month, or in the event the short-term disability benefit ends on or after the first day of a month where the beneficiary is eligible and applies for an early service or a service retirement allowance the first of the following month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

- (4) "Board of Trustees" shall mean the Board of Trustees of the Teachers' and State Employees' Retirement System as provided in G.S. 135-6.
- (5) "Compensation" shall mean any compensation as the term is defined in G.S. 135-1(7a).
- (6) "Disability" or "Disabled" shall mean the mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury.
- (7) "Earnings" shall mean all income for personal services rendered or otherwise receivable, including, but not limited to, salaries and wages, fees, commissions, royalties, awards and other similar items and self-employment; in all cases of doubt, the Board of Trustees shall determine what are "earnings".
- (8) "Employee" shall mean any employee as the term is defined in G.S. 135-1(10).
- (9) "Employer" shall mean any employer as the term is defined in G.S. 135-1(11).
- (10) "Medical Board" shall mean the board of physicians as provided in G.S. 135-102(d).
- (11) "Member" shall mean any member as the term is defined in G.S. 135-1(13).
- (12) "Membership service" shall mean any service as defined in G.S. 135-1(14).
- (13) "Participant" shall mean any teacher or employee eligible to participate in the Plan as provided in G.S. 135-103.
- (14) "Plan" shall mean the Disability Income Plan of North Carolina as provided in this Article.
- (15) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of Article 1 of this Chapter.
- (16) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.
- (17) "Service" shall mean service as a teacher or employee as defined in G.S. 135-1(10) or G.S. 135-1(25).
- (18) "State" shall mean the State of North Carolina.
- (19) "Teacher" shall mean any teacher as the term is defined in G.S. 135-1(25).
- (20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104; shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as

provided in G.S. 135-105; and shall mean a return to service in any capacity and in any position provided the salary earned is equal to or greater than the salary upon which the long-term disability benefit is based immediately preceding the return to service, if the return occurs within the long-term disability period as provided in G.S. 135-106.

- (21) “Workers’ Compensation” shall mean any disability income benefits provided under the North Carolina Workers’ Compensation Act, excluding any payments for a permanent partial disability rating.

History.

1987, c. 738, s. 29(q); 1989, c. 717, ss. 7, 8; 1991 (Reg. Sess., 1992), c. 779, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(s); 2003-284, s. 30.20(j); 2004-78, s. 1; 2006-74, ss. 1, 2.

Editor’s Note.

Session Laws 2003-284, s. 1.2, provides: “This act shall be known as the ‘Current Operations and Capital Improvements Appropriations Act of 2003’.”

Session Laws 2003-284, s. 30.20(j), effective July 1, 2003, and applicable only

to persons who are not vested in the disability plan in question on July 1, 2003, substituted “physical or cognitive limitations that prevent working as determined by the Department of State Treasurer and the Board of Trustees”; for “mental or physical incapacity for the further performance of duty of a participant or beneficiary” in subdivision (6).

Session Laws 2003-284, s. 49.5, is a severability clause.

Subdivision (6), as amended by Session Laws 2004-78, s. 1, is effective retroactively from and after July 1, 2003.

CASE NOTES

Cited in *McCaskill v. Dep’t of State Treasurer*, Ret. Sys. Div., 204 N.C. App. 373, 695 S.E.2d 108, 2010 N.C. App. LEXIS 1062 (2010).

§ 135-102. Administration.

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

(b) The Plan shall have the power and privileges of a corporation and under the name of Disability Income Plan of North Carolina shall all of its business be transacted, all of its funds invested and all of its cash, securities and other property be held.

(c) The Department of State Treasurer and the Board of Trustees shall have the full power and authority to adopt rules for the administration of the Plan not inconsistent with the provisions of this Article. The Department of State Treasurer and the Board of Trustees may appoint those agents, contractors, and employees as they deem advisable to carry out the terms and conditions of the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall designate a Medical Board to be composed of not fewer than three nor more than five physicians not eligible for benefits under the Plan. Other physicians, medical clinics, institutions or agencies may be employed to conduct such medical examinations and tests necessary to provide the Medical Board with clinical evidence as may be needed to determine eligibility for benefits under the Plan. The Medical Board shall investigate the results of medical examinations, clinical evidence, all essential statements and certifications by and on behalf of applicants for benefits and shall report in writing to the Board of Trustees the conclusions and recommendations upon all matters referred to it.

(e) The Department of State Treasurer and the Board of Trustees may provide the benefits according to the terms and conditions of the Plan as provided in this Article either by purchasing a contract or contracts with any insurance company licensed to do business in this State or by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1986.

History.

1987, c. 738, s. 29(q).

§ 135-103. Eligible participants.

(a) The eligible participants of the Disability Income Plan shall consist of:

- (1) All teachers and employees in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program on January 1, 1988.
- (2) All persons who become teachers and employees or re-enter service as teachers or employees and are in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program after January 1, 1988.

(b) The participation of any person in the Disability Income Plan shall cease upon:

- (1) The termination of the participant's employment as a teacher or State employee, or
- (2) The participant's retirement under the provisions of the Teachers' and State Employees' Retirement System or the Optional Retirement Program, or
- (3) The participant's becoming a beneficiary under the Plan, or
- (4) The participant's death.

History.

1987, c. 738, s. 29(q); 2014-97, s. 8.

CASE NOTES

Applied in *Williams v. North Carolina* 119 N.C. App. 535, 458 S.E.2d 750 Dep't of Economic & Community Dev., (1995).

§ 135-104. **Salary continuation.**

(a) A participant shall receive no benefits from the Plan for a period of 60 continuous calendar days from the onset of disability determined as the last actual day of service, the day of the disabling event if the disabling event occurred on a day other than a normal workday, or the day succeeding at least 365 calendar days after service as a teacher or employee, whichever is later. These 60 continuous calendar days may be considered the waiting period before benefits are payable from the Plan. During this waiting period, a participant may be paid such continuation of salary as provided by an employer through the use of sick leave, vacation leave or any other salary continuation. Any such continuation of salary as provided by an employer shall not include any period a participant or beneficiary is in receipt of Workers' Compensation benefits.

(b) During the waiting period a participant may return to service for trial rehabilitation for periods of not greater than five continuous days of service. Such return to service will not cause a new waiting period to begin but shall extend the waiting period by the number of days of service.

History.

1987, c. 738, s. 29(q); 1989, c. 717, s. 9;
1991 (Reg. Sess., 1992), c. 779, s. 2.

CASE NOTES

Salary Continuation. — Because claimant had submitted an application for long-term disability and requested that he remain on the payroll until his accrued leave was exhausted, his request was sufficient exercise of his right to take salary continuation as a form of long-term disability payments, and because claimant was disabled prior to his termination, the trial court correctly ordered that claimant be compensated for the additional annual leave he would have accrued had he stayed on salary continuation through the end of his accrued annual leave. *Williams v. North Carolina* Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

§ 135-105. **Short-term disability benefits.**

(a) Any participant who becomes disabled and is no longer able to perform his or her usual occupation may receive a benefit commencing on the first day succeeding the waiting period provided all of the following conditions are met:

- (1) Application for the benefit occurs at least 365 calendar days succeeding the participant's date of initial employment as a teacher or employee.

- (2) The participant has at least one year of contributing membership service earned within 36 calendar months immediately preceding the date of disability. Salary continuation used during the period as provided in G.S. 135-104 shall count toward this one-year requirement.
- (3) Application for the benefit occurs no later than 365 days following the first day of the waiting period.
- (4) The participant's employer and attending physician certify that the participant is mentally or physically incapacitated for the further performance of duty.
- (5) The participant's incapacity was incurred at the time of active employment and has been continuous thereafter.

As to the requirement that a participant applying for short term disability benefits have at least one year of contributing membership service within the 36 calendar months immediately preceding the date of disability, a participant who would have qualified for a benefit under this section but for service in the uniformed services shall not be denied a benefit under this section because of that interruption for military service provided all other requirements of this section are met.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments. An election to receive any salary continuation for any part of a given day shall be in lieu of any short-term benefit otherwise payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any short-term benefit otherwise payable.

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of $\frac{1}{12}$ th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent (50%) of $\frac{1}{12}$ th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand

dollars (\$3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. The monthly benefit shall be further reduced by the amount of any payments from the federal Veterans Administration, any other federal agency, or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(d) For short-term disability benefits that begin before July 1, 2019, the provisions of this section shall be administered by the employer and further, the benefits during the first six months of the short-term disability period shall be the full responsibility of and paid by the employer; Provided, further, that upon the completion of the initial six months of the short-term disability period, the employer will continue to be responsible for the short-term benefits to the participant, however, such employer shall notify the Plan, at the conclusion of the short-term disability period or upon termination of short-term disability benefits, if earlier, of the amount of short-term benefits and State Health Insurance premiums paid by the employer and the Plan shall reimburse the employer the amounts so paid.

(d1) For short-term disability benefits that begin on and after July 1, 2019, the provisions of this section shall be administered by the employer. The benefits during the first 12 months of the short-term disability period, including benefits from a preliminary determination of eligibility for long-term disability under subsection (f) of this section, shall be the full responsibility of and paid by the employer.

(e) During the short-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 40 continuous days of service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence unless a different incapacity occurs. The period of rehabilitative employment shall not extend the period of the short-term disability benefits.

(f) A participant or beneficiary of short-term disability benefits or his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the employer of the participant or beneficiary, may request the Board of Trustees to have the Medical Board make a determination of eligibility for the short-term disability benefits as provided in this section or to make a preliminary determination of eligibility for the long-term disability benefits as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability benefits shall not preclude the requirement that the Medical Board make a determination of eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary beyond the benefit period of 365 days for an additional period of not more than 365 days; provided the Medical Board determines that the beneficiary's disability is temporary and likely to end within the extended period of short-term disability benefits. During the extended period of short-term disability benefits, payment of benefits shall be made by the Plan directly to the beneficiary. This extended period of short-term disability benefits shall be treated in the same manner as long-term disability payments for the purposes of G.S. 135-108.

History.

1987, c. 738, s. 29(q); 1989, c. 717, s. 10; 1989 (Reg. Sess., 1990), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 779, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(t); 2003-284, s. 30.20(k); 2004-78, s. 2; 2007-325, s. 1; 2013-288, s. 6; 2018-52, s. 10(a); 2018-85, s. 1.

Editor's Note.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 30.20(k), effective July 1, 2003, and applicable only to persons who are not vested in the disability plan in question on July 1, 2003, in subsection (a), substituted "unable to perform the duties of the participant's job or any other available jobs with the State" for "no longer able to perform his usual occupation," and substituted "cannot perform the duties of the participant's job or any other jobs available with the State" for "is mentally or physically incapacitated for the further performance of duty."

Session Laws 2003-284, s. 49.5, is a severability clause.

Subsection (a), as amended by Session Laws 2004-78, s. 2, is effective retroactively from and after July 1, 2003.

Session Laws 2018-52 provides in its preamble: "Whereas, the employee benefit programs operated by the Department of State Treasurer are an intergenerational partnership between public employees and taxpayers of the State, it is incumbent upon the adminis-

trators of those programs to provide for Financial Accountability, Integrity, and Recovery of assets (FAIRness); and

"Whereas, taxpayers should expect FAIRness in these employee benefit programs, and the Department of State Treasurer should be provided all tools necessary to promote that goal; and

"Whereas, public employees who are participants in these employee benefit programs by virtue of deductions from compensation should also expect FAIRness as a baseline in the operation of these programs; and

"Whereas, future generations of North Carolinians benefit from fiscally responsible management provided by FAIRness of these employee benefit programs by the current generation; Now, therefore,"

Session Laws 2018-52, s. 1, provides: "This act shall be known and cited as the 'Financial Accountability, Integrity, and Recovery Act of 2018'."

