

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 376
Committee Substitute Favorable 6/8/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H376-PCS30397-SH-33

Short Title: Retirement Technical Corrections.-AB

(Public)

Sponsors:

Referred to:

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES GOVERNING
3 THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE
4 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 135-45.2(f) reads as rewritten:

7 "(f) Former employees who are receiving disability retirement benefits or disability
8 income benefits pursuant to Article 6 of Chapter 135 of the General Statutes or who are
9 approved for those benefits but not in receipt of the benefits due to lump-sum payouts of
10 ~~vacation and bonus~~ vacation, bonus, and sick leave, provided the former employee has at least
11 five years of contributory retirement service with an employing unit of a State-supported
12 retirement system, shall be eligible for the benefit provisions of this Plan, as set forth in this
13 Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in
14 which such former employee is no longer eligible for disability retirement benefits or disability
15 income benefits pursuant to Article 6 of this Chapter."

16 SECTION 2.(a) G.S. 135-3(8)c1. reads as rewritten:

17 "c1. Within 90 days of the end of each month in which a beneficiary is
18 reemployed under the provisions of sub-subdivision c. of this
19 subdivision, each employer shall provide a report for that month on
20 each reemployed beneficiary, including the terms of the
21 reemployment, the date of the reemployment, and the amount of the
22 monthly compensation. If such a report is not received within the
23 required 90 days, the Board ~~shall~~ may assess the employer with a
24 penalty of ten percent (10%) of the compensation of the unreported
25 reemployed beneficiaries during the months for which the employer
26 did not report the reemployed beneficiaries, with a minimum penalty
27 of twenty-five dollars (\$25.00). If after being assessed a penalty, an
28 employer provides clear and convincing evidence that the failure to
29 report resulted from a lack of oversight or some other event beyond
30 the employer's control and was not a deliberate attempt to omit the
31 reporting of reemployed beneficiaries, the Board may reduce the
32 penalty to not less than two percent (2%) of the compensation of the



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1 unreported reemployed beneficiaries during the months for which the
2 employer failed to report, with a minimum penalty of twenty-five
3 dollars (\$25.00). Upon receipt by the employer of notice that a
4 penalty has been assessed under this sub-subdivision, the employer
5 shall remit the payment of the penalty to the Retirement System, in
6 one lump sum, no later than 90 days from the date of the notice."

7 **SECTION 2.(b)** G.S. 128-24(5)c1. reads as rewritten:

8 "1. Within 90 days of the end of each month in which a beneficiary is
9 reemployed under the provisions of sub-subdivision c. of this
10 subdivision, each employer shall provide a report for that month on
11 each reemployed beneficiary, including the terms of the
12 reemployment, the date of the reemployment, and the amount of the
13 monthly compensation. If such a report is not received within the
14 required 90 days, the Board ~~shall~~may assess the employer with a
15 penalty of ten percent (10%) of the compensation of the unreported
16 reemployed beneficiaries during the months for which the employer
17 did not report the reemployed beneficiaries, with a minimum penalty
18 of twenty-five dollars (\$25.00). If after being assessed a penalty, an
19 employer provides clear and convincing evidence that the failure to
20 report resulted from a lack of oversight or some other event beyond
21 the employer's control and was not a deliberate attempt to omit the
22 reporting of reemployed beneficiaries, the Board may reduce the
23 penalty to not less than two percent (2%) of the compensation of the
24 unreported reemployed beneficiaries during the months for which the
25 employer failed to report, with a minimum penalty of twenty-five
26 dollars (\$25.00). Upon receipt by the employer of notice that a
27 penalty has been assessed under this sub-subdivision, the employer
28 shall remit the payment of the penalty to the Retirement System, in
29 one lump sum, no later than 90 days from the date of the notice."

