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SESSION 2011

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HOUSE BILL 153  
Committee Substitute Favorable 3/31/11  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H153-PCS80400-SH-39

Short Title: No Public Retirement for Convicted Felons.

(Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON WHO HAS BEEN CONVICTED OF A FELONY RELATED TO EMPLOYMENT OR HOLDING OFFICE FROM RECEIVING RETIREMENT BENEFITS FROM THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE OPTIONAL RETIREMENT PROGRAM FOR THE UNIVERSITY OF NORTH CAROLINA, THE OPTIONAL RETIREMENT PROGRAM FOR STATE-FUNDED COMMUNITY COLLEGES, THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR STATE LAW-ENFORCEMENT OFFICERS, AND THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR LOCAL GOVERNMENTAL LAW-ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 135 of the General Statutes is amended by adding a new section to read:

**"§ 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



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1 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
2 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
3 contributions that have been received by the individual under the forfeiture provisions of this  
4 section must be made in a total lump-sum payment with interest compounded annually at a rate  
5 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
6 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
7 reinstatement of the service credit forfeited."

8 **SECTION 2.** G.S. 135-4 is amended by adding a new subsection to read:

9 "(ii) If a member who is in service and has not vested in this System on July 1, 2012, is  
10 convicted of an offense listed in G.S. 135-18.10A for acts committed after July 1, 2012, then  
11 that member shall forfeit all benefits under this System, except for a return of member  
12 contributions plus interest. If a member who is in service and has vested in this System on July  
13 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after July 1,  
14 2012, then that member is not entitled to any creditable service that accrued after July 1, 2012."

15 **SECTION 3.** Article 3 of Chapter 128 of the General Statutes is amended by  
16 adding a new section to read:

17 **§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment**  
18 **or holding office.**

19 (a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any  
20 retirement benefits or allowances, except for a return of member contributions plus interest, to  
21 any member who is convicted of any felony under federal law or the laws of this State if all of  
22 the following apply:

23 (1) The offense is committed while the member is in service.

24 (2) The conduct resulting in the member's conviction is directly related to the  
25 member's office or employment.

26 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
27 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
28 procedure that the member's conduct is directly related to the member's office or employment.

29 (c) If a member or former member whose benefits under the System were forfeited  
30 under this section, except for the return of member contributions plus interest, subsequently  
31 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
32 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
33 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
34 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
35 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
36 contributions that have been received by the individual under the forfeiture provisions of this  
37 section must be made in a total lump-sum payment with interest compounded annually at a rate  
38 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
39 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
40 reinstatement of the service credit forfeited."

41 **SECTION 4.** G.S. 128-26 is amended by adding a new subsection to read:

42 "(x) If a member who is in service and has not vested in this System on July 1, 2012, is  
43 convicted of an offense listed in G.S. 126-38.5 for acts committed after July 1, 2012, then that  
44 member shall forfeit all benefits under this System, except for a return of member contributions  
45 plus interest. If a member who is in service and has vested in this System on July 1, 2012, is  
46 convicted of an offense listed in G.S. 126-38.5 for acts committed after July 1, 2012, then that  
47 member is not entitled to any creditable service that accrued after July 1, 2012."

48 **SECTION 5.** Article 4 of Chapter 135 of the General Statutes is amended by  
49 adding a new section to read:

50 **§ 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment**  
51 **or holding office.**

1        (a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any  
2 retirement benefits or allowances, except for a return of member contributions plus interest, to  
3 any member who is convicted of any felony under federal law or the laws of this State if all of  
4 the following apply:

5            (1) The offense is committed while the member is in service.

6            (2) The conduct resulting in the member's conviction is directly related to the  
7 member's office or employment.

8        (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
9 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
10 procedure that the member's conduct is directly related to the member's office or employment.

11        (c) If a member or former member whose benefits under the System were forfeited  
12 under this section, except for the return of member contributions plus interest, subsequently  
13 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
14 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
15 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
16 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
17 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
18 contributions that have been received by the individual under the forfeiture provisions of this  
19 section must be made in a total lump-sum payment with interest compounded annually at a rate  
20 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
21 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
22 reinstatement of the service credit forfeited."

23        **SECTION 6.** G.S. 135-56 is amended by adding a new subsection to read:

24        "(j) If a member who is in service and has not vested in this System on July 1, 2012, is  
25 convicted of an offense listed in G.S. 135-75.1A for acts committed after July 1, 2012, then that  
26 member shall forfeit all benefits under this System, except for a return of member contributions  
27 plus interest. If a member who is in service and has vested in this System on July 1, 2012, is  
28 convicted of an offense listed in G.S. 135-75.1A for acts committed after July 1, 2012, then that  
29 member is not entitled to any creditable service that accrued after July 1, 2012."

