

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H.B. 203  
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10103-NJ-45

Short Title: DST Technical Corrections.-AB

(Public)

Sponsors: Representative Wheatley.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING TECHNICAL CORRECTIONS AND OTHER CONFORMING AND  
3 CLARIFYING CHANGES TO THE LAWS GOVERNING THE TEACHERS' AND  
4 STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL  
5 EMPLOYEES' RETIREMENT SYSTEM, AND TO OTHER RELATED STATUTES, AS  
6 RECOMMENDED BY THE DEPARTMENT OF STATE TREASURER.

7 The General Assembly of North Carolina enacts:

8  
9 **PART I. CHANGES TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT**  
10 **SYSTEM**

11 **SECTION 1.1.** G.S. 135-3(8)f. reads as rewritten:

12 "f. Should a beneficiary who retired on an early or service retirement  
13 allowance under this Chapter be reemployed by, or otherwise engaged  
14 to perform services for, an employer participating in the Retirement  
15 System on a part-time, temporary, interim, or on a fee for service basis,  
16 whether contractual or otherwise at any time during the six months  
17 immediately following the effective date of retirement, then the option  
18 of the two listed below that has the lesser financial impact on the  
19 member, as determined by the Retirement System, shall be applied:

- 20 1. The member's retirement shall be deemed effective the month  
21 after the last month the member performed services for a  
22 participating employer, and the member shall repay all  
23 retirement benefits paid up to the deemed effective date,  
24 provided the member thereafter has satisfied the six-month  
25 separation required by G.S. 135-1(20).  
26 2. The member shall make a lump-sum payment to the  
27 Retirement System equal to three times the amount of  
28 compensation earned during the six months immediately  
29 following the effective date of retirement. If the member is  
30 unable to make a lump-sum payment, the member can elect to  
31 have the entirety of their monthly retirement benefit withheld  
32 until the Retirement System has recovered three times the  
33 amount of compensation earned during the six months  
34 immediately following the effective date of retirement."

35 **SECTION 1.2.** G.S. 135-4 reads as rewritten:

36 "§ 135-4. Creditable service.



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1 ...  
2 (h) During periods when a member is on an approved leave of absence and is receiving  
3 less than the member's full compensation, the member will be deemed to be in service only if the  
4 member is contributing to the Retirement System as provided in G.S. 135-8(b)(5). If the member  
5 is so contributing, the annual rate of compensation paid to such employee immediately before  
6 the approved leave of absence began will be deemed to be the actual compensation rate of the  
7 employee during the leave of absence.

8 ...  
9 (ff) Retroactive Membership Service. – A member who is reinstated to service as an  
10 employee as defined in G.S. 135-1(10) or as a teacher as defined in G.S. 135-1(25) retroactively  
11 to the date of prior involuntary termination with back pay, as defined by the State Human  
12 Resources Commission, and associated benefits may be allowed membership service, after  
13 submitting clear and convincing evidence of the reinstatement, payment of back pay, and  
14 restoration of associated benefits, as follows:

15 (1) When the reinstatement to service is by court order, final decision of an  
16 Administrative Law Judge, or with the approval of the Office of State Human  
17 Resources Director, and is:

- 18 a. Within 90 days of the involuntary termination, by the payment of  
19 employee and employer contributions that would have been paid; or  
20 b. After 90 days of the involuntary termination, by the payment of the  
21 employee and employer contributions that would have been paid plus  
22 interest compounded annually at a rate equal to the greater of the  
23 average yield on the pension accumulation fund for the preceding  
24 calendar year or the actuarial investment rate-of-return assumption, as  
25 adopted by the Board of Trustees.

26 (2) When the reinstatement to service is by settlement agreement voluntarily  
27 entered into by the affected parties, by the payment of a lump-sum ~~amount.~~  
28 ~~The amount, the~~ member shall purchase this service by paying a lump sum  
29 amount to the annuity savings fund equal to the full liability increase due to  
30 the additional service credits on the basis of the assumptions used for the  
31 purposes of the actuarial valuation of the liabilities of the Retirement System,  
32 except for the following assumptions specific to this calculation: (i) the  
33 allowance shall be assumed to commence at the earliest age at which the  
34 member could retire on an unreduced retirement allowance and (ii) assumed  
35 annual postretirement allowance increases as set by the Board of Trustees  
36 upon the advice of the consulting actuary. The calculation of the amount  
37 payable shall also include an administrative fee to be set by the Board.

38 ...."