30 **SECTION 3.(a)** G.S. 135-5(c) reads as rewritten:

31 "(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1,
32 1988. – The provisions of this subsection shall not be applicable to members in service on or
33 after January 1, 1988. Upon the application of a member or of his employer, any member who
34 has had five or more years of creditable service may be retired by the Board of Trustees, on the
35 first day of any calendar month, not less than one day nor more than 120 days next following
36 the date of filing such application, on a disability retirement allowance: Provided, that the
37 medical board, after a medical examination of such member, shall certify that such member is
38 mentally or physically incapacitated for the further performance of duty, that such incapacity
39 was incurred at the time of active employment and has been continuous thereafter, that such
40 incapacity is likely to be permanent, and that such member should be retired; Provided further
41 the medical board shall determine if the member is able to engage in gainful employment and,
42 if so, the member may still be retired and the disability retirement allowance as a result thereof
43 shall be reduced as in subsection (e) below. Provided further, that the medical board shall not
44 certify any member as disabled who:

- 45 (1) Applies for disability retirement based upon a mental or physical incapacity
46 which existed when the member first established membership in the system;
47 or
48 (2) Is in receipt of any payments on account of the same disability which existed
49 when the member first established membership in the system.

1 The Board of Trustees shall require each employee upon enrolling in the retirement system
2 to provide information on the membership application concerning any mental or physical
3 incapacities existing at the time the member enrolls.

4 Supplemental disability benefits heretofore provided are hereby made a permanent part of
5 disability benefits after age 65, and shall not be discontinued at age 65.

6 Notwithstanding the requirement of five or more years of creditable service to the contrary,
7 a member who is a law-enforcement officer and who has had one year or more of creditable
8 service and becomes incapacitated for duty as the natural and proximate result of an accident
9 occurring while in the actual performance of duty, and meets all other requirements for
10 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
11 allowance.

12 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
13 with an early or service retirement benefit has the right, within three years of his retirement, to
14 convert to an allowance with disability retirement benefits without modification of any election
15 of optional allowance previously made; provided, the beneficiary presents clear and convincing
16 evidence that the beneficiary would have met all applicable requirements for disability
17 retirement benefits while still in service as a member. The allowance on account of disability
18 retirement benefits to the beneficiary shall be retroactive to the effective date of early or service
19 retirement.

20 Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member
21 who met all other requirements for disability retirement benefits, except whose death occurred
22 before the first day of the calendar month in which the member's disability retirement
23 allowance was to be due and payable, may elect to receive the reduced retirement allowance
24 provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return
25 of accumulated contributions, provided the following conditions apply:

- 26 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
27 member's death, one and only one beneficiary is eligible to receive a return
28 ~~of accumulated contributions at the time of his death, one and only one~~
29 person, contributions, and
30 (2) The member had not instructed the Board of Trustees in writing that he did
31 not wish the provision of this subsection to apply."

32 **SECTION 3.(b)** G.S. 128-27(c) reads as rewritten:

33 "(c) Disability Retirement Benefits. – Upon the application of a member or of his
34 employer, any member who has had five or more years of creditable service may be retired by
35 the Board of Trustees, on the first day of any calendar month, not less than one day nor more
36 than 120 days next following the date of filing such application, on a disability retirement
37 allowance: Provided, that the medical board, after a medical examination of such member, shall
38 certify that such member is mentally or physically incapacitated for the further performance of
39 duty, that such incapacity was incurred at the time of active employment and has been
40 continuous thereafter, that such incapacity is likely to be permanent, and that such member
41 should be retired; Provided further the medical board shall determine if the member is able to
42 engage in gainful employment and, if so, the member may still be retired and the disability
43 retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided
44 further, that the Medical Board shall not certify any member as disabled who:

- 45 (1) Applies for disability retirement based upon a mental or physical incapacity
46 which existed when the member first established membership in the system;
47 or
48 (2) Is in receipt of any payments on account of the same disability which existed
49 when the member first established membership in the system.

1 The Board of Trustees shall require each employee upon enrolling in the retirement system
2 to provide information on the membership application concerning any mental or physical
3 incapacities existing at the time the member enrolls.

4 Notwithstanding the requirement of five or more years of creditable service to the contrary,
5 a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue
6 squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable
7 service and becomes incapacitated for duty as the natural and proximate result of an accident
8 occurring while in the actual performance of duty, and meets all other requirements for
9 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
10 allowance.