30        **SECTION 7.** Article 1A of Chapter 120 of the General Statutes is amended by  
31 adding a new section to read:

32        **"§ 120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment**  
33 **or holding office.**

34        (a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any  
35 retirement benefits or allowances, except for a return of member contributions plus interest, to  
36 any member who is convicted of any felony under federal law or the laws of this State if all of  
37 the following apply:

38            (1) The offense is committed while the member is serving as a member of the  
39 General Assembly.

40            (2) The conduct resulting in the member's conviction is directly related to the  
41 member's office.

42        (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
43 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
44 procedure that the member's conduct is directly related to the member's office.

45        (c) If a member or former member whose benefits under the System were forfeited  
46 under this section, except for the return of member contributions plus interest, subsequently  
47 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
48 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
49 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
50 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
51 repayment of all accumulated contributions plus interest. Repayment of all accumulated

1 contributions that have been received by the individual under the forfeiture provisions of this  
2 section must be made in a total lump-sum payment with interest compounded annually at a rate  
3 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
4 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
5 reinstatement of the service credit forfeited."

6 **SECTION 8.** G.S. 120-4.12 is amended by adding a new subsection to read:

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

14 **SECTION 9.** G.S. 15A-1340.16(d)(9) reads as rewritten:

15 "(d) Aggravating Factors. – The following are aggravating factors:

16 ...

17 (9) The defendant held public elected or appointed office or public employment  
18 at the time of the offense and the offense directly related to the conduct of  
19 the office-office or employment.

20 ...."

21 **SECTION 10.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

22 "(f) If the court determines that an aggravating factor under subdivision (9) of  
23 subsection (d) of this section has been proven, the court shall notify the State Treasurer of the  
24 fact of the conviction as well as the finding of the aggravating factor. The indictment charging  
25 the defendant with the underlying offense must include notice that the State seeks to prove the  
26 defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the  
27 State will seek to prove that as an aggravating factor."

28 **SECTION 11.** G.S. 135-5.1 is amended by adding a new subsection to read:

29 "(h) The Board of Governors of The University of North Carolina shall ensure that the  
30 Optional Retirement Program contains benefit forfeiture provisions equivalent to those  
31 contained in G.S. 135-18.10A for University personnel who are eligible for membership in the  
32 Teachers' and State Employees' Retirement System and have elected participation in the  
33 Optional Retirement Program. Any funds forfeited shall be deposited in the Optional  
34 Retirement Program trust fund(s)."

35 **SECTION 12.** G.S. 135-5.4 is amended by adding a new subsection to read:

36 "(h) The North Carolina Community College System shall ensure that the Optional  
37 Retirement Program for State-funded community colleges contains benefit forfeiture provisions  
38 equivalent to those contained in G.S. 135-18.10A for community college personnel eligible for  
39 membership in the Teachers' and State Employees' Retirement System and have elected  
40 participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the  
41 Optional Retirement Program trust fund(s)."

42 **SECTION 13.** G.S. 143-166.30 reads as rewritten:

43 **"§ 143-166.30. Retirement benefits for State law-enforcement officers.**

44 ...

45 (d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of  
46 January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter  
47 called the "Plan," established for the benefit of all law-enforcement officers employed by the  
48 State, who shall be participants. The Board of Trustees of the State Retirement System shall  
49 administer the Plan and shall, under the terms and conditions otherwise appearing herein,  
50 provide Plan benefits either (i) by establishing a separate trust fund in conformance with  
51 Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as

1 amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same  
2 benefits for participants. The Plan shall be separate and apart from any retirement systems.

3 In addition to the contributions transferred from the Law-Enforcement Officers' Retirement  
4 System and the contributions otherwise provided for in this Article, participants may make  
5 voluntary contributions to the Plan to be credited to the designated individual accounts of  
6 participants; provided, in no instance shall the total contributions by a participant exceed ten  
7 percent (10%) of a participant's compensation within any calendar year.

8 All contributions to the Plan shall be credited to the individual accounts of participants, and  
9 except as provided in subsection (g1) of this section, shall be fully and immediately vested in  
10 the name of the participant, and shall be invested according to each participant's election, as  
11 provided by the Board of Trustees, including but not limited to time deposits, and both fixed  
12 and variable investments. The Plan may provide for loans to participants, at reasonable rates of  
13 interest to be charged, from participants' individual accounts, and may provide for withdrawal  
14 of contributions on account of hardship.