Session Laws 2018-52, s. 10(b), made the amendment of this section by Session Laws 2018-52, s. 10(a), effective June 25, 2018, and applicable to applications for short-term disability benefits beginning on or after that date.

Effect of Amendments.

Session Laws 2018-52, s. 10(a), effective June 25, 2018, rewrote subsection (a); substituted "For short-term disability benefits that begin before July 1, 2019, the" for "The" in subsection (d); and added subsection (d1). For effective date and applicability, see editor's note.

Session Laws 2018-85, s. 1, effective June 25, 2018, added the last sentence in subsection (g).

CASE NOTES

Cited in *Williams v. North Carolina* 119 N.C. App. 535, 458 S.E.2d 750 (1995).
 Dep't of Economic & Community Dev.,

§ 135-106. Long-term disability benefits.

(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, and that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section during the first 36 months of the long-term disability period shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced by any primary Social Security disability benefits to which the beneficiary may be entitled, effective as of the first of the month following the month of initial entitlement, and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. When primary Social Security disability benefits are increased by cost-of-living adjustments, the increased reduction shall be applied in the first month following the month in which the member becomes entitled to the increased Social Security benefit. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Department of Veterans Affairs, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced

during the first 36 months of the long-term disability period by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled, effective as of the first of the month following the month of initial entitlement.

After 36 months of long-term disability, no further benefits are payable under the terms of this section unless the member has been approved and is in receipt of primary Social Security disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security disability benefits to which the beneficiary may be entitled, effective as of the first of the month following the month of initial entitlement, and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. When primary Social Security disability benefits are increased by cost-of-living adjustments, the increased reduction shall be applied in the first month following the month in which the member becomes entitled to the increased Social Security benefit. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Department of Veterans Affairs, for payments from any other federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00) a month.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not in receipt of a primary Social Security disability benefit, the long-term disability benefit shall cease after the first 36 months of the long-term disability period. When such a long-term disability recipient begins receiving this unreduced service retirement allowance from the System, that recipient shall not be subject to the

six-month waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term disability benefit in the event the Social Security Administration grants a retroactive approval for primary Social Security disability benefits with a benefit effective date within the first 36 months of the long-term disability period. In such event, the long-term disability benefit shall be restored retroactively to the date of cessation.

(c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability benefits who has earnings during the long-term disability period shall have his long-term disability benefit reduced when the sum of the net long-term disability benefit and the earnings equals one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108. The net long-term benefit shall mean the long-term benefit amount payable as calculated under (b) above, after the reduction for Social Security benefits and Workers' Compensation benefits to which the beneficiary might be entitled, and after the reduction for any monthly payments from the federal Department of Veterans Affairs, for payments from any other federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. The net long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of the month succeeding the month in which the earnings were received of the amount of earnings in excess of the limitations herein provided. Failure to report excess earnings may result in a suspension or termination of benefits as determined by the Board of Trustees.

(c1) During the long-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 36 months of continuous service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence regardless of whether the beneficiary is unable to continue in service due to the same incapacity or a different incapacity.

A beneficiary who, during a period of trial rehabilitation, is unable to continue in service may be entitled to a restoration of the long-term disability benefit provided that the Medical Board certifies that the beneficiary is disabled in accordance with the laws in effect at the time of the Board's original approval for long-term disability benefits, either due to the same or a different incapacity, notwithstanding the requirement the incapacity has been continuous. In the event that the Medical Board determines that the long-term disability benefit should be restored, the restored benefit should be calculated in accordance with G.S. 135-106(b); should include any post-disability benefit adjustments as provided by G.S.

135-108; and shall continue as long as the beneficiary remains disabled until the beneficiary has received a total of 36 long-term disability payments. Continuation of long-term disability benefit payments beyond 36 total payments shall be dependent upon approval for primary Social Security disability benefits as required by G.S. 135-106(b).

A beneficiary who returns to service for a period of trial rehabilitation and who has continued in service for greater than 36 continuous months shall again become a participant, and any subsequent incapacity shall be treated as a new incapacity causing a new waiting period to begin. Such a beneficiary may be entitled to additional long-term disability benefits on account of the new incapacity provided the beneficiary meets all other requirements notwithstanding the requirement of five years of membership service within the 96 calendar months prior to becoming disabled or the cessation of continuous salary continuation payments.

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

History.

1987, c. 738, s. 29(q); 1989, c. 717, s. 11; 1989 (Reg. Sess., 1990), c. 1032, s. 2; 1991 (Reg. Sess., 1992), c. 779, s. 4; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(u); 2003-284, s. 30.20(l); 2004-78, ss. 3, 4; 2005-91, s. 6.1; 2005-276, s. 29.30B(a), (b); 2006-74, ss. 3, 4(a), (b); 2007-325, s. 2; 2010-72, s. 7; 2011-294, s. 6; 2012-178, s. 5; 2013-288, s. 7; 2013-405, s. 2; 2014-88, s. 3(i); 2015-67, s. 2.

Editor's Note.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 30.20(l), effective July 1, 2003, and applicable only to persons who are not vested in the disability plan in question on July 1, 2003, in subsection (a), substituted "unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience" for "mentally or physically incapacitated for the further performance of

duty"; and in the second paragraph, substituted "unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer" for "mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees."

Session Laws 2003-284, s. 49.5, is a severability clause.

Subsection (a), as amended by Session Laws 2004-78, s. 3, is effective retroactively from and after July 1, 2003.

Session Laws 2004-78, s. 4, as amended by Session Laws 2005-276, s. 29.30B, and as amended by Session Laws 2006-74, s. 4, effective August 1, 2007, and applicable only to persons not vested in the disability plan in question on that date, substituted "unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employ-

ees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings" for "mentally or physically incapacitated for the further performance

of duty" in the first paragraph in subsection (a).

Session Laws 2007-325, s. 2, which amended this section, was effective August 1, 2007, and applicable only to those persons who have less than five years of membership service as of July 31, 2007.

Session Laws 2013-405, s. 7, is a severability clause.

CASE NOTES

"Primary". — "Primary" as used in subsection (b) refers to benefits directly received by the disabled person as opposed to "secondary" benefits, which are derivative benefits that may be paid to a disabled worker's spouse, children, or family under certain circumstances. *Willoughby v. Board of Trustees*, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

"Entitle". — "Entitle" has acquired no technical meaning, and therefore "entitle" must be given its ordinary meaning. *Willoughby v. Board of Trustees*, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Offset for Insurance Benefits Under Social Security. — Under G.S. 135-106(b), the amount of the offset should be the net insurance benefits under the Social Security Administration (SSA) after deduction of attorney's fees and costs associated with obtaining the disability insurance benefits from the SSA. *Willoughby v. Board of Trustees*, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Entitlement to Attorney Fees. — Since former employee's attorney has a right superior as against employee to the attorney's fee and since attorney must claim her fee directly from the Social Security Administration (SSA), employee was not entitled within the meaning of G.S. 135-106(b) to the amount statutorily reserved for the attorney's

fee. *Willoughby v. Board of Trustees*, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Salary Continuation as a Form of Long-Term Disability. — Because claimant had submitted an application for long-term disability and requested that he remain on the payroll until his accrued leave was exhausted, his request was sufficient exercise of his right to take salary continuation as a form of long-term disability payments, and because claimant was disabled prior to his termination, the trial court correctly ordered that claimant be compensated for the additional annual leave he would have accrued had he stayed on salary continuation through the end of his accrued annual leave. *Williams v. North Carolina Dep't of Economic & Community Dev.*, 119 N.C. App. 535, 458 S.E.2d 750 (1995).

Employee was not eligible for long-term disability benefits under G.S. 135-106(a) as unpaid leave the employee took pursuant to a settlement arising from the employee's discharge from a state agency did not count as membership service. *McCaskill v. Dep't of State Treasurer, Ret. Sys. Div.*, 204 N.C. App. 373, 695 S.E.2d 108, 2010 N.C. App. LEXIS 1062 (2010), *aff'd in part*, 706 S.E.2d 226, 2011 N.C. LEXIS 140 (2011).

§ 135-107. Optional Retirement Program.

Any participant of the Optional Retirement Program who becomes a beneficiary under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the time the beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary elected to be a member of the Teachers' and State Employees' Retirement System, and shall receive no service accruals as otherwise provided members of the Retirement System under the provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional Retirement

ment Program has not been approved and is not in receipt of a primary Social Security disability benefit, the long-term disability benefit shall cease after the first 36 months of the long-term disability period. However, a beneficiary shall be entitled to a restoration of the long-term disability benefit in the event the Social Security Administration grants a retroactive approval for primary Social Security disability benefits with a benefit effective date within the first 36 months of the long-term disability period. In such event, the long-term disability benefit shall be restored retroactively to the date of cessation.

History.

1987, c. 738, s. 29(q); 2007-325, s. 3.

Editor's Note.

Session Laws 2007-325, s. 3, which

amended this section, was effective August 1, 2007, and applicable only to those persons who have less than five years of membership service as of July 31, 2007.

§ 135-108. Post disability benefit adjustments.

The compensation upon which the short-term or long-term disability benefit is calculated under the provisions of G.S. 135-105(c) or G.S. 135-106(b) may be increased by any permanent across-the-board salary increase granted to employees of the State by the General Assembly and the benefits payable to beneficiaries shall be recalculated based upon the increased compensation, reduced by any percentage increase in Social Security benefits granted by the Social Security Administration times the amount used in the reduction of benefits for primary Social Security disability or retirement benefit as provided in G.S. 135-106(b). The provisions of this section shall be subject to future acts of the General Assembly.

History.

1987, c. 738, s. 29(q); 2001-424, s. 32.32A.

§ 135-109. Reports of earnings.

The Department of State Treasurer and Board of Trustees may require each beneficiary to annually provide a statement of the beneficiary's income received as compensation for services, including fees, commissions, or similar items, income received from business, and benefits received from the Social Security Administration, the federal Veterans Administration, any other federal agency, under the North Carolina Workers' Compensation Act, or under the provisions of G.S. 127A-108. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 120 days after such request may be suspended until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request the right of a beneficiary to a benefit under the Article may be terminated.

History.

1987, c. 738, s. 29(q); 2003-359, s. 23; 2016-108, s. 8.

Editor's Note.

Session Laws 2016-108, s. 9, is a severability clause.

July 22, 2016, substituted "may" for "shall" following "Board of Trustees" in the first sentence; substituted "120 days" for "60 days," "may be suspended" for "shall not be paid a benefit," and "180 days" for "240 days" in the last sentence.

Effect of Amendments.

Session Laws 2016-108, s. 8, effective

§ 135-110. Funding and management of funds.