11 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
12 with an early or service retirement benefit has the right, within three years of his retirement, to
13 convert to an allowance with disability retirement benefits without modification of any election
14 of optional allowance previously made; provided, the beneficiary would have met all applicable
15 requirements for disability retirement benefits while still in service as a member. The allowance
16 on account of disability retirement benefits to the beneficiary shall be retroactive to the
17 effective date of early or service retirement.

18 Notwithstanding the foregoing, effective April 1, 1991, the surviving designated
19 beneficiary of a deceased member who met all other requirements for disability retirement
20 benefits, except whose death occurred before the first day of the calendar month in which the
21 member's disability retirement allowance was to be due and payable, may elect to receive the
22 reduced retirement allowance provided by a one hundred percent (100%) joint and survivor
23 payment option in lieu of a return of accumulated contributions, provided the following
24 conditions apply:

- 25 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
26 ~~member's death, one and only one beneficiary is eligible to receive a return~~
27 ~~of accumulated contributions at the time of his death, one and only one~~
28 ~~person, contributions, and~~
29 (2) The member had not instructed the Board of Trustees in writing that he did
30 not wish the provision of this subsection to apply."

31 **SECTION 4.** G.S. 128-21(19) reads as rewritten:

32 "(19) "Retirement" shall mean withdrawal from active service with a retirement
33 allowance granted under the provisions of this Article. A retirement
34 allowance under the provisions of this Chapter may only be granted upon
35 retirement of a member. In order for a member's retirement to become
36 effective in any month, the member must render no ~~service~~ service,
37 including part time, temporary, substitute, or contractor service, at any time
38 during ~~that month.~~ the month immediately following the effective date of
39 retirement."

40 **SECTION 5.(a)** G.S. 135-4(f)(1) reads as rewritten:

41 "(1) Teachers and other State employees who entered the armed services of the
42 United States on or after September 16, 1940, and prior to February 17,
43 1941, and who returned to the service of the State within a period of two
44 years after they were first eligible to be separated or released from such
45 armed services under other than dishonorable conditions shall be entitled to
46 full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a
47 member who has been on military leave returns to work consistent with the
48 provisions of this subdivision, then the member's employer must remit to the
49 System all the employer contributions for the full period of that member's
50 military service."

51 **SECTION 5.(b)** G.S. 128-26(a) reads as rewritten:

1 **"§ 128-26. Allowance for service.**

2 (a) Each person who becomes a member during the first year of his employer's
3 participation, and who was an employee of the same employer at any time during the year
4 immediately preceding the date of participation, shall file a detailed statement of all service
5 rendered by him to that employer prior to the date of participation for which he claims credit.

6 A participating employer may allow prior service credit to any of its employees on account
7 of: their earlier service to the aforesaid employer; or, their earlier service to any other employer
8 as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state,
9 territory, or other governmental subdivision of the United States other than this State.

10 A participating employer may allow prior service credit to any of its employees on account
11 of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such
12 service prior to the establishment of the Teachers' and State Employees' Retirement System on
13 July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum
14 an amount calculated on the basis of compensation the employee earned when he first entered
15 membership and the employee contribution rate at that time together with interest thereon from
16 year of first membership to year of payment shall be one half of the calculated cost.

17 With respect to a member retiring on or after July 1, 1967, the governing board of a
18 participating unit may allow credit for any period of military service in the armed forces of the
19 United States if the person returned to the service of his employer within two years after having
20 been honorably discharged, or becoming entitled to be discharged, released, or separated from
21 such armed services; provided that, notwithstanding the above provisions, any member having
22 credit for not less than 10 years of otherwise creditable service may be allowed credit for such
23 military services which are not creditable in any other governmental retirement system;
24 provided further, that a member will receive credit for military service under the provisions of
25 this paragraph only if he submits satisfactory evidence of the military service claimed and the
26 participating unit of which he is an employee agrees to grant credit for such military service
27 prior to January 1, 1972.

28 A member retiring on or after July 1, 1971, who is not granted credit for military service
29 under the provisions of the preceding paragraph will be allowed credit for any period in the
30 armed services of the United States up to the date he was first eligible to be separated or
31 released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time
32 he entered military service, and either of the following conditions is met:

- 33 (1) He returns to service, with the employer by whom he was employed when he
34 entered military service, within a period of two years after he is first eligible
35 to be separated or released from such military service under other than
36 dishonorable conditions.
- 37 (2) He is in service, with the employer by whom he was employed when he
38 entered military service, for a period of not less than 10 years after he is
39 separated or released from such armed services under other than
40 dishonorable conditions.

