

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 357
Committee Substitute Favorable 5/2/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H357-PCS80396-LL-22

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

(Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE CITIZEN OVERSIGHT AND TO MAKE OTHER
CONSOLIDATIONS AND IMPROVEMENTS IN THE GOVERNANCE OF THE
STATE RETIREMENT SYSTEMS, AND TO IMPROVE TRANSPARENCY BY
ENSURING THAT ALL RETIREMENT PLANS ADMINISTERED BY THE
DEPARTMENT OF STATE TREASURER ARE OVERSEEN BY A BOARD OF
TRUSTEES.

The General Assembly of North Carolina enacts:

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

"§ 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~~ G.S. 143B-426.24, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan established under G.S. 115C-341.2.

...

(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."

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

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

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

"(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 ~~State Treasurer~~ Board of Trustees. In addition, the Department of Public Safety shall, on and after July 1, 1983, provide the ~~Department of State Treasurer~~ 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 ~~State Treasurer~~ a Board of Trustees an annual census population of all former members of the North Carolina National Guard who are



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1 not in receipt of a pension and who have 15 and more years of creditable service. The
2 Department of State Treasurer shall make pension payments to those persons certified from the
3 North Carolina National Guard Pension Fund, which shall include general fund appropriations
4 made to the Department of State Treasurer. The ~~Department of State Treasurer~~ Board of
5 Trustees shall have performed an annual actuarial valuation of the fund and shall have the
6 financial responsibility for maintaining the fund on a generally accepted actuarial basis. The
7 Department of Public Safety shall provide the Department of State Treasurer with whatever
8 assistance is required by the State Treasurer in carrying out the State Treasurer's and the Board
9 of Trustees' financial responsibilities."

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

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

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

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

48 "(c) Members of Board. – The Board shall consist of (i) ~~seven~~five members of the Board
49 of Trustees of the Teachers' and State Employees' Retirement System appointed under
50 G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members
51 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)
2 ~~seven~~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~~eight members on April 1 of years in which an election
20 is held for the office of Governor, or as soon thereafter as possible, and the ~~seven~~ eight
21 members designated by the Governor shall serve on the Board in addition to the regular duties
22 of their city, town, or county office: Provided, that if for any reason any member appointed
23 pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county
24 office or 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 any of the
33 following apply:

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

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

42 **"§ 120-4.9. Retirement system established.**

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

48 The Retirement System shall have all the power and privileges of a corporation and shall be
49 known as the "Legislative Retirement System of North Carolina." By this name all of its
50 business shall be transacted, all of its funds invested and all of its cash and securities and other

1 property held. All direction and policies concerning the Legislative Retirement System shall be
2 vested in the ~~Legislative Services Commission.~~Board of Trustees.

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

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

17 "**§ 120-4.10. Administration of retirement system.**

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

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