(a) It is the intent of the General Assembly that a trust fund be created that provides an irrevocable source of funding to be used, to the extent the fund's assets are sufficient, only for disability benefits to participants and beneficiaries. Accordingly, the following provisions apply to that trust fund:

- (1) A trust fund, the Disability Income Plan of North Carolina Trust Fund, is hereby created to which all receipts, transfers, appropriations, contributions, investment earnings and other income belonging to the Plan shall be deposited, and from which all benefits and expenses against the Plan shall be disbursed. The Board of Trustees shall be the trustee of the Fund.
- (2) Employer and non-employer contributions to the Disability Income Plan of North Carolina Trust Fund and earnings on those contributions are irrevocable. The assets of the Fund are dedicated to providing benefits to participants and beneficiaries in accordance with the Plan's benefit terms. The assets of the Fund are not subject to the claims of creditors of the employers and non-employers making contributions to the Fund, are not subject to the claims of any creditors of the Fund's trustees and administrators, and are not subject to the claims of participants and beneficiaries.
- (3) Disability Income Plan of North Carolina Trust Fund assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

(b) The Board of Trustees shall on the basis of such economic and demographic assumptions duly adopted, determine and adopt a uniform percentage of compensation as is defined in Article 1 of this Chapter which would be sufficient to fund the benefits payable under this Article on a term cost method basis as recommended by an actuary engaged by the Board of Trustees. Such uniform percentage of compensation shall not be inconsistent with acts of the General Assembly as may be thereafter adopted.

(c) Each employer shall contribute monthly to the Plan an amount determined by applying the uniform percentage of compensation adopted by the Board of Trustees multiplied by the compensation of teachers and employees reportable to the Retirement System or the Optional Retirement Program. Such monthly contri-

bution shall be paid by the employer from the same source of funds from which the compensation of teachers and employees are paid.

(d) The State Treasurer shall be the custodian of the funds and shall invest the assets of the fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

History. 1987, c. 738, s. 29(q); 2017-129, s. 2(o). (a). tive June 30, 2017, rewrote subsection (a).

Effect of Amendments.
Session Laws 2017-129, s. 2(o), effec-

§ 135-111. Applicability of other pension laws.

Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled “Exemption from taxes, garnishment, attachment, etc.”; G.S. 135-10, entitled “Protection against fraud”; G.S. 135-10.1, entitled “Failure to Respond”; and G.S. 135-17, entitled “Facility of payment” shall be applicable to this Article and to benefits paid pursuant to the provisions of this Article.

History.
1987, c. 738, s. 29(q); 2005-91, s. 7;
2012-185, s. 3(b); 2013-288, s. 8.

§ 135-111.1. Improper receipt of decedent’s Disability Income Plan allowance.

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

History. 2013-288, s. 9(a). this section effective December 1, 2013, and applicable to acts committed on or after December 1, 2013.

Editor’s Note.
Session Laws 2013-288, s. 12, made

§ 135-112. Transition provisions.

(a) Any participant in service as of the date of ratification of this Article and who becomes disabled after one year of membership service will be eligible for all benefits provided under this Article notwithstanding the requirement of five years’ membership service to receive the long-term benefit; provided, however, any beneficiary who receives benefits as a result of this transition provision before completing five years of membership service shall receive lifetime

benefits in lieu of service accruals under the Retirement System as otherwise provided in G.S. 135-4(y).

(b) All benefit recipients under the former Disability Salary Continuation Plan provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries under this Plan under the same provisions and conditions including the benefit amounts payable as were provided under the former Disability Salary Continuation Plan. Any benefit recipient under the former Disability Salary Continuation Plan who returns to service on or after January 1, 1988, who subsequently becomes disabled due to the same disabling condition within 90 days after restoration to service shall not become a participant of the Disability Income Plan but shall be entitled to a restoration of the disability benefit under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan, and shall be entitled to make application for disability retirement benefits under the Retirement System under the same provisions and conditions as were provided members whose service terminated prior to January 1, 1988.

(c) Any person who retired on a disability retirement allowance from the Teachers' and State Employees' Retirement System prior to the effective date of this Article shall be entitled to apply for and receive any benefits that would have otherwise been provided under the Disability Salary Continuation Plan provided for in G.S. 135-34 and shall become beneficiaries under this Plan, under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan.

History.

1987, c. 738, s. 29(q); 1989, c. 717, s. 12.

was repealed by Session Laws 1987, c. 738, s. 29(l). See now G.S. 135-100 et seq.

Editor's Note.

G.S. 135-34, referred to in this section,

§ 135-113. Reservation of power to change.

The benefits provided in this Article as applicable to a participant who is not a beneficiary under the provisions of this Article shall not be considered as a part of an employment contract, either written or implied, and the General Assembly reserves the right at any time and from time to time to modify, amend in whole or in part or repeal the provisions of this Article.

History.

1987, c. 738, s. 29(q).

§ 135-114. Reciprocity of membership service with the Legislative Retirement System and the Consolidated Judicial Retirement System.

Only for the purpose of determining eligibility for benefits accruing under this Article, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time.

History.

1993 (Reg. Sess., 1994), c. 769, s. 7.30(q).

§§ 135-115 through 135-149. Reserved for future codification purposes.

ARTICLE 7.

QUALIFIED EXCESS BENEFIT ARRANGEMENT.

§ 135-150. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meanings:

- (1) "Board of Trustees" means the Board of Trustees established by G.S. 135-6.
- (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (3) "Payee" means a retired member, or the survivor beneficiary of a member or retired member.
- (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit arrangement under section 415(m) of the Internal Revenue Code established under this Article.
- (5) "Retirement System" means the Teachers' and State Employees' Retirement System.

History.
2013-405, s. 3(a).

Session Laws 2013-405, s. 7, is a severability clause.

Editor's Note.
Session Laws 2013-405, s. 8, made this Article effective January 1, 2014.

§ 135-151. Qualified Excess Benefit Arrangement.

(a) The Qualified Excess Benefit Arrangement (QEBA) is established effective January 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA is solely to provide the part of a retirement allowance or benefit that would otherwise have been payable by a Retirement System except for the limitations under section 415(b) of the Internal Revenue Code. The QEBA, as set forth in this Article, is intended to constitute a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

(b) **Eligibility to Participate in the QEBA.** — Effective as of January 1, 2014, a payee shall participate in the QEBA for any calendar year, or portion of the calendar year, during which he or she receives a retirement allowance or benefit payment on and after January 1, 2014, from the Teachers' and State Employees' Retirement System that is reduced due to the application of the maximum benefit provisions of section 415(b) of the Internal Revenue Code. For purposes of the QEBA, a payee is a retired member or survivor beneficiary of a member or retired member who is receiving monthly retirement benefit payments from a Retirement System.

(c) **Supplemental Benefit Payable Under the QEBA.** — Effective January 1, 2014, a payee shall receive each month, commencing on and after January 1, 2014, a monthly supplemental benefit equal to the difference between the amount of that payee's monthly retirement benefit paid under the Teachers' and State Employees' Retirement System on and after January 1, 2014, and the amount that would have been payable to that payee from the Teachers' and State Employees' Retirement System in that month if not for the reduction due to the application of section 415(b) of the Internal Revenue Code. That supplemental benefit shall be computed and payable under the same terms, at the same time, and to the same person as the related benefit payable under the Retirement System. A payee cannot elect to defer the receipt of all or any part of the supplemental payments due under the QEBA. The supplemental benefit paid under this section shall be taxable under North Carolina law in the same manner as the benefit paid under the Teachers' and State Employees' Retirement System.

(d) **Funding of the QEBA.** — The QEBA shall be unfunded within the meaning of federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise shall be made or allowed. The Board of Trustees, upon the recommendation of the

actuary engaged by the Board of Trustees, shall determine the employer contributions required to pay the benefits due under the QEBA for each fiscal year. The required contributions shall be paid by all participating employers. The required contributions shall be deposited in a separate fund from the fund into which regular employer contributions are deposited for the Retirement System. The benefit liability for the QEBA shall be determined each fiscal year, and assets shall not be accumulated to pay benefits in future fiscal years.

(d1) The last employer of a payee who retires on or after August 1, 2016, and who receives any supplemental benefit payment under this section shall be required to reimburse the QEBA in the amount of any supplemental benefit payment made to that payee. The reimbursement amount shall be calculated on an annual basis every calendar year. For purposes of calculating the reimbursement amount, the Board of Trustees may include a pro rata share of direct costs attributable to administration of the QEBA. The total amount of reimbursement owed by The University of North Carolina and UNC Health Care shall not exceed five hundred thousand dollars (\$500,000) annually. The Fiscal Research Division of the General Assembly shall be required to review all reimbursement amounts prior to notifying an employer of the reimbursement amount owed.

The employer shall have 60 calendar days from the date of notification of the reimbursement amount owed to pay the amount in full or the employer shall be assessed a penalty, in lieu of interest, of one percent (1%) per month, or fraction thereof, that the payment is made beyond the due date.

(e) **Treatment of Unused Assets.** — Any assets of the QEBA plan not used to pay benefits in the current calendar year shall be used for payment of the administrative expenses of the QEBA for the current or future calendar years or shall be paid to the Retirement System as an additional employer contribution.

(f) **Assets Subject to Claims of Creditors.** — A payee, or a payee's beneficiary or heirs, shall have no right to, and shall have no property interest in, any assets held to support the liabilities created under this Article. To the extent that any person acquires the right to receive benefits under the QEBA, that right shall be no greater than the right of any unsecured general creditor of the State of North Carolina or such other applicable employer under this Article.

(g) **Administration.** — The QEBA shall be administered by the Board of Trustees, which shall compile and maintain all records necessary or appropriate for administration. The Board of Trustees shall have full discretionary authority to interpret, construe, and implement the QEBA and to adopt such rules and regulations as may be necessary or desirable to implement the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

(h) **No Assignment.** — Except for the application of the provisions of G.S. 110-136 and G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under G.S. 50-20, any supplemental benefit under this Article shall be exempt from levy and sale, garnishment, attachment, or any other process, and shall be unassignable except as specifically otherwise provided in this Chapter.

(i) **Reservation of Power to Change.** — The General Assembly reserves the right at any time and, from time to time, to modify or amend, in whole or in part, any or all of the provisions of the QEBA. No member of the Retirement System and no beneficiary of such a member shall be deemed to have acquired any vested right to a supplemental payment under this Article.

(j) **Sunset of Eligibility to Participate in the QEBA.** — No member of the Teachers' and State Employees' Retirement System who became a member of the Retirement System on or after January 1, 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any new member more retirement benefits than allowed under the limitations of section 415(b) of the Internal Revenue Code.

History.

2013-405, s. 3(a); 2015-67, s. 3(a); 2015-241, s. 30.30A(a); 2016-94, s. 36.23(a), (c).

Editor's Note.

Session Laws 2013-405, s. 7, is a severability clause.

Session Laws 2014-100, s. 35.15A, provides: "Notwithstanding the provisions of G.S. 135-151(e), the assets of the Qualified Excess Benefit Arrangement (QEBA) established under Article 7 of Chapter 135 of the General Statutes may be used to loan the sum of one hundred fifty thousand dollars (\$150,000) to the administrative account of the North Carolina Public School Teachers' and Professional Educators' Investment Plan established under G.S. 115C-341.2. The Plan shall repay the QEBA when the balance in its administrative account exceeds the sum of two hundred fifty thousand dollars (\$250,000). The repayment shall be made with interest at a rate set by the Board of Trustees established under G.S. 135-6."

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.4, provides: "Except for statutory changes or other provisions that clearly indicate an

intention to have effects beyond the 2014-2015 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2014-2015 fiscal year."

Session Laws 2014-100, s. 38.7, is a severability clause.

Session Laws 2016-94, s. 36.23(e), provides: "Notwithstanding Chapter 150B of the General Statutes, the Board of Trustees of the Teachers' and State Employees' Retirement System may develop procedures to implement subsection (a) of this section. Notwithstanding Chapter 150B of the General Statutes, the Board of Trustees of the North Carolina Local Government Employees' Retirement System may develop procedures to implement subsection (b) of this section."