41 Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns
42 to work consistent with the provisions of this subsection concerning return to service within
43 two years after the member's earliest eligibility for separation or release from military service,
44 then the member's employer must remit to the System all the employer contributions for the full
45 period of that member's military service."

46 **SECTION 6.** G.S. 135-106(b) reads as rewritten:

47 "(b) After the commencement of benefits under this section, the benefits payable under
48 the terms of this section during the first 36 months of the long-term disability period shall be
49 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable
50 to the participant or beneficiary prior to the beginning of the short-term disability period as may
51 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent

1 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would
2 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced
3 by any primary Social Security disability benefits and by monthly payments for Workers'
4 Compensation to which the participant or beneficiary may be entitled. When primary Social
5 Security disability benefits are increased by cost-of-living adjustments, the increased reduction
6 shall be applied in the first month following the month in which the member becomes entitled
7 to the increased Social Security benefit. The monthly benefit shall be further reduced by the
8 amount of any monthly payments from the federal Department of Veterans Affairs, any other
9 federal agency or any payments made under the provisions of G.S. 127A-108, to which the
10 participant or beneficiary may be entitled on account of the same disability. Provided, in any
11 event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a
12 disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in
13 lieu of long-term disability benefits; provided such election shall not extend the first 36
14 consecutive calendar months of the long-term disability period. An election to receive any
15 salary continuation for any part of any given day shall be in lieu of any long-term benefit
16 payable for that day, provided further, any lump-sum payout for vacation leave shall be treated
17 as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term
18 benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced
19 during the first 36 months of the long-term disability period by an amount, as determined by
20 the Board of Trustees, equal to a primary Social Security retirement benefit to which the
21 beneficiary might be entitled.

22 After 36 months of long-term disability, no further benefits are payable under the terms of
23 this section unless the member has been approved and is in receipt of primary Social Security
24 disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of
25 1/12th of the annual base rate of compensation last payable to the participant or beneficiary
26 prior to the beginning of the short-term disability period as may be adjusted for percentage
27 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual
28 longevity payment to which the participant or beneficiary would be eligible, to a maximum of
29 three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security
30 disability benefits and by monthly payments for Workers' Compensation to which the
31 participant or beneficiary may be entitled. When primary Social Security disability benefits are
32 increased by cost-of-living adjustments, the increased reduction shall be applied in the first
33 month following the month in which the member becomes entitled to the increased Social
34 Security benefit. The monthly benefit shall be further reduced by the amount of any monthly
35 payments from the federal Department of Veterans Affairs, for payments from any other
36 federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the
37 participant or beneficiary may be entitled on account of the same disability. Provided, in any
38 event, the benefit payable shall be no less than ten dollars (\$10.00) a month.

39 Notwithstanding the foregoing, the long-term disability benefit is payable so long as the
40 beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the
41 earliest date at which the beneficiary is eligible for an unreduced service retirement allowance
42 from the Retirement System, at which time the beneficiary would receive a retirement
43 allowance calculated on the basis of the beneficiary's average final compensation at the time of
44 disability as adjusted to reflect compensation increases subsequent to the time of disability and
45 the creditable service accumulated by the beneficiary, including creditable service while in
46 receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not
47 in receipt of a primary Social Security disability benefit, the long-term disability benefit shall
48 cease after the first 36 months of the long-term disability period. When such a long-term
49 disability recipient begins receiving this unreduced service retirement allowance from the
50 System, that recipient shall not be subject to the six-month waiting period set forth in
51 G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term

1 disability benefit in the event the Social Security Administration grants a retroactive approval
2 for primary Social Security disability benefits with a benefit effective date within the first 36
3 months of the long-term disability period. In such event, the long-term disability benefit shall
4 be restored retroactively to the date of cessation."

5 **SECTION 7.** Section 2 of this act becomes effective July 1, 2009, and applies to
6 penalties assessed on or after that date. The remainder of this act becomes effective July 1,
7 2011.