

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

HOUSE BILL 357  
PROPOSED COMMITTEE SUBSTITUTE H357-PCS80344-LL-13

Short Title: Retirement Governance Changes Act of 2013.-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE CITIZEN OVERSIGHT AND TO MAKE OTHER  
3 CONSOLIDATIONS AND IMPROVEMENTS IN THE GOVERNANCE OF THE  
4 STATE RETIREMENT SYSTEMS, AND TO IMPROVE TRANSPARENCY BY  
5 ENSURING THAT ALL RETIREMENT PLANS ADMINISTERED BY THE  
6 DEPARTMENT OF STATE TREASURER ARE OVERSEEN BY A BOARD OF  
7 TRUSTEES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 135-96 reads as rewritten:

10 "§ 135-96. Supplemental Retirement Board of Trustees.

11 (a) The Supplemental Retirement Board of Trustees is established to administer the  
12 Supplemental Retirement Income Plan established under the provisions of this Article and the  
13 North Carolina Public Employee Deferred Compensation Plan established under  
14 ~~G.S. 143B-426.24~~G.S. 143B-426.24, and the North Carolina Public School Teachers' and  
15 Professional Educators' Investment Plan established under G.S. 115C-341.2.

16 ...

17 (e) The Board may retain the services of independent appraisers, auditors, actuaries,  
18 attorneys, investment counseling firms, statisticians, custodians, or other persons or firms  
19 possessing specialized skills or knowledge necessary for the proper administration of  
20 investment programs that the Board administers pursuant to this section."

21 SECTION 2. G.S. 161-50.1(b) reads as rewritten:

22 "(b) ~~The North Carolina Department of State Treasurer~~Board of Trustees of the Local  
23 Governmental Employees' Retirement System shall administer the provisions of this Article."

24 SECTION 3. G.S. 127A-40 reads as rewritten:

25 "(f) The Board of Trustees of the Teachers' and State Employees' Retirement System  
26 shall administer the provisions of this section. The Secretary of Public Safety shall determine  
27 the eligibility of North Carolina National Guard members for the benefits provided in this  
28 section and shall certify those eligible to the ~~State Treasurer~~Board of Trustees. In addition, the  
29 Department of Public Safety shall, on and after July 1, 1983, provide the ~~Department of State~~  
30 ~~Treasurer~~Board of Trustees with an annual census population, by age and the number of years  
31 of creditable service, for all former members of the North Carolina National Guard in receipt of  
32 a pension as well as for all active members of the North Carolina National Guard who are not  
33 in receipt of a pension and who have seven and more years of creditable service. The  
34 Department of Public Safety shall also provide the ~~State Treasurer~~aBoard of Trustees an  
35 annual census population of all former members of the North Carolina National Guard who are  
36 not in receipt of a pension and who have 15 and more years of creditable service. The



\* H 3 5 7 - P C S 8 0 3 4 4 - L L - 1 3 \*

1 Department of State Treasurer shall make pension payments to those persons certified from the  
2 North Carolina National Guard Pension Fund, which shall include general fund appropriations  
3 made to the Department of State Treasurer. The ~~Department of State Treasurer~~ Board of  
4 Trustees shall have performed an annual actuarial valuation of the fund and shall have the  
5 financial responsibility for maintaining the fund on a generally accepted actuarial basis. The  
6 Department of Public Safety shall provide the Department of State Treasurer with whatever  
7 assistance is required by the State Treasurer in carrying out the State Treasurer's and the Board  
8 of Trustees' financial responsibilities."

9 **SECTION 4.(a)** G.S. 135-6(b) reads as rewritten:

10 "(b) Membership of Board; Terms. – The Board shall consist of ~~14~~ 13 members, as  
11 follows:

- 12 (1) The State Treasurer, ex officio;
- 13 (2) The Superintendent of Public Instruction, ex officio;
- 14 (3) ~~Ten~~ Nine members to be appointed by the Governor and confirmed by the  
15 Senate of North Carolina. One of the appointive members shall be a member  
16 of the teaching profession of the State; ~~one of the appointive members shall~~  
17 ~~be an employee of the Board of Transportation, who shall be appointed by~~  
18 ~~the Governor for a term of four years commencing April 1, 1947, and~~  
19 ~~quadrennially thereafter;~~ one of the appointive members shall be a  
20 representative of higher education appointed by the Governor for a term of  
21 four years commencing July 1, 1969, and quadrennially thereafter; one of  
22 the appointive members shall be a retired teacher who is drawing a  
23 retirement allowance, appointed by the Governor for a term of four years  
24 commencing July 1, 1969, and quadrennially thereafter; one shall be a  
25 retired State employee who is drawing a retirement allowance, appointed by  
26 the Governor for a term of four years commencing July 1, 1977, and  
27 quadrennially thereafter; one to be a general State employee, and ~~three~~ two  
28 who are not members of the teaching profession or State employees; two to  
29 be appointed for a term of two years, two for a term of three years and one  
30 for a term of four years; one appointive member shall be a law-enforcement  
31 officer employed by the State, appointed by the Governor, for a term of four  
32 years commencing April 1, 1985. One member shall be an active or retired  
33 member of the North Carolina National Guard appointed by the Governor  
34 for a term of four years commencing July 1, 2013. At the expiration of these  
35 terms of office the appointment shall be for a term of four years;
- 36 (4) Two members appointed by the General Assembly, one appointed upon the  
37 recommendation of the Speaker of the House of Representatives, and one  
38 appointed upon the recommendation of the President Pro Tempore of the  
39 Senate in accordance with G.S. 120-121. Neither of these members may be  
40 an active or retired teacher or State employee or an employee of a unit of  
41 local government. The initial members appointed by the General Assembly  
42 shall serve for terms expiring June 30, 1983. Thereafter, their successors  
43 shall serve for two-year terms beginning July 1 of odd-numbered years.  
44 Vacancies in appointments made by the General Assembly shall be filled in  
45 accordance with G.S. 120-122."