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2016-2017 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2016-2017 fiscal year."

Session Laws 2016-94, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-94, s. 36.23(a), (c),

§ 135-151 QUALIFIED EXCESS BENEFIT ARRANGEMENT § 135-151

effective July 1, 2016, added subsection (d1) and in subsection (j), substituted “who became a member of the Retirement System on or after January 1, 2015” for “retiring on or after August 1, 2016” and substituted “new member” for “new retiree.”

CHAPTER 143. STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS.

Article 12. Law-Enforcement Officers' Retirement System.

Section

143-166 through 143-166.04. [Repealed.]

Article 12A. Public Safety Employees' Death Benefits Act.

143-166.1. Purpose.
143-166.2. Definitions.
143-166.3. Payments; determination.
143-166.4. Funds; conclusiveness of award.
143-166.5. Other benefits not affected.
143-166.6. Awards exempt from taxes.
143-166.7. Applicability of Article.
143-166.8 through 143-166.12. [Reserved.]

Article 12C. Retirement Benefits for State Law-Enforcement Officers.

143-166.30. Retirement benefits for State law-enforcement officers.

Article 12D. Separation Allowances for Law-Enforcement Officers.

143-166.41. Special separation allowance.
143-166.42. Special separation allowances for local officers.
143-166.43. Separation buyouts for law enforcement officers.

Article 12E. Retirement Benefits for Local Governmental Law-Enforcement Officers.

143-166.50. Retirement benefits for local governmental law-enforcement officers.

Article 12F. Separate Insurance Benefits Plan for State and Local Governmental Law-Enforcement Officers.

143-166.60. Separate insurance benefits plan for law-enforcement officers.

Article 12G. Transfers of Assets of Law-Enforcement Officers' Retirement System to Other Retirement Systems.

143-166.70. Transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems.

ARTICLE 12. LAW-ENFORCEMENT OFFICERS' RETIREMENT SYSTEM.

§§ 143-166 through 143-166.04. Repealed by Session Laws 1985, c. 479, s. 196(t).

Cross References.

As to the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, see G.S. 143-166.1 et seq.

As to retirement benefits for local gov-

ernmental law-enforcement officers, see now G.S. 143-166.50.

As to separate insurance benefits plan for state and local governmental law-enforcement officers, see now G.S. 143-166.60.

As to transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems, see G.S. 143-166.70.

Editor's Note.

Session Laws 1971, c. 837, contained provisions as to the transfer of wildlife protectors from the Teachers' and State Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund.

Session Laws 1973, c. 572, as amended by Session Laws 1973, c. 874, contained provisions as to the transfer of law-enforcement officers who were members of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund.

Section 8 of Session Laws 1985, c. 751, which amended repealed G.S. 143-166, provided: "In order to fund the provisions of this act, the Board of Trustees of the Local Governmental Employees' Retirement System, and Law Enforcement Officers' Retirement System with the advice of its consulting actuary, shall apply any unencumbered actuarial gain remaining after application of actuarial gains to any cost-of-living increase granted to retired members effective July 1, 1985, and shall adjust the normal contribution rate of employers, without increase in the total employers' contribution rates and without changes in the amortization periods for liquidation of unfunded accrued liabilities of employers participating in the Retirement System."

ARTICLE 12A.

PUBLIC SAFETY EMPLOYEES' DEATH BENEFITS ACT.

§ 143-166.1. Purpose.

In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firefighters, rescue squad workers, and senior Civil Air Patrol members killed in the discharge of their official duties, and for dependents of noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety killed by an individual or individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

History.

1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2; 1975, c. 284, s. 6; 1977, c. 797; 1983, c. 761, s. 236; 2018-5, s. 35.29(a).

Editor's Note.

Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date, rewrote the Article heading, which formerly read: "Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act."

Session Laws 2018-5, s. 35.29(d), made the amendment of this section by Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2018-2019 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2018-2019 fiscal year."

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2018-5, s. 35.29(a), substituted "firefighters, rescue squad workers," for "firemen, rescue squad workers" and added "and for dependents of non-custodial employees of the Division of

Adult Correction and Juvenile Justice of the Department of Public Safety killed by an individual or individuals in the custody of the Division of Adult Correc-

tion and Juvenile Justice of the Department of Public Safety” at the end. For effective date and applicability, see editor’s note.

CASE NOTES

Cited in *State v. Gaines*, 332 N.C. 461, 421 S.E.2d 569 (1992).

§ 143-166.2. Definitions.

The following definitions apply in this Article:

- (1) Covered person. — This term shall apply to all of the following individuals:
 - a. Firefighters.
 - b. Law enforcement officers.
 - c. Noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - d. Rescue squad workers.
 - e. Senior Civil Air Patrol members.
- (2) Custodial employee. — An employee of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who is a detention officer or a correctional officer or who otherwise has direct care and control over individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
- (3) Dependent child. — Any unmarried child of the deceased covered person, whether natural, adopted, posthumously born or whether a child born out of wedlock as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his or her chief support from the covered person at the time of the covered person’s death; provided, however, that if a dependent child is entitled to receive benefits at the time of the covered person’s death as hereinafter provided, the child shall continue to be eligible to receive such benefits regardless of his or her age thereafter. This term also includes any child over 18 years of age who is physically or mentally incapable of earning a living. Any child over 18 years of age who was enrolled as a full-time student at the time of the covered person’s death shall, so long as the child remains a full-time student as defined in the Social Security Act, be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.
- (4) Dependent parent. — The parent of the deceased covered person, whether natural or adoptive, who was dependent

upon and receiving his or her total and entire support from the covered person at the time of the injury that resulted in that covered person's death.

- (5) Firefighter. — This term shall apply to all of the following individuals:
 - a. Firefighters as defined in G.S. 58-84-5.
 - b. Eligible firefighters as defined in G.S. 58-86-2, notwithstanding any age requirements set out in Article 86 of Chapter 58 of the General Statutes.
 - c. Full-time, permanent part-time, and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services during the time they are actively engaged in firefighting activities or emergency response activities pursuant to G.S. 166A-19.77.
 - d. Full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in firefighting activities and during the time they are training firefighters.
 - e. County fire marshals when engaged in the performance of their county duties.
 - f. All otherwise eligible individuals who, while actively engaged as firefighters, are acting in the capacity of a fire instructor outside their own department or squad.
- (6) Killed in the line of duty. — This term shall apply to all of the following deaths:
 - a. The death of any law-enforcement officer, firefighter, or rescue squad worker who is killed or dies as a result of bodily injuries sustained or extreme exercise or extreme activity experienced in the course and scope of his or her official duties while in the discharge of his or her official duty or duties.
 - b. The death of a senior Civil Air Patrol member who is killed or dies as a result of bodily injuries sustained or extreme exercise or extreme activity experienced in the course and scope of his or her official duties while engaged in a State requested and approved mission pursuant to Article 13 of Chapter 143B of the General Statutes.
 - c. The death of a noncustodial employee who, while performing his or her official duties, is killed in a manner reasonably determined by the Industrial Commission to be directly caused by an individual or individuals in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - d. When the death of a law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member

occurs as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty.

- e. When the death of a firefighter occurs as a direct and proximate result of any of the following cancers that are occupationally related to firefighting, that firefighter is presumed to have been killed in the line of duty:
 - 1. Mesothelioma.
 - 2. Testicular cancer.
 - 3. Intestinal cancer.
 - 4. Esophageal cancer.
- (7) Law enforcement officer or officer. — This term shall apply to all of the following individuals:
 - a. Sheriffs and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina, or any county or municipality thereof, whether paid or unpaid.
 - b. Full-time custodial employees and probation and parole officers of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - c. Full-time institutional and full-time, permanent part-time, and temporary detention employees of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - d. Full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid.
- (8) Noncustodial employee. — An employee of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who is not a custodial employee.
- (9) Official duties. — All duties to which an individual is assigned as part of the individual's job function. This term shall also include those duties performed by an individual while (i) en route to, engaged in, or returning from training; (ii) in the course of responding to, engaged in, or returning from a call by the department of which the individual is a member; or (iii) in the course of responding to, engaged in, or returning from a call for assistance from any department or organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina when served or aided by a department

from within the State of North Carolina. While within the State of North Carolina, any covered person who renders service or assistance, of his or her own volition, at the scene of an emergency, is performing his or her official duties when both of the following apply:

- a. Reasonably apparent circumstances require prompt decisions and actions to protect persons and property.
 - b. The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any individual's life.
- (10) Rescue squad worker. — This term shall apply to all of the following individuals:
- a. Individuals who are dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, these individuals must belong to an organized rescue squad that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., and must have attended a minimum of 36 hours of training in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue and Emergency Medical Services, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 31 of each year, and this roster must be certified to by the secretary of said association.
 - b. Members of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 31 of each year.
 - c. County emergency services coordinators when engaged in the performance of their county duties.
 - d. Full-time employees of the North Carolina Department of Insurance during the time they are training rescue squad workers and during the time they are engaged in activities as members of the State Emergency Response Team when the State Emergency Response Team has been activated.
 - e. All otherwise eligible individuals who, while actively engaged as rescue squad workers, are acting in the capacity of a rescue instructor outside their own department or squad.

- (11) Senior Civil Air Patrol members. — Senior members of the North Carolina Wing-Civil Air Patrol who are 18 years of age or older and currently certified pursuant to G.S. 143B-1031.
- (12) Spouse. — The wife or husband of the deceased covered person who survives him or her and who was residing with the covered person at the time of and during the six months next preceding the date of injury to the covered person that resulted in his or her death and who also resided with the covered person from that date of injury up to and at the time of his or her death and provided, however, the six-month residency requirement shall not apply where the marriage occurred during this six-month period or where the covered person was absent during this six-month period due to service in the Armed Forces of the United States.

History.

1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237; 1987, c. 812; 1987 (Reg. Sess., 1988), c. 1050, s. 1; 1989, c. 727, s. 218(97); 1989 (Reg. Sess., 1990), c. 1024, s. 32; 1991 (Reg. Sess., 1992), c. 833, s. 5; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(y); 2003-284, s. 30.18A(b); 2004-124, s. 31.18C(a); 2005-276, s. 29.30C; 2005-376, s. 1; 2008-163, s. 1; 2011-145, ss. 13.25(ss), 19.1(h), (l); 2011-183, s. 104; 2012-83, s. 46; 2013-155, s. 20; 2013-198, s. 27; 2013-288, s. 10; 2015-88, s. 8; 2016-94, s. 22.1(a); 2017-57, s. 21.1; 2017-186, s. 2(bbbbbb); 2018-5, s. 35.29(a).

Editor's Note.

Subsection (d), as amended by Session Laws 2004-124, s. 31.18C(c), effective July 20, 2004, is applicable to persons killed in the line of duty on or after July 20, 2004, and the subsequent amendment by Session Laws 2005-376, s. 1, effective November 1, 2004, is applicable to all deaths occurring on or after November 1, 2004.

Session Laws 2008-163, s. 2, provides: "This act [s. 1 of which amended subsection (d)] becomes effective June 1, 2008, and applies to workers' compensation claims arising from injuries occurring on or after that date and to death benefits awarded on or after that date under Article 12A of Chapter 143 of the General Statutes."

Session Laws 2016-94, s. 22.1(b), made the amendment of subsection (c) by Ses-

sion Laws 2016-94, s. 22.1(a), applicable to deaths occurring on or after October 1, 2016.

