

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 359

Short Title: Retirement Administrative Changes Act of 2013-AB (Public)

Sponsors: Representatives Moffitt, Blust, Warren, and Collins (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: State Personnel, if favorable, Finance.

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO ADMINISTRATION OF THE STATE RETIREMENT SYSTEMS THAT WILL EXTEND THE TRANSFER BENEFIT OPTION TO PARTICIPANTS IN THE 403(B) SUPPLEMENTAL RETIREMENT PLAN, CLARIFY THE TIMING OF THE SOCIAL SECURITY OFFSET FOR LONG-TERM DISABILITY BENEFITS, AND ESTABLISH A 415(M) BENEFITS PRESERVATION ARRANGEMENT AS ALLOWED UNDER FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5(m2) reads as rewritten:

"(m2) Special Retirement Allowance. – At any time coincident with or following retirement, a member may make a one-time election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North ~~Carolina~~ or Carolina, the North Carolina Public Employee Deferred Compensation ~~Plan~~Plan, or the North Carolina Public School Teachers' and Professional Educators' Investment Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance. Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 135-18.7(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain (i) the relationship between the transferred balance and the monthly benefit; and (ii) how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees



1 shall modify the mortality and such other tables every five years, as shall be deemed necessary,
2 based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a
3 member who transfers the member's eligible accumulated contributions from the Supplemental
4 Retirement Income Plan of North ~~Carolina~~ or Carolina, the North Carolina Public Employee
5 Deferred Compensation ~~Plan~~ Plan, or the North Carolina Public School Teachers' and
6 Professional Educators' Investment Plan to this Retirement System shall be taxed for North
7 Carolina State Income Tax purposes on the special retirement allowance the same as if that
8 special retirement allowance had been paid directly by the Supplemental Retirement Income
9 Plan of North ~~Carolina~~ or Carolina, the North Carolina Public Employee Deferred
10 Compensation ~~Plan~~ Plan, or the North Carolina Public School Teachers' and Professional
11 Educators' Investment Plan. The Teachers' and State Employees' Retirement System shall be
12 responsible to determine the taxable amount, if any, and report accordingly.

13 The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess
14 a one-time flat administrative fee not to exceed the actual cost of the administrative expenses
15 relating to these transfers.

16 The special retirement allowance shall continue for the life of the member and the
17 beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as
18 provided in G.S. 135-5(g), if any. The Board of Trustees, however, shall establish two payment
19 options that guarantee payments as follows:

- 20 (1) A member may elect to receive the special retirement allowance for life but
21 with payments guaranteed for a number of months to be specified by the
22 Board of Trustees. Under this plan, if the member dies before the expiration
23 of the specified number of months, the special retirement allowance will
24 continue to be paid to the member's designated beneficiary for the life of the
25 beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected,
26 the member's designated beneficiary will receive the benefit only for the
27 remainder of the specified number of months. If the member's designated
28 beneficiary dies before receiving payments for the specified number of
29 months, any remaining payments will be paid to the member's estate.
- 30 (2) A member may elect to receive the special retirement allowance for life but
31 is guaranteed that the sum of the special allowance payments will equal the
32 total of the transferred amount. Under this payment option, if the member
33 dies before receiving the total transferred amount, the special retirement
34 allowance will continue to be paid to the member's designated beneficiary
35 for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or
36 6 is not selected, the member's designated beneficiary or the member's estate
37 shall be paid any remaining balance of the transferred amount.

38 The Board of Trustees shall report annually to the Joint Legislative Commission on
39 Governmental Operations on the number of persons who made an election in the previous
40 calendar year, with any recommendations it might make on amendment or repeal based on any
41 identified problems.

42 The General Assembly reserves the right to repeal or amend this subsection, but such repeal
43 or amendment shall not affect any person who has already made the one-time election provided
44 in this subsection."

