

March 17, 2009

H 642. RETIREMENT TECHNICAL CORRECTIONS. Filed 3/17/09. *TO MAKE TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.*

As the title indicates.

Non-spouse beneficiary. Amends (1) GS 135-18.7(d) [regarding Internal Revenue Code (IRC) Compliance and distributions under the Teachers' and the State Employees' Retirement System (TSERS)], (2) GS 135-74(d) [regarding IRC Compliance and distributions under the Judicial Retirement System (JRS)], (3) GS 120-4.31(d) [regarding IRC Compliance and distributions under the Legislative Retirement System (LRS)], and (4) GS 128-38.2(d) [regarding IRC Compliance and distributions under the Retirement System for Counties, Cities, and Towns]. Provides that effective on or after January 1, 2007, a non-spouse beneficiary of a deceased member may choose, at a time and in a manner prescribed by the administrator of the Board of Trustees of each of the above listed retirement systems, to directly roll over any portion of the beneficiary's distribution from the respective retirement system providing that the rollover conforms with the provisions of section 402(c)(11) of the IRC.

Definitions. Amends GS 128-21(11) to modify the definition of *employer* for the purposes of Article 3 of GS Chapter 128 (regarding the Retirement System for Counties, Cities, and Towns AKA Local Governmental Employees' Retirement System [LGERS]) to delete the provision providing that *employer* means 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.

Amends the definition for *compensation* in GS 135-1(7a), 128-21(7a), 135-53(5), and 120-4.8(5) to also mean payment of military differential wages.

Amends GS 135-1(10) and 128-21(10) to provide that *employee* includes any member whose employment is interrupted because of service in the Uniformed Services, as defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if the member was an employee at the time of the interruption. Provides that if the member does not immediately return to employment with a covered employer in this retirement system, then the member is deemed *in service* until the date on which the member was first eligible to be separated or released from the member's involuntary military service.

Firemen's and rescue squad workers' pension fund. Makes modifications to Article 86, *NC Firemen's and Rescue Squad Workers' Pension Fund*, of GS Chapter 58. Amends GS 58-86-25 (defining eligible firemen) and GS 58-86-30 (defining eligible rescue squad worker) to provide that the list of persons meeting the eligibility requirements under the respective sections must be filed with the State Treasurer by January 31 of each year (was, by July 1 of each year).

Amends GS 58-86-35 (regarding monthly payments by eligible firemen to the pension fund), and GS 58-86-40 (regarding monthly payments by eligible rescue squad workers to the pension fund) to require that each monthly payment of \$10 per month be paid to the director of the pension fund no later than 90 days after the end of the calendar year in which the month occurred. Amends GS 58-86-45(b) to provide that an eligible fireman or rescue squad worker who is less than 35 years may apply for membership in the fund at any time (was, applicant had to be less than 35 years old and to have not previously elected to become a member). Also clarifies that a member is not required to have applied for membership after first becoming eligible in order to receive credit for prior service.

Repeals GS 58-86-50, which required a former member who wished to rejoin the fund to pay a \$25 administrative fee. Makes conforming changes eliminating reference to the administrative fee in the repealed statute.

Amends GS 58-86-60 to provide that the lump sum payment made to survivors of, or the estate of a fireman or rescue squad worker who dies before reaching the age at which the pension is payable to the member under Article 86, GS Chapter 58, is to be equal to the amount paid into the member's separate account by the member, or on behalf of the member (was, equal to the amount paid into the fund by the member). Also provides that if a fireman or rescue squad worker dies after beginning to receive the member's pension, and before receiving an amount

that is equal to the amount paid into the fund by the member that the lump sum payment made to survivors of, or the estate of the deceased fireman or rescue squad worker is to be equal to the difference between the amount paid into the member's separate account by the member, or on behalf of the member, and the amount received by the member as a pensioner (was, equal to the difference between the amount paid into the fund by the member and the amount received as a pensioner).

Application for retirement benefits. Modifies the timeline for a member of TSERS, the JRC, or the LGERS to indicate in a written application the time frame in which the member intends to engage in (1) service retirement, (2) early service retirement, or (3) disability retirement. Provides that the member seeking retirement must submit a written application setting the date that is not more than 120 days (was, 90 days) subsequent to the execution and filing of the member's application for retirement. Makes this change by amending GS 135-5(a)(3), 135-5(a)(4), 135-5(a1), 135-5(c), 135-57(d), 135-59(a), 128-24(4), 128-24(5), 128-27(a), 128-27(a1), and 128-27(c). Also amends GS 120-4.22(a) to provide that a member of the Legislative Retirement System, who applies for disability retirement, must designate a retirement date that is no more than 120 days (was, 90 days) from the filing of the application.