Session Laws 2016-94, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2016.'"

Session Laws 2016-94, s. 39.7, is a severability clause.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.6, is a severability clause.

Session Laws 2018-5, s. 35.29(d), made the rewriting of this section by Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2016-94, s. 22.1(a), effective October 1, 2016, added the last sentence in subsection (c); and added subdivisions (c)(1) through (c)(3). See editor's note for applicability.

Session Laws 2017-57, s. 21.1, effective July 1, 2017, added subdivision (c)(4).

Session Laws 2017-186, s. 2(bbbbbb), effective December 1, 2017, in the first sentence of subsection (d), inserted "and Juvenile Justice" and substituted "Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice" for "Division of Juvenile Justice."

Session Laws 2018-5, s. 35.29(a), re-wrote the section. For effective date and applicability, see editor's note.

Legal Periodicals.

For casenote, "The Established Stan-

dard for Fathers Who Have Acknowledged Paternity and Who Are Seeking Custody of Their Illegitimate Child(ren): *Rosero v. Blake*, 357 N.C. 193 (2003)," see 26 N.C. Cent. L.J. 116 (2003).

CASE NOTES

Cited in *Rosero v. Blake*, 357 N.C. 193, 581 S.E.2d 41, 2003 N.C. LEXIS 605 (2003).

§ 143-166.3. Payments; determination.

(a) When any covered person is killed in the line of duty, the Industrial Commission shall award a death benefit in the amount of one hundred thousand dollars (\$100,000) to be paid to one of the following:

- (1) The spouse of the covered person if there is a surviving spouse.
- (2) If there is no surviving spouse, then payments shall be made to any surviving dependent child of the covered person. If there is more than one surviving dependent child, then the payment shall be made to and equally divided among all surviving dependent children.
- (3) If there is no surviving spouse and no surviving dependent child or children, then payments shall be made to any surviving dependent parent of the covered person. If there is more than one surviving dependent parent, then the payments shall be made to and equally divided between the surviving dependent parents of the covered person.
- (4) If there is no surviving spouse, surviving dependent child, or surviving parent, then the payment shall be made to the estate of the deceased covered person.

(b) Repealed by Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

(c), (d) Repealed by Session Laws 2015-88, s. 9, effective July 1, 2015.

History.

1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960; 1973, c. 634, s. 2; 1975, c. 284, s. 8; 2003-284, s. 30.18A(a); 2015-88, s. 9; 2018-5, s. 35.29(a).

Editor's Note.

Session Laws 2018-5, s. 35.29(d), made the amendment of this section by Session Laws 2018-5, s. 35.29(a), effective retroactively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2018-5, s. 35.29(a), re-wrote subsection (a); and deleted former subsection (b), relating to payments made to qualifying persons. For effective date and applicability, see editor's note.

§ 143-166.4. Funds; conclusiveness of award.

Such award of benefits as is provided for by this Article shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this Article are hereby appropriated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this Article. It shall be vested with power to make all determinations necessary for the administration of this Article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this Article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt.

History.

1959, c. 1323, s. 1; 1965, c. 937.

CASE NOTES

Commission's Decisions Under This Article Are Conclusive and Not Appealable. — This section governs the administration of claims under this Article; by its specific terms, decisions by the Industrial Commission are final and conclusive and appeal from such decisions is proscribed. In re Vandiford, 56 N.C. App. 224, 287 S.E.2d 912 (1982).

Appellate Review Under Workers'

Compensation Act Not Applicable. — This Article is not a part of the North Carolina Workers' Compensation Act, and the methods of appellate review contained in the compensation act are not applicable to the Industrial Commission's function under this Article. In re Vandiford, 56 N.C. App. 224, 287 S.E.2d 912 (1982).

§ 143-166.5. Other benefits not affected.

None of the other benefits now provided for law-enforcement officers, or other persons covered by this Article, or their dependents by the Workers' Compensation Act or other laws shall be affected by the provisions of this Article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law.

History.

1959, c. 1323, s. 1; 1965, c. 937; 1979, c. 245; c. 714, s. 2.

CASE NOTES

Cited in *Kestler v. Board of Trustees*, 48 F.3d 800 (4th Cir. 1995).

§ 143-166.6. Awards exempt from taxes.

Any award made under the provisions of this Article shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this Article.

History.

1959, c. 1323, s. 1; 1965, c. 937.

§ 143-166.7. Applicability of Article.

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, firefighter, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services killed in the line of duty on or after July 1, 1975. The provisions of this Article shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988. The provisions of this Article shall apply to noncustodial employees of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who are killed in the line of duty on and after April 1, 2017.

History.

1965, c. 937; 1973, c. 634, s. 3; 1975, c. 284, s. 9; 1981, c. 944, s. 2; 1987 (Reg. Sess., 1988), c. 1050, s. 2; 1989, c. 727, s. 218(98); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(tt); 2013-155, s. 21; 2018-5, s. 35.29(a).

Editor's Note.

The two instances of the bracketed term "[the]" were inserted in the second sentence of this section at the direction of the Revisor of Statutes.

Session Laws 2018-5, s. 35.29(d), made the amendment of this section by Session Laws 2018-5, s. 35.29(a), effective retro-

actively to April 1, 2017, and applicable to qualifying deaths occurring on or after that date.

Session Laws 2018-5, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2018.'"

Session Laws 2018-5, s. 39.7, is a severability clause.

Effect of Amendments.

Session Laws 2018-5, s. 35.29(a) in the first sentence, substituted "firefighter" for "fireman", added the last sentence, and made minor stylistic changes. For effective date and applicability, see editor's note.

§§ 143-166.8 through 143-166.12. Reserved for future codification purposes.

ARTICLE 12C.

RETIREMENT BENEFITS FOR STATE LAW- ENFORCEMENT OFFICERS.

§ 143-166.30. Retirement benefits for State law-enforcement officers.

(a) **Definitions.** — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) “Beneficiary” means any person in receipt of a retirement allowance or other benefit from a Retirement System.
- (2) “Creditable service” means membership service plus prior service plus military service allowable with a Retirement System.
- (3) “Employer” means the State of North Carolina and its departments, agencies and institutions.
- (4) “Law-enforcement officer” means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.
- (5) “Member” means an officer included in the membership of a retirement system including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.
- (6) “Officer” means a “law-enforcement officer.”
- (7) “Participant” means an officer with an individual account with the Supplemental Retirement Income Plan.
- (8) “Regular accumulated contributions” means the sum of all contributions of a member made to the Retirement System, together with regular interest thereon, pursuant to G.S. 143-166 as the same appeared prior to January 1, 1985.
- (9) “Retirement allowance” means annual payments for life payable in monthly installments continuing until the death of a beneficiary.
- (10) “Law-Enforcement Officers’ Retirement System” means the system provided for under G.S. 143-166.
- (11) “Special annuity account accumulated contributions” means the sum of all contributions of a member or an employer made to the Special Annuity Accounts for Members of the Law-Enforcement Officers’ Retirement System,

together with regular interest thereon, pursuant to G.S. 143-166.03 as the same appeared prior to January 1, 1985.

- (12) "Special Annuity Accounts" means the supplemental defined contribution provisions of the Law-Enforcement Officers' Retirement System, provided for under G.S. 143-166.03 as the same appeared prior to January 1, 1985.
- (13) "State" means the State of North Carolina.
- (14) "State Retirement System" means the Teachers' and State Employees' Retirement System of North Carolina provided for under Article 1 of Chapter 135 of the General Statutes.
- (15) "Supplemental Retirement Income Plan" means a plan created in conformance with Section 401(a), 401(k), or any other section of the Internal Revenue Code of 1954 as amended.

(b) **Basic Retirement System.** — On and after January 1, 1985, law-enforcement officers employed by the State shall be members of the Teachers' and State Employees' Retirement System and beneficiaries who were last employed as officers by the State, or who are surviving beneficiaries of officers last employed by the State, shall be beneficiaries of the State Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by the State shall be members of the State Retirement System.

(c) **Transfers of Assets and Liabilities to Other Retirement Systems.** — As of January 1, 1985, certain assets and liabilities of the Law-Enforcement Officers' Retirement System shall be transferred to the Teachers' and State Employees' Retirement System and the Supplemental Retirement Income Plan in the amounts calculated and in the order of precedence enumerated as follows:

- (1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the State Retirement System to the credit of each individual officer.
- (2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries last employed as officers by the State and the surviving beneficiaries of officers last employed by the State, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the State Retirement System.
- (3) After the transfers provided for above, additional assets in the pension accumulation fund of the Law-Enforcement

Officers' Retirement System shall be transferred to the pension accumulation fund of the State Retirement System, in an amount equal to the ratio of the accrued liabilities on account of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State to the total accrued liabilities on account of all members of the Law-Enforcement Officers' Retirement System.

- (4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan pursuant to subsection (d) of this section to the credit of individual officers.

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

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants.

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

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees

in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

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

(e) **State Contributions to the Supplemental Retirement Income Plan.** — Under all other restrictions as are herein provided, the State shall contribute monthly to the individual accounts of participants who are employed by the State an amount equal to five percent (5%) of the compensation of each participant. The contributions so paid shall be in addition to the contributions on account of court cost assessments as hereinafter provided.

Contributions shall be made to the individual accounts of all participants in the Plan on a per capita basis in equal shares, equal to the sum of the one-half dollar (\$0.50) for each cost of court assessed and collected under G.S. 7A-304.

(e1) **Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act.** — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(f) **Administration.** — The provisions of the State Retirement System pertaining to administration and management of funds under G.S. 135-6 and 7 are made applicable to the Plan.

(g) **Exemption from Garnishment and Attachment.** — Except as provided in subsection (g1) of this section, the right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

(g1) **Forfeiture of Benefits for Certain Felonies.** — Participants in the Supplemental Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under G.S. 135-18.10A shall also forfeit contributions paid on or after December 1, 2012, on behalf of the participant by the State to the Supplemental Retirement Income Plan. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Teachers' and State Employees' Retirement System.

History.

1983 (Reg. Sess., 1984), c. 1034, s. 248; 1985, c. 479, s. 196(s); 1989, c. 792, s. 2.7; 1995, c. 361, s. 5; 2006-141, s. 1; 2007-384, s. 10.5; 2010-72, s. 11(a); 2012-193, s. 13; 2013-288, s. 1(a).

Editor's Note.

Section 143-166, referred to in subdivision (a)(8) and (a)(10) of this section, was repealed by Session Laws 1985, c. 479, s. 196(t).

Section 143-166.03, referred to in subdivisions (a)(11) and (a)(12) of this section, was repealed by Session Laws 1985, c. 479, s. 196(t).

Session Laws 2007-384, s. 11(b), provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance in-

crease of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees."

Session Laws 2007-384, which, in s. 10.5, added the last paragraph of subsection (d), in s. 11(b), provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees."

Session Laws 2012-193, s. 17, as amended by Session Laws 2013-284, s. 3, provides: "The State Treasurer shall ne-

gotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5.1(h), 135-5.4(h), and 58-86-100(b)."

Session Laws 2012-193, s. 18, made the amendments to this section by Session Laws 2012-193, s. 13, which amended subsections (d) and (g) and added subsection (g1), applicable to offenses committed on or after December 1, 2012.

CASE NOTES

Cited in *Braswell v. Ellis*, 950 F. Supp. 145 (E.D.N.C. 1995); *Carter v. Good*, 951 F. Supp. 1235 (W.D.N.C. 1996).

