

## Article 5.

### Supplemental Retirement Income Act of 1984.

#### **§ 135-90. Short title and purpose.**

(a) This Article shall be known and may be cited as the "Supplemental Retirement Income Act of 1984".

(b) The purpose of the Article is to attract and hold qualified employees and officials of the State of North Carolina and its political subdivisions by permitting them to participate in a profit sharing or salary reduction form of deferred compensation which will provide supplemental retirement income payments upon retirement, termination, hardship, and death as allowed under section 401(k), or any other relevant section, of the Internal Revenue Code of 1954 as amended. As used in this Article, the term "profit" means the excess revenue over expenditures prior to the expenditure of the amount which may be optionally made available for employees to be placed in trust by the State and its political subdivisions on behalf of the employees and officials covered by this Article. (1983 (Reg. Sess., 1984), c. 975; 2020-48, s. 1.3(a).)

#### **§ 135-91. Administration.**

(a) The provisions of this Article shall be administered by the Department of State Treasurer and the Supplemental Retirement Board of Trustees established in G.S. 135-96. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(b) The Supplemental Retirement Income Plan shall have the power and privileges of a corporation and shall be known as the "Supplemental Retirement Income Plan of North Carolina" and by this name all of its business shall be transacted.

(c) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article.

(c1) Subject to the limitations specified in this subsection, the Department of State Treasurer and the Board of Trustees may adopt a new or amended rule to impose or change administrative fees under the Plan, provided that the rule is adopted at a public meeting that complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the Department of State Treasurer's public website and, subject to the approval of the Department of State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day period preceding the public meeting at which the rule is to be adopted, the Department of State Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the adoption or amendment of a rule concerning the imposition of, or a change to, an administrative fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject to the approval of the Department of State Treasurer, provide a link or a copy of the adopted rule to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect until amended or repealed by the Department of State Treasurer and the Board of Trustees and are not subject to Article 2A of Chapter 150B of the General Statutes. This subsection applies only to rules regarding administrative fees charged by the Department of State Treasurer and the Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan. The Department of State Treasurer and the Board of Trustees may not adopt a new or amended rule to impose or change an administrative fee under the Plan that exceeds the following amounts:

- (1) Twenty-five thousandths percent (0.025%) of assets for the Supplemental Retirement Income Plan of North Carolina.
- (2) Twenty-five thousandths percent (0.025%) of assets for the North Carolina Deferred Compensation Plan.
- (3) Five hundredths percent (0.05%) of assets for the North Carolina Public School Teachers' and Professional Educators' Investment Plan.

(c2) The Department of State Treasurer and Board of Trustees may appoint those agents, contractors, employees and committees as they deem advisable to carry out the terms and conditions of the Plan. In order to promote achievement of long-term investment objectives and to retain key public employees with investment functions, the Board of Trustees shall authorize the State Treasurer to establish market-oriented compensation plans, including salaries and performance-related bonuses, for employees possessing specialized skills or knowledge necessary for the proper administration of the Plan, who shall be exempt from the classification and compensation rules established by the Office of State Human Resources. The design and administration of those compensation plans shall be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation. The compensation and other associated employee benefits shall be apportioned directly from the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall be charged with a fiduciary responsibility for managing all aspects of the Plan, including the receipt, maintenance, investment, and disposition of all Plan assets.

(e) The administrative costs of the Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees.

(f) Each institution of The University of North Carolina shall report the data and other information to the Supplemental Retirement Income Plan pertaining to participants in the Optional Retirement Program as shall be required by the Department of State Treasurer and the Board of Trustees.

(g) Each political subdivision of the State that sponsors a retirement or pension plan with members who are members of the Supplemental Retirement Income Plan shall report the data and other information to the Plan pertaining to members of the retirement or pension plan as shall be required by the Department of State Treasurer and the Board of Trustees. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 1; 1989 (Reg. Sess., 1990), c. 948, s. 2; 2008-132, s. 1; 2015-164, s. 9(a); 2021-75, s. 5.1(a).)

### **§ 135-92. Membership.**

(a) The membership eligibility of the Supplemental Retirement Income Plan shall consist of any of the following individuals who voluntarily elect to enroll in the Plan:

- (1) Members of the Teachers' and State Employees' Retirement System.
- (2) Members of the Consolidated Judicial Retirement System.
- (3) Members of the Legislative Retirement System.
- (4) Members of the Local Governmental Employees' Retirement System.
- (5) Law enforcement officers as defined under G.S. 143-166.30 and G.S. 143-166.50.
- (6) Participants in the Optional Retirement Program provided for under G.S. 135-5.1.