Failure to respond. Amends GS 128-32.1 (LGERS) and GS 135-10.1 (TSERS) to provide that if a member fails to respond within 90 days after the Form 6-E (was, Form 6-E, election of Benefits) and preliminary option figures are mailed, the Form 6 will be null and void (was, the Form 6, Application for Service, Early, or Disability Retirements will be null and void).

Election of optional allowance. Current law provides that members of TSERS or LGERS may choose to receive benefits in a retirement allowance payable throughout life, or elect to receive the actuarial equivalent of the retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under one of six specified options. Amends GS 135-5(g) (TSERS), and GS 128-27(g) (LGERS) to provide that if a member dies (1) after the effective date of retirement; (2) following receipt by the Board of Trustees of an election of benefits, and (3) before the first benefit check is cashed, then the retirement benefit is payable in accordance with the member's election of benefits. Also amends GS 135-5(g1) (TSERS), and GS 128-27(g1) (LGERS) to provide that if a retiree dies without having designated a beneficiary, the benefit becomes payable to the member's estate.

Survivor's alternate benefit. Amends GS 135-5(m) (TSERS) and GS 128-27(m) (LGERS) to provide that for the purpose of calculating the *survivor's alternate benefit*, any terminal payouts made after the date of the member's death that meet the definition of compensation are to be credited to the month prior to the month of death. Provides that the terminal payouts do not include salary or wages paid for work performed during the month of death. Additionally, provides that if a member dies after the effective date of a retirement for which the member has been approved but before the receipt by the Board of Trustees of an election of benefits, then the member's designated beneficiary for a return of accumulated contributions may choose to receive the *survivor's alternate benefit*.

Death benefit. Amends GS 135-5(l) (TSERS) and GS 128-27(l) to provide for the calculation of a member's last day of actual service for purposes of administration of the death benefit when (1) the member's employment was interrupted because of service in the Uniformed Services, as defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and (2) the member does not immediately return to employment with a covered employer in this retirement system. Provides that the last date of actual service is the date on which the member was first eligible to be separated or released from the member's involuntary military service.

Current law provides for the payment of benefits on the death of a member of the JRS who is *in service* upon submission of satisfactory proof of the member's death to the Board of Trustees. Amends GS 135-63 (JRS) to provide that a participant whose employment is interrupted because of service in the Uniformed Services, as defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353 is considered to be *in service* with regards to his qualifying employment until the last day of the member's service in the Uniformed Services. Provides that if the member does not immediately return to employment with a covered employer in this retirement system, then the member is

deemed *in service* until the date on which the member was first eligible to be separated or released from the member's involuntary military service.

Amends GS 120-4.27 (LRS) to provide that *in service* for purposes of determining the death benefit for a member of the LRS also means service in the Uniformed Services, as 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. Provides that if the member does not immediately return to employment with a covered employer in this retirement system then the member is deemed *in service* until the date on which the member was first eligible to be separated or released from the member's involuntary military service.

Miscellaneous changes. Amends GS 135-8(b2) (TSERS) and GS 128-30(b2) (LGERS) regarding retroactive adjustment in compensation or an underreporting of compensation to replace the term *member* with the phrase *member or beneficiary* wherever it occurs in these two subdivisions. Enacts new subdivision (c1) to GS 135-3(8) (TSERS) and to GS 128-24(5) (LGERS) to direct employers to report each reemployment of beneficiaries who retired on early or service retirement within 90 days of the reemployment and to include the nature of the reemployment, the date, and the compensation. Provides that if the report is not received within the required 90 days, the Board of Trustees is to assess the employer with a penalty of 1% per month with a minimum penalty of \$25.

Amends GS 135-5(c) (TSERS disability retirement benefits of members leaving service prior to January 1, 1988) to allow a surviving designated beneficiary of a qualifying deceased member, whose death occurred before the first day of the month in which the member's disability retirement allowance was due and payable, to elect to receive the reduced retirement allowance provided by a 100% (was, 50%) joint and survivor payment option in lieu of a return of accumulated contributions under specified conditions.

Amends GS 127A-40(b) (pensions for the National Guard) to provide that the legal representative of a deceased retired member is entitled to a full check for the month in which the death occurred.