45 **SECTION 2.** G.S. 135-106(b) reads as rewritten:

46 "(b) After the commencement of benefits under this section, the benefits payable under
47 the terms of this section during the first 36 months of the long-term disability period shall be
48 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable
49 to the participant or beneficiary prior to the beginning of the short-term disability period as may
50 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent
51 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would

1 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced
2 by any primary Social Security disability benefits to which the beneficiary may be entitled,
3 effective as of the month such benefits are payable, and by monthly payments for Workers'
4 Compensation to which the participant or beneficiary may be entitled. When primary Social
5 Security disability benefits are increased by cost-of-living adjustments, the increased reduction
6 shall be applied in the first month following the month in which the member becomes entitled
7 to the increased Social Security benefit. The monthly benefit shall be further reduced by the
8 amount of any monthly payments from the federal Department of Veterans Affairs, any other
9 federal agency or any payments made under the provisions of G.S. 127A-108, to which the
10 participant or beneficiary may be entitled on account of the same disability. Provided, in any
11 event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a
12 disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in
13 lieu of long-term disability benefits; provided such election shall not extend the first 36
14 consecutive calendar months of the long-term disability period. An election to receive any
15 salary continuation for any part of any given day shall be in lieu of any long-term benefit
16 payable for that day, provided further, any lump-sum payout for vacation leave shall be treated
17 as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term
18 benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced
19 during the first 36 months of the long-term disability period by an amount, as determined by
20 the Board of Trustees, equal to a primary Social Security retirement benefit to which the
21 beneficiary might be entitled.

22 After 36 months of long-term disability, no further benefits are payable under the terms of
23 this section unless the member has been approved and is in receipt of primary Social Security
24 disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of
25 1/12th of the annual base rate of compensation last payable to the participant or beneficiary
26 prior to the beginning of the short-term disability period as may be adjusted for percentage
27 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual
28 longevity payment to which the participant or beneficiary would be eligible, to a maximum of
29 three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security
30 disability benefits to which the beneficiary may be entitled, effective as of the month such
31 benefits are payable, and by monthly payments for Workers' Compensation to which the
32 participant or beneficiary may be entitled. When primary Social Security disability benefits are
33 increased by cost-of-living adjustments, the increased reduction shall be applied in the first
34 month following the month in which the member becomes entitled to the increased Social
35 Security benefit. The monthly benefit shall be further reduced by the amount of any monthly
36 payments from the federal Department of Veterans Affairs, for payments from any other
37 federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the
38 participant or beneficiary may be entitled on account of the same disability. Provided, in any
39 event, the benefit payable shall be no less than ten dollars (\$10.00) a month.

40 Notwithstanding the foregoing, but subject to an additional integration with the five-year
41 and 10-year retirement vesting provisions as set forth in this paragraph, the long-term disability
42 benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social
43 Security disability benefit until the earliest date at which the beneficiary who became a member
44 prior to August 1, 2011, is eligible for an unreduced service retirement allowance from the
45 Retirement System, at which time the beneficiary would receive a retirement allowance
46 calculated on the basis of the beneficiary's average final compensation at the time of disability
47 as adjusted to reflect compensation increases subsequent to the time of disability and the
48 creditable service accumulated by the beneficiary, including creditable service while in receipt
49 of benefits under the Plan. In the case of any long-term disability beneficiary who became a
50 member on and after August 1, 2011, and ordinarily would not be eligible for a retirement
51 benefit without 10 years of membership service, for purposes of this conversion from long-term

1 disability to service retirement, and for that purpose only, noncontributory creditable service
2 granted while in receipt of disability benefits under this Article shall be deemed to be
3 membership service, through the completion of 10 years of combined membership and
4 noncontributory service on short-term and long-term disability benefits in total. In the event the
5 beneficiary has not been approved and is not in receipt of a primary Social Security disability
6 benefit, the long-term disability benefit shall cease after the first 36 months of the long-term
7 disability period. When such a long-term disability recipient begins receiving this unreduced
8 service retirement allowance from the System, that recipient shall not be subject to the
9 six-month waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled
10 to a restoration of the long-term disability benefit in the event the Social Security
11 Administration grants a retroactive approval for primary Social Security disability benefits with
12 a benefit effective date within the first 36 months of the long-term disability period. In such
13 event, the long-term disability benefit shall be restored retroactively to the date of cessation."

14 **SECTION 3.** Chapter 135 of the General Statutes is amended by adding a new
15 Article to read:

16 "Article 7.

17 "Qualified Excess Benefit Arrangement for Certain Plans Administered by the Department of
18 State Treasurer.