OPINIONS OF ATTORNEY GENERAL

Participation by Commissioner of Motor Vehicles in State 401(k) Plan. — Because the current Commissioner of Motor Vehicles appears to meet the definition of a "law-enforcement officer" for purposes of this section, employer contributions to the State 401(k) Plan on be-

half of the Commissioner should be accepted. See opinion of Attorney General to Mr. Michael Williamson, Director, Department of State Treasurer, Retirement Systems Division, 2004 N.C.A.G. 8 (6/30/04).

ARTICLE 12D.

SEPARATION ALLOWANCES FOR LAW-ENFORCEMENT OFFICERS.

§ 143-166.41. Special separation allowance.

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11c) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning in the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or, (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall

not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(a1) Repealed by Session Laws 2014-88, s. 3(j), effective July 30, 2014.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined or as a probation/parole officer as defined in G.S. 135-1(17a).

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

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or
- (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 position exempt from the North Carolina Human Resources Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f).

History.

1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14; 2007-69, s. 1; 2011-232, s. 9; 2013-382, s. 9.1(c); 2014-88, s. 3(j); 2017-57, s. 35.19B(b).

Editor's Note.

Session Laws 2013-382, s. 9.1(b), provides: "The following entities and positions created by Chapter 126 of the General Statutes are hereby renamed by this act:

"(1) The State Personnel Commission

is renamed the 'North Carolina Human Resources Commission.'

"(2) The Office of State Personnel is renamed the 'North Carolina Office of State Human Resources.'

"(3) The State Personnel Director is renamed the 'Director of the North Carolina Office of State Human Resources.'"

Session Laws 2013-382, s. 9.1(c), provides: "Modification of References. — The Revisor of Statutes shall delete any references in the General Statutes to the State Personnel Act, State Personnel Commission, the State Personnel Director, and the Office of State Personnel (or any derivatives thereof) and substitute references to the North Carolina Human Resources Act, the State Human Resources Commission, the Director of the Office of State Human Resources, and the Office of Human Resources (or the appropriate derivative thereof) to effectuate the renaming set forth in this section wherever conforming changes are necessary."

Session Laws 2013-382, s. 9.2, provides: "No action or proceeding pending on the effective date of this section, brought by or against the State Personnel Commission, the Director of the Office of State Personnel, or the Office of State Personnel, shall be affected by any provision of this section, but the same may be prosecuted or defended in the new name of the Commission, Director, and Office. In these actions and proceed-

ings, the renamed Commission, Director, or Office shall be substituted as a party upon proper application to the courts or other public bodies."

Session Laws 2013-382, s. 9.3, provides: "Any business or other matter undertaken or commanded by the former State Personnel Commission, State Personnel Director, or Office of State Personnel regarding any State program, office, or contract or pertaining to or connected with their respective functions, powers, obligations, and duties that are pending on the date this act becomes effective may be conducted and completed by the Commission, Director, or Office in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the formerly named commission, director, or office."

Session Laws 2017-57, s. 35.19B(c), provides that the amendment to subsection (b) applies to persons retiring on or after July 1, 2017.

Session Laws 2017-57, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations Act of 2017.'"

Session Laws 2017-57, s. 39.6, is a severability clause.

Effect of Amendments.

Session Laws 2017-57, s. 35.19B(b), effective July 1, 2017, added "or as a probation/parole officer as defined in G.S. 135-1(17a)" at the end of subsection (b). For applicability, see editor's note.

CASE NOTES

Amount of Separation Allowance Mandatory. — This statute permits local governments to determine eligibility and requires them to make payments, but it does not authorize local governments to determine the amount of the separation allowance differently from the mandate of subsection (a). *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994).

Eligibility. — Since the initial eligibility requirement for a separation allowance under G.S. 143-166.41 was that police officers retire on a service retirement, police officer was not eligible because he retired on a disability retirement. *Cochrane v. City of Charlotte*, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002), cert. denied, 356 N.C. 160, 568 S.E.2d 189 (2002).

Police officer who retired on disability retirement was not eligible for a special separation allowance because he did not

retire on a service retirement and was, therefore, not among the class of persons statutorily eligible for a special separation allowance. *Cochrane v. City of Charlotte*, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002), cert. denied, 356 N.C. 160, 568 S.E.2d 189 (2002).

Creditable Service. — When a police officer retired on disability retirement, his time spent on disability retirement could not be considered "creditable service" for purposes of determining eligibility for a special separation allowance. *Cochrane v. City of Charlotte*, 148 N.C. App. 621, 559 S.E.2d 260, 2002 N.C. App. LEXIS 45 (2002), cert. denied, 356 N.C. 160, 568 S.E.2d 189 (2002).

"Base rate of compensation" refers to that portion of compensation which is relatively stable and forms the foundation or groundwork of the employee's entire compensation scheme; this would

generally be the minimum amount of compensation to which the employee is entitled in any given pay period relatively independent of factors other than the employment relationship itself. *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994).

In this section “base rate of compensation” has a definite meaning not subject to alteration by local governments and does not include overtime pay, longevity pay, or pay for unused accrued vacation. *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994).

Authority of Municipalities. —

This section and G.S. 143-166.42 do not authorize municipalities to make separation allowances based on overtime pay, longevity pay, and accrued vacation. *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994).

Establishing reemployment by another local government as grounds for cessation of the payment of a separation allowance pursuant to G.S. 143-166.42 is within a city’s authority; G.S. 143-166.42 does not allow the city to determine the amount of the payment but does permit it to determine a retiree’s eligibility. *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Pursuant to the plain and unambiguous language of G.S. 143-166.42, as well as of G.S. 143-166.41 upon which it was based, the actions of a county and a county board of commissioners in entering into a contractual relationship with a retired local law enforcement officer, wherein he was to receive a special separation allowance, were legislatively authorized; accordingly, such was not an ultra vires act on the part of the county entities. *Wiggs v. Edgecombe County*,

361 N.C. 318, 643 S.E.2d 904, 2007 N.C. LEXIS 411 (2007).

Reemployment By Local Government. — Retired city police officer lost his right to receive a separation allowance pursuant to G.S. 143-166.42 when he became reemployed by a county sheriff’s office, which was a local government as defined by G.S. 143-166.41. *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Establishing reemployment by another local government as grounds for cessation of the payment of a separation allowance pursuant to G.S. 143-166.42 is within a city’s authority; G.S. 143-166.42 does not allow the city to determine the amount of the payment but does permit it to determine a retiree’s eligibility. *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Resolution Restricting Vested Allowance was Improper. — County’s resolution, pursuant to its authority under G.S. 143-166.42, restricting a former officer’s ability to collect a special separation allowance, impaired the obligation of the state’s contract with former officer under the retirement system; because the resolution was enacted after the former officer had retired and his right to receive the special separation had become vested, it was improper. *Wiggs v. Edgecombe County*, 179 N.C. App. 47, 632 S.E.2d 249, 2006 N.C. App. LEXIS 1645 (2006), *aff’d*, 361 N.C. 318, 643 S.E.2d 904 (2007).

Cited in *BellSouth Telecomms., Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164; *Finger v. Gaston County*, 178 N.C. App. 367, 631 S.E.2d 171, 2006 N.C. App. LEXIS 1396 (2006).

§ 143-166.42. Special separation allowances for local officers.

(a) On and after January 1, 1987, every sworn law enforcement officer as defined by G.S. 128-21(11d) or G.S. 143-166.50(a)(3) employed by a local government employer who qualifies under this section shall receive, beginning in the month in which the officer retires on a basic service retirement under the provisions of G.S. 128-27(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal

installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

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

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or
- (3) The first day of reemployment by a local government employer in any capacity.

(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.
- (2) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Government Employees' Retirement System.

(d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.

(e) The governing body of each local employer shall determine the eligibility of employees for the benefits provided herein.

(f) The governing body of each local employer shall make the payments set forth in subsection (a) of this section to those persons certified under subsection (e) of this section from funds available.

History.

1985 (Reg. Sess., 1986), c. 1019, s. 2; 2009-396, s. 1; 2018-25, s. 1.

Editor's Note.

This section, as rewritten by Session Laws 2009-396, s. 1, effective July 31, 2009, is applicable prospectively to payments required by this act whether the officer retired before, on, or after July 31, 2009.

Session Laws 2009-396, s. 2, provides: "Nothing in this act shall be deemed to (i) entitle a law enforcement officer to retroactive payments of any benefit for the period prior to the effective date of this act for which the officer's employer previously determined that the officer was not entitled; (ii) prospectively deny payment of an annual separation allowance to an officer who was previously determined by the officer's employer to be eligible for such benefit; (iii) apply to any pending litigation related to the special separation allowance; or (iv) extend the

payment beyond the date when payment shall cease pursuant to G.S. 143-166.42(c), as enacted by Section 1 of this act."

At the direction of the Revisor of Statutes, in 2011, the reference to "G.S. 128-21(11b)" near the beginning of subsection (a) was changed to "G.S. 128-21(11c)" to conform to the redesignation of subdivision (11b) as (11c) as a result of changes made to the section by Session Laws 2011-92. In 2012, the reference to "G.S. 128-21(11c)" near the beginning of subsection (a) was changed to "G.S. 128-21(11d)" to conform to the redesignation of G.S. 128-21(11c) as G.S. 128-21(11d) by Session Laws 2012-185.

Effect of Amendments.

Session Laws 2018-25, s. 1, effective June 22, 2018, designated the former second paragraph of subsection (c) as subsection (c1) and rewrote such subsection.

CASE NOTES

"Creditable Service." — Superior court erred in granting partial summary judgment awarding a sheriff a special separation allowance for 36 years of creditable service through two North Carolina retirement systems, state and local, because the sheriff was not a member of the state system when he retired since, prior to his retirement from the sheriff's department, he began receiving retirement benefits from that system, and the sheriff was only entitled to credit for his 12 years of service under the local system where the county never issued the sheriff a prior service certificate, the sheriff never transferred membership of his state service to the local system, and the county never gave the sheriff credit for prior service. *Lovin v. Cherokee Cnty.*, — N.C. App. —, 789 S.E.2d 869, 2016 N.C. App. LEXIS 818 (2016).

Authority of Municipalities. — Section 143-166.41 and this section do not authorize municipalities to make separation allowances based on overtime pay, longevity pay, and accrued vacation. *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994).

Pursuant to the plain and unambigu-

ous language of G.S. 143-166.42, as well as of G.S. 143-166.41 upon which it was based, the actions of a county and a county board of commissioners in entering into a contractual relationship with a retired local law enforcement officer, wherein he was to receive a special separation allowance, were legislatively authorized; accordingly, such was not an ultra vires act on the part of the county entities. *Wiggs v. Edgecombe County*, 361 N.C. 318, 643 S.E.2d 904, 2007 N.C. LEXIS 411 (2007).

Reemployment By Local Government. — Retired city police officer lost his right to receive a separation allowance pursuant to G.S. 143-166.42 when he became reemployed by a county sheriff's office, which was a local government as defined by G.S. 143-166.41. *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

Resolution Restricting Vested Allowance was Improper. — County's resolution, pursuant to its authority under G.S. 143-166.42, restricting a former officer's ability to collect a special separation allowance, impaired the obliga-

tion of the state's contract with former officer under the retirement system; because the resolution was enacted after the former officer had retired and his right to receive the special separation had become vested, it was improper. *Wiggs v. Edgecombe County*, 179 N.C. App. 47, 632 S.E.2d 249, 2006 N.C. App. LEXIS 1645 (2006), aff'd, 361 N.C. 318, 643 S.E.2d 904 (2007).