39 **SECTION 1.3.** G.S. 135-5(l) reads as rewritten:

40 "(l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan (hereinafter  
41 called the "Plan") which is established as an employee welfare benefit plan that is separate and  
42 apart from the Retirement System and under which the members of the Retirement System shall  
43 participate and be eligible for group life insurance benefits. The Plan shall be part of the North  
44 Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All  
45 receipts, transfers, appropriations, contributions, investment earnings, and other income  
46 belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against  
47 the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to  
48 the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit  
49 Trust are dedicated to providing benefits to participants, surviving spouses, and the members'  
50 estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject  
51 to the claims of creditors of the employees and non-employees making contributions to the

1 Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and  
 2 administrators, and are not subject to the claims of creditors of members and beneficiaries.  
 3 Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the  
 4 Fund as approved by the Board of Trustees.

5 ...

6 Notwithstanding the above provisions, the Board of Trustees may and is specifically  
 7 authorized to provide the death benefit according to the terms and conditions otherwise appearing  
 8 in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of  
 9 group life insurance with any life insurance company or companies licensed and authorized to  
 10 transact business in this State for the purpose of insuring the lives of members in service, or (ii)  
 11 by establishing a separate trust for such purpose. To that end the Board of Trustees is authorized,  
 12 empowered and directed to investigate the desirability of utilizing group life insurance by either  
 13 of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund  
 14 is established, it shall be operated in accordance with rules and regulations adopted by the Board  
 15 of Trustees and all investment earnings on the trust fund shall be credited to such fund.

16 In administration of the death benefit the following shall apply:

- 17 (1) For the purpose of determining eligibility only, in this subsection "calendar  
 18 year" shall mean any period of 12 consecutive months or, if less, the period  
 19 covered by an annual contract of employment. For all other purposes in this  
 20 subsection "calendar year" shall mean the 12 months beginning January 1 and  
 21 ending December 31.
- 22 (2) Last day of actual service shall be:
- 23 a. ~~When employment~~ When the employee has been terminated, the last  
 24 day the member actually worked.
- 25 b. ~~When employment~~ When the employee has not been terminated, the  
 26 date on which an absent member's sick and annual leave expire, unless  
 27 ~~he the member~~ is on approved leave of absence and is in service under  
 28 the provisions of G.S. 135-4(h).
- 29 c. ~~When a participant's employment~~ When the member's service is  
 30 interrupted by reason of service in the Uniformed Services, as that  
 31 term is defined in section 4303(16) of the Uniformed Services  
 32 Employment and Reemployment Rights Act, Public Law 103-353, and  
 33 the participant does not return immediately after that service to  
 34 employment with a covered employer in this System, the date on  
 35 which the participant was first eligible to be separated or released from  
 36 his or her involuntary military service.

37 ...."

38 **SECTION 1.4.** G.S. 135-8(b)(5) reads as rewritten:

39 "(b) Annuity Savings Fund. – The annuity savings fund shall be a fund in which shall be  
 40 accumulated contributions from the compensation of members to provide for their annuities.  
 41 Contributions to any payments from the annuity savings fund shall be made as follows:

42 ...

- 43 (5) The Board of Trustees may approve the purchase of creditable service by any  
 44 member for leaves of absence or for interrupted service to an employer only  
 45 for the purpose of acquiring knowledge, talents, or abilities and to increase the  
 46 efficiency of service to the employer, subject to the provisions of this  
 47 subdivision. A leave of absence or interrupted service may be approved for  
 48 purchase under this subdivision for a period of employment as a teacher in a  
 49 charter school. Any other leave of absence or interrupted service shall qualify  
 50 for purchase under this subdivision only if (i) during the time of the leave or  
 51 interrupted service the member is enrolled and participates in a full time

1 degree program at an accredited institution of higher education, (ii) the  
 2 member is not paid compensation, other than a stipend resulting from  
 3 participation in a full-time degree program, for the activity in which he or she  
 4 is acquiring knowledge, talents, or abilities, and (iii) the service is not  
 5 purchased for any month in which the member performed any services for any  
 6 of the organizations listed in ~~G.S. 135-27(a) or G.S. 135-27(f)~~, G.S. 135-27(a)  
 7 or G.S. 135-27(f), or a successor to any of those organizations. Approval by  
 8 the Board under this subdivision shall be made prior to the purchase of the  
 9 creditable service, is limited to a career total of six years for each member,  
 10 and may be obtained in the following manner:  
 11 ...."

## 13 PART II. CHANGES PERTAINING TO THE LOCAL GOVERNMENTAL 14 EMPLOYEES' RETIREMENT SYSTEM

15 SECTION 2.1. G.S. 128-26(v)(2) reads as rewritten:

16 "(2) When the reinstatement to service is by settlement agreement voluntarily  
 17 entered into by the affected parties, by the payment of a lump-sum ~~amount~~.  
 18 ~~The amount, the~~ member shall purchase this service by paying a lump sum  
 19 amount to the annuity savings fund equal to the full liability increase due to  
 20 the additional service credits on the basis of the assumptions used for the  
 21 purposes of the actuarial valuation of the liabilities of the Retirement System,  
 22 except for the following assumptions specific to this calculation: (i) the  
 23 allowance shall be assumed to commence at the earliest age at which the  
 24 member could retire on an unreduced retirement allowance and (ii) assumed  
 25 annual postretirement allowance increases as set by the Board of Trustees  
 26 upon the advice of the consulting actuary. The calculation of the amount  
 27 payable shall also include an administrative fee to be set by the Board."