19 **"§ 135-150. Definitions.**

20 The following words and phrases as used in this Article, unless a different meaning is
21 plainly required by the context, have the following meanings:

- 22 (1) "Board of Trustees" means the Board of Trustees established by G.S. 135-6
23 or G.S. 128-28.
24 (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
25 amended from time to time.
26 (3) "Payee" means a retired member, or the survivor beneficiary of a member or
27 retired member.
28 (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit
29 arrangement under section 415(m) of the Internal Revenue Code established
30 under this Article.
31 (5) "Retirement Systems" means the Teachers' and State Employees' Retirement
32 System, the North Carolina Local Governmental Employees' Retirement
33 System, the Consolidated Judicial Retirement System, and the Legislative
34 Retirement System. "Retirement System" refers to any one of those four
35 retirement systems.

36 **"§ 135-151. Qualified Excess Benefit Arrangement.**

37 (a) The Qualified Excess Benefit Arrangement (QEBA) is established effective January
38 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA
39 is solely to provide the part of a retirement allowance or benefit that would otherwise have been
40 payable by a Retirement System except for the limitations under section 415(b) of the Internal
41 Revenue Code. The QEBA, as set forth in this Article, is intended to constitute a qualified
42 governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

43 (b) Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee
44 shall participate in the QEBA for any calendar year, or portion of the calendar year, during
45 which he or she receives a retirement allowance or benefit payment on and after January 1,
46 2014, from one or more of the Retirement Systems that is reduced due to the application of the
47 maximum benefit provisions of section 415(b) of the Internal Revenue Code. For purposes of
48 the QEBA, a payee is a retired member or survivor beneficiary of a member or retired member
49 who is receiving monthly retirement benefit payments from a Retirement System.

50 (c) Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a
51 payee shall receive each month, commencing on and after January 1, 2014, a monthly

1 supplemental benefit equal to the difference between the amount of that payee's monthly
2 retirement benefit paid under the applicable Retirement System on and after January 1, 2014,
3 and the amount that would have been payable to that payee from the applicable Retirement
4 System in that month if not for the reduction due to the application of section 415(b) of the
5 Internal Revenue Code. That supplemental benefit shall be computed and payable under the
6 same terms, at the same time, and to the same person as the related benefit payable under the
7 applicable Retirement System. A payee cannot elect to defer the receipt of all or any part of the
8 supplemental payments due under the QEBA.

9 (d) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of
10 federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise
11 shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary
12 engaged by the Board of Trustees, shall determine the employer contributions required to pay
13 the benefits due under the QEBA for each fiscal year. The required contributions shall be paid
14 by each employer with respect to which a payee's benefit under the QEBA is attributable. The
15 required contributions shall be deposited in a separate fund from the fund into which regular
16 employer contributions are deposited for the underlying Retirement System. The benefit
17 liability for the QEBA shall be determined each fiscal year and assets shall not be accumulated
18 to pay benefit in future fiscal years.

19 (e) Treatment of Unused Assets. – Any assets of the QEBA plan not used to pay
20 benefits in the current fiscal year shall be used for payment of the administrative expenses of
21 the QEBA for the current or future fiscal years or shall be paid to the appropriate Retirement
22 System as an additional employer contribution.

23 (f) Assets Subject to Claims of Creditors. – A payee, or a payee's beneficiary or heirs,
24 shall have no right to and shall have no property interest in any assets held to support the
25 liabilities created under this Article. To the extent that any person acquires the right to receive
26 benefits under the QEBA, that right shall be no greater than the right of any unsecured general
27 creditor of the State of North Carolina or such other applicable employer under this Article.

28 (g) Administration. – The QEBA shall be administered by the Board of Trustees, which
29 shall compile and maintain all records necessary or appropriate for administration. The Board
30 of Trustees shall have full discretionary authority to interpret, construe, and implement the
31 QEBA and to adopt such rules and regulations as may be necessary or desirable to implement
32 the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

33 (h) No Assignment. – Except for the application of the provisions of G.S. 110-136 and
34 G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under
35 G.S. 50-20, any supplemental benefit under this Article shall be exempt from levy and sale,
36 garnishment, attachment, or any other process and shall be unassignable except as specifically
37 otherwise provided in this Chapter.

38 (i) Reservation of Power to Change. – The General Assembly reserves the right at any
39 time and from time to time to modify or amend, in whole or in part, any or all of the provisions
40 of the QEBA. No member of the Retirement Systems covered by this Article and no
41 beneficiary of such a member shall be deemed to have acquired any vested right to a
42 supplemental payment under this Article."

43 **SECTION 4.** This act becomes effective January 1, 2014.