Contracts Clause Violated by Retroactive Resolution to Stop Payments. — County and county board of commissioners' attempt to terminate a retired local law enforcement officer's payments of a special separation allowance under G.S. 143-166.42 was violative of the contracts clause of U.S. Const.,

Art. I, § 10, as the statute allowed the parties to enter into the payment arrangement without any restrictions and, accordingly, the county entities could not pass a resolution to terminate the payments upon re-employment by the retired officer with another participant in the North Carolina Local Government Employees' Retirement System; such a resolution would have retroactively terminated his contractual right, which would have unconstitutionally impaired the contract. *Wiggs v. Edgecombe County*, 361 N.C. 318, 643 S.E.2d 904, 2007 N.C. LEXIS 411 (2007).

Cited in N.C. Ass'n of Educators, Inc. v. State, 241 N.C. App. 284, 776 S.E.2d 1, 2015 N.C. App. LEXIS 453 (2015).

OPINIONS OF ATTORNEY GENERAL

"Creditable service," for purposes of determining a local law enforcement officer's eligibility for the special separation allowance benefit and for calculating the amount of that benefit, is service for which credit is allowed under either retirement system of which the officer is a member. See opinion of Attorney General to Claire McNaught, Public Safety Attorney, City of Winston-Salem, 56 N.C.A.G. 40 (1986).

A local law enforcement officer's eligibility for the special separation allowance benefit is in all instances determined by the officer's local government employer. See opinion of Attorney General to Claire McNaught, Public Safety Attorney, City of Winston-Salem, 56 N.C.A.G. 40 (1986).

§ 143-166.43. Separation buyouts for law enforcement officers.

Any State department, agency, or institution, or any local government employer, may, in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves employment prior to reaching the officer's eligibility for a separation allowance under this Article. The lump sum separation buyout shall be paid from funds available and shall not exceed the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41 or G.S. 143-166.42.

History.

2018-22, s. 1.

Editor's Note.

Session Laws 2018-22, s. 5, made this section effective June 22, 2018.

ARTICLE 12E.**RETIREMENT BENEFITS FOR LOCAL
GOVERNMENTAL LAW-ENFORCEMENT
OFFICERS.****§ 143-166.50. Retirement benefits for local governmental
law-enforcement officers.**

(a) **Definitions.** — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:

- (1) “Beneficiary” means any person in receipt of a retirement allowance or other benefit from a Retirement System.
- (2) “Employer” means a county, city, town or other political subdivision of the State.
- (3) “Law-enforcement officer” means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Article 1 of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. “Law enforcement officer” also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.
- (4) “Law-Enforcement Officers’ Retirement System” means the system provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986.
- (5) “Local Governmental Employees’ Retirement System” means the Local Governmental Employees’ Retirement System of North Carolina provided for under Article 3 of Chapter 128 of the General Statutes.
- (6) “Member” means an officer included in the membership of a retirement system, including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.
- (7) “Officer” means a “law-enforcement officer.”
- (8) “State” means the State of North Carolina.

(b) **Basic Retirement System.** — On and after January 1, 1986, law-enforcement officers employed by an employer shall be members of the Local Government Employees’ Retirement System, and beneficiaries who were last employed as officers by an employer, or who are surviving beneficiaries of officers last employed by an employer,

are beneficiaries of the Local Governmental Employees' Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by an employer are members of the Local Retirement System.

(c) **Rights.** — Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Local Governmental Employees' Retirement System.

(d) **Court Cost Receipts.** — Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article, except for the amount designated for the provisions of G.S. 143-166.50(e), shall be paid over to the pension accumulation fund of the Local Governmental Employees' Retirement System and shall offset, to the extent of these receipts, the employers' normal contribution rate required in G.S. 128-30(d)(2) as it pertains to law enforcement officers.

(e) **Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers.** — As of January 1, 1986, all law-enforcement officers employed by a local government employer, are participating members of the Supplemental Retirement Income Plan as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System, participants may make voluntary contributions to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participants. From July 1, 1987, until July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to at least two percent (2%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers; and on and after July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to five percent (5%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be

credited to the designated individual accounts of participating local officers.

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

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

(e1) **Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act.** — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(e2) **Forfeiture of Benefits for Certain Felonies.** — Participants in the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after December 1, 2012, on behalf of the participant by local government employers of law enforcement officers to the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan.

History.

1985, c. 479, s. 196(t); c. 729, ss. 6, 7; 1985 (Reg. Sess., 1986), c. 1015, s. 2; c. 1019, s. 1; 1995, c. 361, s. 6; 1997-144, s. 2; 2006-141, s. 2; 2007-384, s. 10.6; 2010-72, s. 11(b); 2012-193, s. 14; 2013-288, s. 1(b).

Local Modification.

Catawba: 1995, c. 306, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 2; Mecklenburg: 1995, c. 532, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 1.

Editor's Note.

Article 12 of Chapter 143, referred to in subdivision (a)(4) of this section, was

repealed by Session Laws 1985, c. 479, s. 196(t).

Session Laws 2007-384, s. 11(b), provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Govern-

mental Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees."

Session Laws 2007-384, which, in s. 10.6, added the last paragraph of subsection (e), in s. 11(b), provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five

year experience study as required by G.S. 135-6(n) and including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees of the Local Governmental Employees' Retirement System shall adopt straight life annuity factors, for the purpose of determining the special retirement allowance, based upon mortality and such other tables and the interest assumption rate recommended by the actuary based upon the actual experience as reported in the last five year experience study as required by G.S. 128-29(o) and including an assumed annual post-retirement allowance increase of four percent (4%). Sections 10.1 through 10.6 of this act become effective the first of the month following the adoption of those factors by the Boards of Trustees."

Session Laws 2012-193, s. 18, made subsection (e2) effective December 1, 2012, and applicable to offenses committed on or after that date.

"Article 1 of Chapter 17C" has been substituted for "Chapter 17C" in this section at the direction of the Revisor of Statutes.

CASE NOTES

This Section Found Controlling. — Because G.S. 128-23(g) is more specific than G.S. 143-166.50(b), when there is a conflict, G.S. 128-23(g) controls. *Taylor v. City of Lenoir*, 129 N.C. App. 174, 497 S.E.2d 715 (1998), appeal dismissed, 140 N.C. App. 337, 536 S.E.2d 848 (2000).

Town, Not Officers, Must Fund Mandatory Contribution. — A town may increase or decrease the salary of its police officers according to its own discretion, as long as the town and not the officers fund the mandatory two percent contribution; where the contribution is funded from the salary increase of the officers, the ordinance providing for same violates this section. *Abeyounis v. Town of Wrightsville Beach*, 102 N.C. App. 341, 401 S.E.2d 847 (1991).

Sheriff's Department is Local Governmental Entity. — In the injured party's suit against a sheriff and individual detention officers arising out of a five-day episode in the county detention center where she alleged that they ignored her requests for medical treatment, the trial court properly concluded

that the office of North Carolina sheriff was a "person" under 42 U.S.C.S. § 1983 because: (1) the State constitution created the office of sheriff, N.C. Const., Art. VII, § 2, but included that provision within the article governing local governments, along with provisions for counties, cities, towns, and other governmental subdivisions, N.C. Const., Art. VII, § 1; (2) State statutes, including G.S. 17E-1, 160A-288.2, 143-166.50, and 97-2, characterized a sheriff's department as a local governmental entity; (3) there was no contention that the State would be potentially liable for any monetary judgment entered against the sheriff and the detention officers; and (4) the State did not have, with respect to a sheriff, the minimum degree of control required for Eleventh Amendment immunity. *Boyd v. Robeson County*, 169 N.C. App. 460, 621 S.E.2d 1, 2005 N.C. App. LEXIS 2352 (2005), cert. denied, — N.C. —, 615 S.E.2d 866 (2005).

Applied in *Campbell v. City of Laurinburg*, 168 N.C. App. 566, 608 S.E.2d 98, 2005 N.C. App. LEXIS 335 (2005).

OPINIONS OF ATTORNEY GENERAL

Funding of Employer's Contribution. — A local government employer may not use a local law enforcement officer's salary increase, or a portion thereof, to fund the employer's mandated contribution to the Supplemental Retirement Income Plan. See opinion of Attorney General to Sheriff John H. Baker, Jr., Wake County Sheriff's Department, 57 N.C.A.G. 24 (1987).

ARTICLE 12F.

**SEPARATE INSURANCE BENEFITS PLAN FOR
STATE AND LOCAL GOVERNMENTAL LAW-
ENFORCEMENT OFFICERS.**

§ 143-166.60. Separate insurance benefits plan for law-enforcement officers.

(a) A Separate Insurance Benefits Plan, hereinafter called the "Plan", is to be an employee welfare benefit plan, established for the benefit of (i) all law enforcement officers, as defined in G.S. 135-1(11c) and G.S. 128-21(11d) employed by the State and local governments and (ii) all former law-enforcement officers previously employed by the State and local governments, who had 20 or more years of service as an officer or are in receipt of a disability retirement allowance from any State-administered retirement system or are in receipt of a benefit from the Disability Income Plan of North Carolina, who shall be participants.

(b) The Boards of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall jointly administer the Plan and shall, under the terms and conditions otherwise appearing in this Article, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 501(c)(9) of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with a master trust, the North Carolina Teachers' and State Employees' Benefits Trust, providing the same benefits for participants. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, participants' estates, and persons named by the participant to receive the benefit. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of participants. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

(c) The initial assets of the Plan are the assets of the former Separate Benefit Plan established under G.S. 143-166.04 as it

existed prior to January 1, 1986, which shall be transferred to the Plan on January 1, 1986. The Plan shall be separate and apart from any retirement systems or plans.

(d) The Boards of Trustees shall promulgate rules and regulations as are necessary to establish benefits under the Plan, within the availability of funds, to provide:

- (1) An accident and sickness disability insurance benefit;
- (2) A group life insurance benefit for participants employed by an employer at the time of death, not to exceed five thousand dollars (\$5,000);
- (3) A group life insurance benefit for participants who are eligible former officers, not to exceed four thousand dollars (\$4,000); and
- (4) An accidental line-of-duty insurance death benefit not to exceed two thousand one hundred dollars (\$2,100) in total on account of the death of a participant caused by an accident while in the actual performance of duty as an officer.

(d1) In addition to the benefits provided under subsection (d) of this section, the assets of the Plan may be used to pay the employer health insurance contributions and contribution rates on behalf of law enforcement officers, as defined in G.S. 135-1(11c), employed by the State and former law enforcement officers receiving a retirement allowance from the Teachers' and State Employees' Retirement System.

(e) The insurance benefit of the Plan on account of the death of a participant shall be payable to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that the participant does not wish these benefits to be paid to his or her spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose. The life insurance benefits shall be payable only on account of participants in the Plan for six or more months or, if an actively employed officer, at any time after employment if death results from an accident. The accident and sickness disability insurance benefits shall be payable to a participant at any time after becoming a participant in the Plan.

(f) Should amounts in the trust fund of the Plan be insufficient at any time to enable the Boards of Trustees to pay benefits due in full, then an equitable graded percentage of the payment shall be made.

(g) The provisions of the State and Local Retirement Systems pertaining to administration and management of funds under G.S. 128-28, G.S. 128-29, G.S. 135-6 and G.S. 135-7 are made applicable to the Plan.

(h) **Exemption from Garnishment and Attachment.** — The right of a participant in the Separate Insurance Benefits Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

History.