28 SECTION 2.2. G.S. 128-26(y)(3) reads as rewritten:

29 "(3) Option three. – An adjustment to the required employer contribution rate for  
 30 the employer as provided in ~~G.S. 128-30(d)(4b)~~. G.S. 128-30(d)(4a)."

31 SECTION 2.3. G.S. 128-27(e)(6) reads as rewritten:

32 "(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt  
 33 of a disability retirement allowance until the earliest date on which he would  
 34 have qualified for an unreduced service retirement allowance shall thereafter  
 35 (i) not be subject to further reexaminations as to disability, (ii) not be subject  
 36 to any reduction in allowance on account of being engaged in a gainful  
 37 occupation other than with an employer participating in the Retirement  
 38 System, and (iii) be considered a beneficiary in receipt of a service retirement  
 39 allowance. Provided, however, a beneficiary in receipt of a disability  
 40 retirement allowance whose allowance is reduced on account of  
 41 reexamination as to disability ~~or to~~ or the ability to engage in a gainful  
 42 occupation prior to the date on which he would have qualified for an  
 43 unreduced service retirement allowance shall have only the right to elect to  
 44 convert to an early or service retirement allowance as permitted under  
 45 subdivision (1) above."

46 SECTION 2.4. G.S. 128-26(g) reads as rewritten:

47 "(g) During periods when a member is on an approved leave of absence and is receiving  
 48 less than his full compensation, he will be deemed to be in service only if he is contributing to  
 49 the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate  
 50 of compensation paid to such employee immediately before the leave of absence began will be  
 51 deemed to be the actual compensation rate of the employee during the leave of absence."

**SECTION 2.5.** G.S. 128-27(l) reads as rewritten:

"(l) Death Benefit Plan. – The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to members and beneficiaries in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

...

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
  - a. ~~When employment~~ When the employee has been terminated, the last day the member actually worked.
  - b. ~~When employment~~ When the employee has not been terminated, the date on which an absent member's sick and annual leave expire.
  - c. ~~When a participant's employment~~ When the member's service is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

...."

**SECTION 2.6.** G.S. 128-30(b2) reads as rewritten:

"(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. – A member or beneficiary who is awarded backpay in cases of a denied promotional opportunity or wrongful demotion in which the aggrieved member or beneficiary is granted a promotion or a demotion is reversed retroactively, or in cases in which an employer errs in the reporting of compensation, including the employee and employer contributions, the member or beneficiary and employer may make employee and employer contributions on the retroactive or additional compensation after submitting clear and convincing evidence of the retroactive promotion or underreporting of compensation, as follows:

...

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced

1 the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, G.S. 128-21(5), the  
 2 compensation the member or beneficiary would have received during the period shall be included  
 3 in calculating the member's or beneficiary's average final compensation only in the event the  
 4 appropriate employee and employer contributions are paid on such compensation.

5 An employer error in underreporting compensation shall not include a retroactive increase in  
 6 compensation that occurs during the four consecutive calendar years that would have produced  
 7 the highest average annual compensation pursuant to ~~G.S. 135-1(5)~~, G.S. 128-21(5), for reasons  
 8 other than a wrongfully denied promotional opportunity or wrongful demotion where the member  
 9 is promoted or the demotion is reversed retroactively."

### 10 11 **PART III. CHANGES PERTAINING TO THE DISABILITY INCOME PLAN OF** 12 **NORTH CAROLINA**

13 **SECTION 3.1.** G.S. 135-102(a) reads as rewritten:

14 "(a) The provisions of this Article shall be administered by the Department of State  
 15 Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement ~~System~~  
 16 System, except where otherwise provided, and all expenses in connection with the administration  
 17 of the Plan, except for expenses incurred by and properly charged to the employer, shall be  
 18 charged against and paid from the trust fund as created and provided in this Article."

19 **SECTION 3.2.** G.S. 135-105(a)(4) reads as rewritten:

20 "(4) The participant's employer and ~~attending~~-physician certify that the participant  
 21 is mentally or physically incapacitated for the further performance of duty."  
 22

### 23 **PART IV. CHANGES PERTAINING TO THE APPLICATION OF NET PROCEEDS** 24 **FOR STATE LANDS**

25 **SECTION 4.** G.S. 146-30 reads as rewritten:

26 "**§ 146-30. Application of net proceeds.**

27 (a) The net proceeds of any disposition made in accordance with this Subchapter shall be  
 28 handled in accordance with the following priority:

- 29 (1) First, in accordance with the provisions of any trust or other instrument of title  
30 whereby title to real property was acquired.
- 31 (2) Second, as provided by any other act of the General Assembly.
- 32 (3) Third, by depositing the net proceeds ~~with the State Treasurer~~ in accordance  
33 with Article 6A of Chapter 147 of the General Statutes.

