

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 763  
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10360-MGp-45

Short Title: Preserve State Pension Plan Modernization. (Public)

Sponsors: Representative Elmore.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT PRESERVING STATE PENSION PLAN MODERNIZATION BY ESTABLISHING  
3 A MECHANISM FOR AN AUTOMATED COST-OF-LIVING INCREASE WITHIN THE  
4 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

5 The General Assembly of North Carolina enacts:

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

7 "§ 135-1. Definitions.

8 The following words and phrases as used in this Chapter, unless a different meaning is plainly  
9 required by the context, shall have the following meanings:

10 ...  
11 (7a) "COLA-eligible member" shall mean teachers and State employees who (i)  
12 did not earn membership service prior to July 1, 2021, or (ii) withdrew any  
13 membership service earned prior to July 1, 2021.

14 (7b) a. "Compensation" shall mean all salaries and wages prior to any  
15 reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457  
16 of the Internal Revenue Code, not including any terminal payments for  
17 unused sick leave, derived from public funds which are earned by a  
18 member of the Retirement System for service as an employee or  
19 teacher in the unit of the Retirement System for which he is performing  
20 full-time work. In addition to the foregoing, "compensation" shall  
21 include:

- 22 1. Performance-based compensation (regardless of whether paid  
23 in a lump sum, in periodic installments, or on a monthly basis);
- 24 2. Conversion of additional benefits to salary (additional benefits  
25 such as health, life, or disability plans), so long as the benefits  
26 are other than mandated by State law or regulation;
- 27 3. Payment of tax consequences for benefits provided by the  
28 employer, so long as they constitute an adjustment or increase  
29 in salary and not a "reimbursement of expenses";
- 30 4. Payout of vacation leave so long as such payouts are permitted  
31 by applicable law and regulation;
- 32 5. Employee contributions to eligible deferred compensation  
33 plans; and
- 34 6. Effective July 1, 2009, payment of military differential wages.

35 b. "Compensation" shall not include any payment, as determined by the  
36 Board of Trustees, for the reimbursement of expenses or payments for



housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:

1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
2. Travel supplement/allowance (nonaccountable allowance plans);
3. Employer contributions to eligible deferred compensation plans;
4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
5. Reimbursement of uninsured medical expenses;
6. Reimbursement of business expenses;
7. Reimbursement of moving expenses;
8. Reimbursement/payment of personal expenses;
9. Incentive payments for early retirement;
10. Bonuses paid incident to retirement;
- 10a. Local supplementation as authorized under G.S. 7A-300.1 for Judicial Department employees;
11. Contract buyout/severance payments; and
12. Payouts for unused sick leave.

c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.

~~(7b)~~(7c) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.

~~(7e)~~(7d) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

...."

**SECTION 2.** G.S. 135-5(b21) reads as rewritten:

"(b21) Service Retirement Allowance of Members Retiring on or After July 1, 2019. – Upon retirement from service on or after July 1, 2019, in accordance with subsection (a) or (a1) of this section, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after the member's 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to the following:

1. For non-COLA-eligible members, one and eighty-two hundredths percent (1.82%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.
2. For COLA-eligible members, one and five-tenths percent (1.5%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after the member's 65th birthday upon the completion of five years of membership service, or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to the following:
  1. For non-COLA-eligible members, one and eighty-two hundredths percent (1.82%) of the member's average final compensation, multiplied by the number of years of creditable service.
  2. For COLA-eligible members, one and five-tenths percent (1.5%) of the member's average final compensation, multiplied by the number of years of the member's creditable service.

...."

**SECTION 3.** G.S. 135-8 is amended by adding a new subsection to read:

"(d1) Pension Distribution Fund for COLA-Eligible Members. – The pension distribution fund for COLA-eligible members shall be the fund that pays the retirement allowances of COLA-eligible members. The amount of the balance to be transferred from the pension accumulation fund into this fund for each COLA-eligible member shall be equivalent to the present value of that member's future benefits, as calculated using methods and assumptions adopted by the Board of Trustees, upon the advice of the consulting actuary.

The consulting actuary shall make an annual valuation of the assets and liabilities of the pension distribution fund for COLA-eligible members on the basis of mortality tables, such other tables as may be necessary, and the asset return assumption recommended by the actuary and adopted by the Board of Trustees specifically for the pension distribution fund for COLA-eligible members. The asset return assumption shall be chosen to have a high probability of being exceeded by the actual return over the remaining lives of the beneficiaries.

The Board of Trustees shall annually increase or decrease all benefits paid from the pension distribution fund for COLA-eligible members to increase or decrease the fund liabilities until they equal the fund assets. The same percentage increase or decrease shall apply to all COLA-eligible members receiving an allowance on the effective date of the adjustment, except that no retiree's benefit may be lowered below the amount that would be due if no adjustments had ever been made. No increase shall occur unless the required employer contribution rate, as defined in G.S. 135-8(d)(3a), has been set as the actual employer contribution rate for the current fiscal year."

**SECTION 4.(a)** By June 30, 2021, the Board of Trustees responsible for the general administration and proper operation of the Teachers' and State Employees' Retirement System (Retirement System) shall develop a process to allow teachers and State employees who became members of the Retirement System prior to July 1, 2021, to elect to begin participating in the Retirement System as COLA-eligible members, as defined in G.S. 135-1(7a), as amended by this act.

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**SECTION 4.(b)** This section is effective when it becomes law.

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**SECTION 5.** Except as otherwise provided, this act becomes effective July 1, 2021.