15 The benefit to a participant in the Plan shall be either a lump-sum distribution or a  
16 distribution in periodic installments of the participant's account payable under retirement,  
17 disability, or termination of employment. Upon the death of a participant there shall be paid the  
18 same lump-sum distribution or periodic installments to the surviving spouse of the participant  
19 or otherwise to the participant's estate; provided, should a participant instruct the Board of  
20 Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then  
21 the benefits shall be paid to the person or persons as the participant may name for this purpose.

22 Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible  
23 accumulated contributions, not including any Roth after-tax contributions and the earnings  
24 thereon, to the Teachers' and State Employees' Retirement System and receive, in addition to  
25 his basic service, early or disability retirement allowance a special retirement allowance which  
26 shall be based on his eligible accumulated account balance at the date of the transfer of the  
27 assets.

28 ...

29 (g) Exemption from Garnishment and Attachment. – Except as provided in subsection  
30 (g1) of this section, ~~The~~ the right of a participant in the Supplemental Retirement Income Plan  
31 to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and  
32 garnishment.

33 (g1) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental  
34 Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under  
35 G.S. 135-18.10A shall also forfeit contributions paid on or after July 1, 2012, on behalf of the  
36 participant by the State to the Supplemental Retirement Income Plan. Any funds forfeited shall  
37 be deposited in the Supplemental Retirement Income Plan.

38 (h) Notwithstanding any other provisions of law, any pending or inchoate rights of a  
39 member of the Law-Enforcement Officers' Retirement System as of their transfer to the State  
40 Retirement System on January 1, 1985, including the rights to a vested deferred retirement  
41 allowance and to commence retirement at certain ages with required years of service as a  
42 law-enforcement officer, shall in no way be diminished; provided, however, in no event may a  
43 member commence retirement and continue membership service with the same Retirement  
44 System.

45 No eligible officer shall be precluded from exercising that officer's pending or inchoate  
46 rights under this section, should the officer elect to make Roth after-tax contributions to the  
47 Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the  
48 earnings thereon shall not be subsequently transferred to the Teachers' and State Employees'  
49 Retirement System."

50 **SECTION 14.** G.S.143-166.50 reads as rewritten:

51 **"§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.**

1 ...  
2 (e2) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental  
3 Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are  
4 forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after July 1, 2012, on  
5 behalf of the participant by local government employers of law enforcement officers to the  
6 Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers.  
7 Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan."

8 **SECTION 15.** G.S. 135-94 reads as rewritten:

9 **"§ 135-94. Benefits.**

10 (a) The Department of State Treasurer and the Board of Trustees shall establish a  
11 schedule of supplemental retirement income benefits for all members of the Supplemental  
12 Retirement Income Plan, subject to the following limitations:

- 13 (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), The  
14 the balance in each member's account shall be fully vested at all times and  
15 shall not be subject to forfeiture for any reason.
- 16 (2) All amounts maintained in a member's account shall be invested according  
17 to the member's election, as approved by the Department of State Treasurer  
18 and Board of Trustees, including but not limited to, a time deposit account, a  
19 fixed investment account, or a variable investment account. Transfers of  
20 accumulated funds shall be permitted among the various approved forms of  
21 investment.
- 22 (3) The Department of State Treasurer and Board of Trustees shall provide  
23 members with alternative payment options, including survivors' options, for  
24 the distribution of benefits from the Plan upon retirement, disability,  
25 termination, hardship, and death.
- 26 (4) With the consent of the Department of State Treasurer and the Board of  
27 Trustees, amounts may be transferred from other qualified plans to the  
28 Supplemental Retirement Income Plan, provided that the trust from which  
29 such funds are transferred permits the transfer to be made and, the transfer  
30 will not jeopardize the tax status of the Supplemental Retirement Income  
31 Plan.
- 32 (5) At the discretion of the Department of State Treasurer and Board of  
33 Trustees, a loan program may be implemented for members which complies  
34 with applicable State and federal laws and regulations.

35 (b) All provisions of the Plan shall be interpreted and applied by the Department of  
36 State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

37 (c) All benefits under the Plan shall become payable on and after January 1, 1985.

38 (d) Contributions under the Plan may be made on and after January 1, 1985."

39 **SECTION 16.** G.S. 135-95 reads as rewritten:

40 **"§ 135-95. Exemption from garnishment, attachment.**

41 Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2),  
42 G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable  
43 distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income  
44 Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale,  
45 and garnishment."

46 **SECTION 17.** The State Treasurer shall negotiate a memorandum of agreement  
47 with the United States Attorneys for the Eastern, Middle, and Western Districts of North  
48 Carolina whereby the prosecutors will notify the State Treasurer of convictions under  
49 G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5(h), and 135-5.4(h).

50 **SECTION 18.** This act becomes effective July 1, 2012, and applies to offenses  
51 committed on or after that date.