- (7) Members of retirement and pension plans sponsored by political subdivisions of the State so long as such plans are qualified under Section 401(a) of the Internal Revenue Code of 1986 as amended.
  - (8) Individuals required under the Internal Revenue Code to be eligible for participation in the Plan.
- (b) The membership of any person in the Supplemental Retirement Income Plan shall cease upon any of the following:
- (1) The withdrawal of a member's accumulated account.
  - (2) Retirement under the provisions of the Supplemental Income Retirement Plan.
  - (3) Death. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 2; 1989 (Reg. Sess., 1990), c. 948, s. 1; 2020-48, s. 1.3(b).)

### **§ 135-93. Contributions.**

(a) Each member may elect to reduce his compensation by the amount of his contribution to the Supplemental Retirement Income Plan and that amount shall be held in the member's account. Members electing such a reduction in compensation may authorize payroll deductions for making contributions to the Plan.

(b) The State and any of its political subdivisions may make contributions to the Supplemental Retirement Income Plan on behalf of any of its members, provided these contributions are nondiscriminatory in accordance with the Internal Revenue Code of 1954 as amended, and are duly appropriated by their governing bodies, and the contributions are held in the member's account. Employer contributions to the Plan are declared expenditures for a public purpose.

(c) The Department of State Treasurer and Board of Trustees shall establish maximum annual additions that may be made to a member's account and provide for multiple plan reductions in accordance with the Internal Revenue Code of 1954 as amended. (1983 (Reg. Sess., 1984), c. 975.)

### **§ 135-94. Benefits.**

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

- (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), the balance in each member's account shall be fully vested at all times and shall not be subject to forfeiture for any reason.
- (2) All amounts maintained in a member's account shall be invested according to the member's election, as approved by the Department of State Treasurer and Board of Trustees, including but not limited to, a time deposit account, a fixed investment account, or a variable investment account. Transfers of accumulated funds shall be permitted among the various approved forms of investment.
- (3) The Department of State Treasurer and Board of Trustees shall provide members with alternative payment options, including survivors' options, for the distribution of benefits from the Plan upon retirement, termination, hardship, and death.
- (4) With the consent of the Department of State Treasurer and the Board of Trustees, amounts may be transferred from other qualified plans to the

Supplemental Retirement Income Plan, provided that the trust from which such funds are transferred permits the transfer to be made and, the transfer will not jeopardize the tax status of the Supplemental Retirement Income Plan.

- (5) At the discretion of the Department of State Treasurer and Board of Trustees, a loan program may be implemented for members which complies with applicable State and federal laws and regulations.

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

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

(d) Contributions under the Plan may be made on and after January 1, 1985. (1983 (Reg. Sess., 1984), c. 975; 1993, c. 531, s. 9; 2012-193, s. 15; 2020-48, s. 1.3(c).)

### **§ 135-95. Exemption from garnishment, attachment.**

Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2), G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 402; 1989, c. 665, s. 2; c. 792, s. 2.6; 2012-193, s. 16.)

### **§ 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, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan established under G.S. 115C-341.2.

(b) The Board consists of nine voting members, as follows:

- (1) Six persons appointed by the Governor who have experience in finance and investments, one of whom shall be a State employee, and one of whom shall be a retired State or local governmental employee;
- (2) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;
- (3) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and
- (4) The State Treasurer, ex officio, who shall be the Chair.

(c) Effective July 1, 2016:

- (1) The appointments made by the General Assembly pursuant to subdivisions (2) and (3) of subsection (b) of this section shall be for initial terms of three years, to expire June 30, 2019.
- (2) Three of the appointments made by the Governor pursuant to subdivision (1) of subsection (b) of this section shall be for initial terms of one year, to expire June 30, 2017.
- (3) Three of the appointments made by the Governor pursuant to subdivision (1) of subsection (b) of this section shall be for initial terms of two years, to expire June 30, 2018.

Upon the expiration of these initial terms, appointments for all members shall be for terms of three years beginning on the day following the expiration date of the previous member's term.

(c1) A member shall continue to serve until the member's successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve longer than any of the following:

- (1) Two consecutive three-year terms.
- (2) Three consecutive terms of any length, in the event that one or more of the terms is for fewer than three years in duration or the member serves a partial term as result of filling a vacancy.
- (3) Eight consecutive years, regardless of term lengths.

(d) Other than ex officio members, members appointed by the Governor shall serve at the Governor's pleasure. An ex officio member may designate in writing, filed with the Board, any employee of the member's department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(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. (2008-132, s. 2; 2009-378, s. 1; 2013-287, s. 1; 2015-164, s. 1(b).)

#### **§ 135-97. Immunity.**

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

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper personal financial benefit, either directly or indirectly, from the transaction.
- (5) The person incurred the liability from the operation of a motor vehicle. (2013-287, s. 5.)

#### **§ 135-98 Reserved for future codification purposes.**

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