46 **SECTION 4.(b)** G.S. 128-28(c) reads as rewritten:

47 "(c) Members of Board. – The Board shall consist of (i) ~~seven~~ six members of the Board  
48 of Trustees of the Teachers' and State Employees' Retirement System appointed under  
49 G.S. 135-6(b); the State Treasurer; the Superintendent of Public Instruction; the two members  
50 appointed by the General Assembly; and one of the ~~three~~ two members appointed by the

1 Governor who are not members of the teaching profession or State employees; and (ii) ~~seven~~  
2 eight members designated by the Governor:

- 3 (1) One member shall be a mayor or a member of the governing body of a city  
4 or town participating in the Retirement System;
- 5 (2) One member shall be a county commissioner of a county participating in the  
6 Retirement System;
- 7 (3) One member shall be a law-enforcement officer employed by an employer  
8 participating in the Retirement System;
- 9 (4) One member shall be a county manager of a county participating in the  
10 Retirement System;
- 11 (5) One member shall be a city or town manager of a city or town participating  
12 in the Retirement System;
- 13 (6) One member shall be an active, Fair Labor Standards Act nonexempt, local  
14 governmental employee of an employer; ~~and~~
- 15 (7) One member shall be a retired, Fair Labor Standards Act nonexempt, local  
16 governmental employee of an ~~employer-employer~~; ~~and~~
- 17 (8) One member shall be an active or retired member of the Firemen's and  
18 Rescue Squad Workers' Pension Fund.

19 The Governor shall designate ~~seven-six~~ members on April 1 of years in which an election is  
20 held for the office of Governor, or as soon thereafter as possible, and the seven members  
21 designated by the Governor shall serve on the Board in addition to the regular duties of their  
22 city, town, or county office: Provided, that if for any reason any member appointed pursuant to  
23 subdivisions (1) through (6) of this subsection vacates the city, town, or county office or  
24 employment which the member held at the time of this designation, the Governor shall  
25 designate another member to serve until the next regular date for the designation of members  
26 to serve on the Board."

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

29 **"§ 135-97. Immunity.**

30 A person serving on the Supplemental Retirement Board of Trustees shall be immune  
31 individually from civil liability for monetary damages, except to the extent covered by  
32 insurance, for any act or failure to act arising out of that service, except where the person:

- 33 (1) Was not acting within the scope of that person's official duties.
- 34 (2) Was not acting in good faith.
- 35 (3) Committed gross negligence or willful or wanton misconduct that resulted in  
36 the damages or injury.
- 37 (4) Derived an improper personal financial benefit, either directly or indirectly,  
38 from the transaction.
- 39 (5) Incurred the liability from the operation of a motor vehicle."

40 **SECTION 6.** G.S. 120-4.9 reads as rewritten:

41 **"§ 120-4.9. Retirement system established.**

42 A Retirement System is established and placed under the Board of Trustees of the Teachers'  
43 and State Employees' Retirement System for administrative purposes. This Retirement System  
44 is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code.  
45 Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not  
46 apply.

47 The Retirement System shall have all the power and privileges of a corporation and shall be  
48 known as the "Legislative Retirement System of North Carolina." By this name all of its  
49 business shall be transacted, all of its funds invested and all of its cash and securities and other  
50 property held. All direction and policies concerning the Legislative Retirement System shall be  
51 vested in the ~~Legislative Services Commission~~ Board of Trustees.

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

14 **SECTION 7.** G.S. 120-4.10 reads as rewritten:

15 "**§ 120-4.10. Administration of retirement system.**

16 The Board of Trustees of the Teachers' and State Employees' Retirement System shall be  
17 the trustee of the Retirement System, ~~under the direction of the Legislative Services~~  
18 ~~Commission System.~~ The provisions of this Article shall be administered by the Board of  
19 Trustees, ~~under the direction of the Legislative Services Commission Trustees.~~"

20 **SECTION 8.** This act becomes effective July 1, 2013.