34 Nothing in this section, however, prohibits the disposition of any State lands by exchange for  
 35 other lands, but if the appraised value in fee simple of any property involved in the exchange is  
 36 at least twenty-five thousand dollars (\$25,000), then the exchange shall not be made without  
 37 consultation with the Joint Legislative Commission on Governmental Operations.

38 ...

39 (d) Notwithstanding any other provision of this Subchapter, the following exceptions  
 40 apply:

41 ...

- 42 (6) The following provisions apply with respect to land owned by or under the  
 43 supervision and control of the Department of Agriculture and Consumer  
 44 Services:

- 45 a. The net proceeds derived from the sale of land shall be deposited ~~with~~  
 46 ~~the State Treasurer~~ in a capital improvement account to the credit of  
 47 the Department of Agriculture and Consumer Services, to be used for  
 48 such specific capital improvement projects or other purposes as are  
 49 provided by transfer of funds from those accounts in an act of the  
 50 General Assembly.

- 1                   b.       The net proceeds derived from the sale of timber and other products of  
2                   land shall be deposited in ~~accounts at the~~ accounts to the credit of the  
3                   Department of Agriculture and Consumer Services to be used for  
4                   operational expenses of the Department incurred for restoration and  
5                   stewardship of the land.
- 6                   c.       Except as otherwise specifically provided by law, the Department of  
7                   Agriculture and Consumer Services is subject to Article 6A of Chapter  
8                   147 of the General Statutes with respect to net proceeds required to be  
9                   deposited as provided in this subdivision.
- 10               (7)       The net proceeds derived from the sale of park land owned by or under the  
11               supervision and control of the Department of Natural and Cultural Resources  
12               shall be deposited ~~with the State Treasurer~~ in a capital improvement account  
13               to the credit of the Department of Administration to be used for the purpose  
14               of park land acquisition as provided by transfer of funds from those accounts  
15               in the Capital Improvement Appropriations Act. In the Capital Improvement  
16               Appropriations Act, line items for purchase of park and agricultural lands will  
17               be established for use by the Departments of Administration and Agriculture.  
18               The use of these funds for any specific capital improvement project or land  
19               acquisition is subject to approval by the Director of the Budget. No other use  
20               shall be made of funds in these line items without approval by the General  
21               Assembly except for incidental expenses related to the project or land  
22               acquisition. Additionally, with the approval of the Director of the Budget,  
23               either Department may request funds from the Contingency and Emergency  
24               Fund when the necessity of prompt purchase of available land can be  
25               demonstrated and funds in the capital improvement accounts are insufficient.  
26               Except as otherwise specifically provided by law, the Department of  
27               Administration is subject to Article 6A of Chapter 147 of the General Statutes  
28               with respect to net proceeds required to be deposited as provided in this  
29               subdivision.
- 30               (8)       The net proceeds derived from the sale of any portion of the land owned by  
31               the State in the Camp Butner reservation shall be deposited ~~with the State~~  
32               ~~Treasurer~~ in a capital improvement account to the credit of the Department of  
33               Health and Human Services to make capital improvements on or to property  
34               owned by the State in the Camp Butner reservation subject to approval by the  
35               Office of State Budget and Management. The net proceeds derived from the  
36               sale of timber from land owned by the State in the Camp Butner reservation  
37               shall be deposited with the State Treasurer in a capital improvement account  
38               to the credit of the Department of Public Safety to be used to support the North  
39               Carolina National Guard's Camp Butner Training Center and other North  
40               Carolina National Guard-operated Training Centers. The definition of "Camp  
41               Butner reservation" in G.S. 122C-3 applies to this subdivision. Except as  
42               otherwise specifically provided by law, the following provisions apply with  
43               respect to net proceeds required to be deposited as provided in this  
44               subdivision:
- 45               a.       The Department of Health and Human Services is subject to Article  
46               6A of Chapter 147 of the General Statutes with respect to net proceeds  
47               that must be deposited to the credit of the Department of Health and  
48               Human Services.
- 49               b.       The Department of Public Safety is subject to Article 6A of Chapter  
50               147 of the General Statutes with respect to net proceeds that must be  
51               deposited to the credit of the Department of Public Safety.

1                   ...."

2

3 **PART V. EFFECTIVE DATE**

4                   **SECTION 5.** This act becomes effective January 1, 2024.