1985, c. 479, s. 196(t); 1987, c. 738, s. 29(p); 1989, c. 792, s. 2.8; 2003-284, s. 30.19B(b); 2013-360, s. 35.17(a); 2014-97, s. 9; 2017-129, s. 2(v).

Editor's Note.

At the direction of the Revisor of Statutes, in 2011, the reference to "G.S. 128-21(11b)" near the beginning of subsection (a) was changed to "G.S. 128-21(11c)" to conform to the redesignation of subdivision (11b) as (11c) as a result of changes made to the section by Session Laws 2011-92. In 2012, the reference to "G.S. 128-21(11c)" in subsection (a) was changed to "G.S. 128-21(11d)" and the reference to "G.S. 135-1(11b)" in subsection (a) was changed to "G.S. 135-1(11c)" to conform to the redesignation of those subdivisions by Session Laws 2012-185.

Session Laws 2013-360, s. 35.17(b), provides: "During the 2013-2015 fiscal biennium, the Department of Public Safety and the Department of Justice shall report monthly to the Department of State Treasurer a list of the sworn law enforcement officers on whose behalf the departments have paid employer premiums to the State Health Plan. After receiving the reports, the Department of State Treasurer shall review and approve the reports and execute periodic transfers to the General Fund in order to ensure that these State law enforcement employer premium costs are financially supported by the Separate Insurance Benefits Plan established under G.S. 143-166.60."

Session Laws 2013-360, s. 35.17(c), as amended by Session Laws 2014-100, s. 35.17, provides: "For each fiscal year of the 2013-2015 fiscal biennium, the Department of State Treasurer shall calculate the total compensation for which the Department of Public Safety and Department of Justice have paid retirement contributions on behalf of sworn law enforcement officers. The Department of State Treasurer shall multiply this total

compensation by five and forty hundredths percent (5.40%) for months during the 2013-2014 fiscal year and by five and forty-nine hundredths percent (5.49%) for months during the 2014-2015 fiscal year and shall ensure that the General Fund is fully reimbursed for these costs by executing periodic transfers of the resulting amounts from the Separate Insurance Benefits Plan established under G.S. 143-166.60 to the General Fund."

Session Laws 2013-360, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2013.'"

Session Laws 2013-360, s. 38.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2013-2015 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2013-2015 fiscal biennium."

Session Laws 2013-360, s. 38.5 is a severability clause.

Session Laws 2014-100, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2014.'"

Session Laws 2014-100, s. 38.4, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2014-2015 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2014-2015 fiscal year."

Session Laws 2014-100, s. 38.7, is a severability clause.

Effect of Amendments.

Session Laws 2017-129, s. 2(v), effective June 30, 2017, in subsection (b), inserted "the North Carolina Teachers' and State Employees' Benefit Trust" in the first sentence, and added the last four sentences.

ARTICLE 12G.**TRANSFERS OF ASSETS OF LAW-
ENFORCEMENT OFFICERS' RETIREMENT
SYSTEM TO OTHER RETIREMENT SYSTEMS.****§ 143-166.70. Transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems.**

As of January 1, 1986, assets of the Law-Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

- (1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.
- (2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law-Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.
- (3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d)(9).
- (4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

- (5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1) [128-27(l)].

History.

1985, c. 479, s. 196(u).

Section 143-166.02, referred to in subdivision (5) of this section, was repealed by Session Laws 1985, c. 479, s. 196(t).

Editor's Note.

Article 12 of Chapter 143, referred to in this section, was repealed by Session Laws 1985, c. 479, s. 196(t).

The reference to G.S. 128-27(1) in subdivision (5) was apparently intended to refer to G.S. 128-27(l).

CASE NOTES

Applied in *Mathews v. Board of Trustees*, 97 N.C. App. 186, 385 S.E.2d 343 (1989).

CHAPTER 143B.
EXECUTIVE ORGANIZATION ACT OF 1973.

Article 9. Department of Administration.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred
Compensation Plan.

Section

143B-426.24. North Carolina Public Employee Deferred Compensation Plan.

ARTICLE 9.
DEPARTMENT OF ADMINISTRATION.

PART 25.

**BOARD OF TRUSTEES OF THE NORTH
CAROLINA PUBLIC EMPLOYEE DEFERRED
COMPENSATION PLAN.**

**§ 143B-426.24. North Carolina Public Employee Deferred
Compensation Plan.**

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established. Effective July 1, 2008, the Plan shall be administered by the Supplemental Retirement Board of Trustees established under G.S. 135-96.

(b)-(f) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(g) It shall be the duty of the Supplemental Retirement Board to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Supplemental Retirement Board to devise a uniform Deferred Compensation Plan for teachers and

employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Supplemental Retirement Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

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

(i) The Supplemental Retirement Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Supplemental Retirement Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k), (l) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Supplemental Retirement Board

may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) Repealed by Session Laws 2008-132, s. 3, effective July 1, 2009.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein.

History.

1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1; 2006-66, s. 20.1; 2008-132, s. 3; 2018-84, s. 5(a).

Effect of Amendments.

Session Laws 2018-84, s. 5(a), effective June 25, 2018, added subsection (h2).

CHAPTER 161.

REGISTER OF DEEDS.

Article 3. Registers of Deeds' Supplemental Pension Fund Act of 1987.

Section

161-50. Short title and purpose.

161-50.1. Scope.

161-50.2. Assets.

161-50.3. Disbursements.

161-50.4. Eligibility.

161-50.5. Benefits.

ARTICLE 3.

REGISTERS OF DEEDS' SUPPLEMENTAL PENSION FUND ACT OF 1987.

§ 161-50. Short title and purpose.

(a) This Article shall be known and may be cited as the "Registers of Deeds' Supplemental Pension Fund Act of 1987."

(b) The purpose of this Article is to create a pension fund to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of register of deeds.

History.

1987, c. 792, s. 1.

§ 161-50.1. Scope.

(a) This Article provides supplemental pension benefits for all county registers of deeds who are retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan as herein described.

(b) The Board of Trustees of the Local Governmental Employees' Retirement System shall administer the provisions of this Article.

(c) The provisions of this Article shall be subject to future legislative change or revision, and no person is deemed to have acquired any vested right to a pension payment provided by this Article.

History.

1987, c. 792, s. 1; 2013-287, s. 2.

§ 161-50.2. Assets.

(a) On and after October 1, 1987, each County Commission shall remit monthly to the Department of State Treasurer an amount equal to one and one-half percent (1.5%) of the monthly receipts collected pursuant to Article 1 of Chapter 161 of the General

Statutes, to be deposited to the credit of the Registers of Deeds' Supplemental Pension Fund, hereinafter referred to as the Fund, to be used in making monthly pension payments to eligible retired registers of deeds under the provisions of this Article and to pay the cost of administering the provisions of this Article.

(b) The State Treasurer shall be the custodian of the Registers of Deeds' Supplemental Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

History.

1987, c. 792, s. 1; 2007-245, s. 1.

§ 161-50.3. Disbursements.

(a) Immediately following July 1, 1988, the Department of State Treasurer shall divide an amount equal to forty-five percent (45%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments to all eligible retired registers of deeds as of July 1, 1988, payable in accordance with the method described in G.S. 161-50.5, except that such pension benefit shall be computed for a six-months basis beginning with the month of July, 1988.

(b) Immediately following January 1, 1996, and the first of January of each succeeding calendar year thereafter, the Department of State Treasurer shall divide an amount equal to ninety-three percent (93%) of the assets of the Fund at the end of the preceding calendar year into equal shares and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) The remaining seven percent (7%) of the Fund's assets as of December 31, 1995, and at the end of each calendar year thereafter, may be used by the Department of State Treasurer in administering the provisions of this Article.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced.

History.

1987, c. 792, s. 1; 1995, c. 259, s. 2.

§ 161-50.4. Eligibility.

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally

sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(a2) Each county register of deeds who is not eligible to retire with the Local Governmental Employees' Retirement System solely because the county has not elected to participate as an employer with the Local Governmental Employees' Retirement System and who has either (i) attained the age of 65, (ii) attained 30 years of creditable service regardless of age, or (iii) attained the age of 60 with not less than 25 years of creditable service, and who has completed at least 10 years of creditable service as a register of deeds is entitled to receive a monthly pension under this Article, provided that register of deeds is not eligible to receive any retirement benefits from any State or locally sponsored plan.

(b) Each eligible retired register of deeds as defined in subsection (a), (a1), or (a2) of this section relating to service and retirement status shall be entitled to receive a monthly pension under this Article beginning with the month of retirement.

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

History.

1987, c. 792, s. 1; 1991, c. 443, s. 1; 1995, c. 259, s. 1; 1998-147, s. 1; 2007-245, s. 2; 2018-84, s. 2(c).

June 25, 2018, and applicable to the forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A occurring on or after that date.

Editor's Note.

Session Laws 2018-84, s. 2(e), made subsection (c) of this section, as added by Session Laws 2018-84, s. 2(c), effective

Effect of Amendments.

Session Laws 2018-84, s. 2(c), added subsection (c). For effective date and applicability, see editor's note.

§ 161-50.5. Benefits.

(a) An eligible retired register of deeds shall be entitled to receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as register of

deeds multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired registers of deeds on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S. 161-50.3. In no event, however, shall a monthly pension under this Article exceed an amount which, when added to a retirement allowance under the maximum allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than seventy-five percent (75%) of a register of deed's equivalent annual salary immediately preceding retirement computed on the latest monthly rate, including any and all supplements, to a maximum amount of one thousand five hundred dollars (\$1,500).

(a1) A register of deeds eligible under G.S. 161-50.4(a2) shall be entitled to receive an annual pension benefit, payable in equal monthly installments as determined under the provisions of subsection (a) of this section, but reduced by an amount equal to the benefit that would be payable from the Local Governmental Employees' Retirement System if the register of deeds had been a member of the Local Governmental Employees' Retirement System and all of the years of local service were creditable to that System.

(b) All monthly pensions payable under this Article shall be paid on the same business day of each month that benefits are paid from the Local Governmental Employees' Retirement System.

(c) Monthly pensions payable under this Article shall cease at the death of the pensioner and no payment will be made to any beneficiaries or to the decedent's estate.

(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.

(d1) Monthly pensions payable under this Article will cease upon the ineligibility of a pensioner under G.S. 161-50.4(c) due to the forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A.

(e) Repealed by Session Laws 1989, c. 792, s. 2.11, effective for taxable years beginning on or after January 1, 1989.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan.

History.

1987, c. 792, s. 1; 1989, c. 792, s. 2.11; 1991, c. 50, s. 1; c. 443, s. 2; 1998-147, s. 2; 2007-245, s. 3; 2009-576, s. 1; 2018-84, s. 2(d).

Editor's Note.

Session Laws 2009-576, s. 2, provides that amendments made to G.S. 161-50.5 by Section 1 of the act [which substituted "exceed an amount which, when added to

a retirement allowance under the maximum allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than seventy-five percent (75%)” for “exceed seventy-five percent (75%)” in the last sentence of subsection (a)] shall not apply to any retiree of the Register of Deeds' Supplemental Pension Fund. Section 1 of the act shall not apply to any register of deeds who is serving as of the effective date of this bill (September 10, 2009).

Session Laws 2018-84, s. 2(e), made subsection (d1) of this section, as added by Session Laws 2018-84, s. 2(d), effective June 25, 2018, and applicable to the forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A occurring on or after that date.

Effect of Amendments.

Session Laws 2018-84, s. 2(d), added subsection (d1). For effective date and applicability, see editor's note.

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