Amends GS 135-63(a) (JRS benefits upon death before retirement for members in service), GS 135-63(c) (JRS benefits upon death before retirement for members not in service), GS 135-5(f) (TSERS benefits upon death before retirement), GS 135-5(l) (TSERS death benefit plan), GS 128-27(f) (LGERS benefits upon death before retirement), GS 128-27(l) (LGERS death benefit plan), and GS 120-4.25 (LRS return of accumulated contributions upon death before retirement) to provide that, upon receipt of proof of death prior to retirement of a member or former member, the amount of death benefit or accumulated contributions is paid to such person as the member nominated by written designation duly acknowledged and filed with the Board of Trustees *or by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees.*

Amends GS 135-63(a) (JRS benefits if retirement allowance payments terminate upon remarriage or death of a spouse), GS 135-64(c) (JRS benefits upon member's death after retirement to a person other than a spouse or beneficiary receiving a survivorship benefit), GS 135-64(d) (JRS benefits upon death or remarriage of a spouse or the death of the designated survivor), GS 135-5(g1) (TSERS benefits upon the member's death after retirement, death of a designated survivor, and additional death benefit related to the purchase of creditable service), GS 128-27(g1) (LGERS benefits upon the member's death after retirement, death of a designated survivor, and additional death benefit related to the purchase of creditable service), and GS 120-4.26A (LRS benefits upon member's death after retirement or upon death of the designated survivor) to provide that a benefit equal to the remaining accumulated contributions is paid to such person as the member nominated by written designation duly acknowledged and filed with the Board of Trustees *or by electronic submission in a form approved by the Board of Trustees.*

Amends GS 135-3(3) and (8) (TSERS membership requirements), GS 135-5(a) and (a1) (TSERS benefits), GS 128-24(4) and (5) (LGERS membership requirements), GS 128-27(a) and (a1) (LGERS benefits), GS 135-57(a) and (d) (JRS service retirement), and GS 120-4.21(a) (LRS service retirement benefits) to allow members to retire upon *electronic submission* or written application to the Board of Trustees.

Amends GS 135-106(b) (related to the Disability Income Plan of North Carolina long term disability benefits) to clarify that a reduction in monthly long term disability benefits for receipt of primary Social Security disability benefits begins the first month following the month in which the member becomes entitled to those benefits.

Effective July 1, 2009.

Intro. by Tucker.

GS 58, 120, 127A, 128, 135

April 29, 2009

H 642. RETIREMENT TECHNICAL CORRECTIONS. Filed 3/17/09. House committee substitute makes the following changes to 1st edition.

Amends GS 128-32.1 [Local Governmental Employees' Retirement System (LGERS)] and GS 135-10.1 [Teachers' & State Employees' Retirement System (TSERS)] to provide that the Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 90-day limitation on the time period that the member has to respond after the Form 6-E and the preliminary option figures are mailed. Provides for the extension if (1) the member is incapacitated to the extent that a reasonable person would not have expected the member to complete the paperwork within the regular deadline or (2) when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline.

Amends GS 135-5(g) (TSERS) and GS 128-27(g) (LGERS) to provide that when a member dies after the effective date of retirement but prior to the Board of Trustees receiving a properly acknowledged and filed election of benefits form from the member, if there is a single designated beneficiary for the return of accumulated contributions, that beneficiary may elect to receive the benefit; however, if there is more than one beneficiary named for the return of accumulated contributions, then the administrator or executor of the deceased member's estate is to select an option and name the beneficiary or beneficiaries.

Amends GS 135-5(m) (TSERS) and GS 128-27(m) (LGERS) by deleting the proposed provisions that allowed a designated beneficiary to elect to receive the survivor's alternate benefit in the event that the member dies after the effective retirement date has been approved but prior to the receipt by the Board of Trustees of an election of benefits acknowledged and filed by the member.

Amends proposed subdivision (c1) to GS 135-3(8) (TSERS) and proposed subdivision (c1) to GS 128-24(5) (LGERS) (respectively directing employers to report each reemployment of beneficiaries who retired on early or service retirement) to provide that if the report is not received within the required 90 days, the Board of Trustees is to assess the employer with a penalty of 10% of the compensation of the unreported reemployed beneficiaries during the unreported period (was, 1% per month) with a minimum penalty of \$25.

Deletes proposed amendments to GS 135-106(b) (related to the Disability Income Plan of North Carolina long-term disability benefits) determining the schedule for commencing a reduction in primary Social Security disability benefits for a member who qualifies for long-term disability benefits.

June 9, 2009

SL 2009-66 (H 642). RETIREMENT TECHNICAL CORRECTIONS. AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND. Summarized in *Daily Bulletin* 3/17/09 and 4/29/09. Enacted June 8, 2009. Effective July 1, 2009.