

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

3

HOUSE BILL 359  
Committee Substitute Favorable 5/9/13  
Senate Pensions & Retirement and Aging Committee Substitute Adopted 6/26/13

Short Title: Retirement Administrative Changes Act of 2013.

(Public)

Sponsors:

Referred to:

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, ESTABLISH A 415(M) BENEFITS PRESERVATION ARRANGEMENT AS ALLOWED UNDER FEDERAL LAW, AND PROVIDE THAT DOMESTIC RELATIONS ORDERS DIVIDING INTERESTS UNDER THE RETIREMENT SYSTEM MUST BE SUBMITTED ON APPROVED FORMS, AND TO CORRECT AN OVERSIGHT IN THE DISABILITY INCOME PLAN, AND TO AMEND THE PROVISIONS FOR ALLOWANCE OF RETROACTIVE MEMBERSHIP SERVICE IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

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 the North Carolina Public Employee Deferred Compensation 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.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System:

- (1) A plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan.
- (2) A plan described in section 403(b) of the Internal Revenue Code.
- (3) A plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.



\* H 3 5 9 - V - 3 \*

- 1           (4)    An individual retirement account or annuity described in Section 408(a) or  
2           408(b) of the Internal Revenue Code that is eligible to be rolled over and  
3           would otherwise be includible in gross income.  
4           (5)    A tax-qualified plan described in section 401(a) or 403(a) of the Internal  
5           Revenue Code.

6           Notwithstanding anything to the contrary, a member may not transfer such amounts as will  
7           cause the member's retirement allowance under the System to exceed the amount allowable  
8           under G.S. 135-18.7(b). The Board of Trustees may establish a minimum amount that must be  
9           transferred if a transfer is elected. The member may elect a special retirement allowance with  
10          no postretirement increases or a special retirement allowance with annual postretirement  
11          increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement  
12          increases on any other allowance will not apply to the special retirement allowance. The Board  
13          of Trustees shall provide educational materials to the members who apply for the transfer  
14          authorized by this section. Those materials shall describe the special retirement allowance and  
15          shall explain (i) the relationship between the transferred balance and the monthly benefit; and  
16          (ii) how the member's heirs may be impacted by the election to make this transfer and any costs  
17          and fees involved.

18          For the purpose of determining the special retirement allowance, the Board of Trustees shall  
19          adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality  
20          and such other tables as may be necessary based upon actual experience. A single set of  
21          mortality and such other tables will be used for all members, with factors differing only based  
22          on the age of the member and the election of postretirement increases. The Board of Trustees  
23          shall modify the mortality and such other tables every five years, as shall be deemed necessary,  
24          based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a  
25          member who transfers the member's eligible accumulated contributions from ~~the Supplemental~~  
26          ~~Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred~~  
27          ~~Compensation Plan~~ an eligible retirement plan pursuant to this subsection to this Retirement  
28          System shall be taxed for North Carolina State Income Tax purposes on the special retirement  
29          allowance the same as if that special retirement allowance had been paid directly by the  
30          ~~Supplemental Retirement Income Plan of North Carolina or the North Carolina Public~~  
31          ~~Employee Deferred Compensation Plan~~ eligible plan or the plan through which the transfer was  
32          made, whichever is most favorable to the member. The Teachers' and State Employees'  
33          Retirement System shall be responsible to determine the taxable amount, if any, and report  
34          accordingly.

35          The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess  
36          a one-time flat administrative fee not to exceed the actual cost of the administrative expenses  
37          relating to these transfers. An eligible plan shall not assess a fee specifically relating to a  
38          transfer of accumulated contributions authorized under this subsection. This provision shall not  
39          prohibit other fees that may be assessable under the plan. Each plan, contract, account, or  
40          annuity shall fully disclose to any member participating in a transfer under this subsection any  
41          surrender charges or other fees, and such disclosure shall be made contemporaneous with the  
42          initiation of the transfer by the member.

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

- 47               (1)    A member may elect to receive the special retirement allowance for life but  
48               with payments guaranteed for a number of months to be specified by the  
49               Board of Trustees. Under this plan, if the member dies before the expiration  
50               of the specified number of months, the special retirement allowance will  
51               continue to be paid to the member's designated beneficiary for the life of the

1 beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected,  
2 the member's designated beneficiary will receive the benefit only for the  
3 remainder of the specified number of months. If the member's designated  
4 beneficiary dies before receiving payments for the specified number of  
5 months, any remaining payments will be paid to the member's estate.

- 6 (2) A member may elect to receive the special retirement allowance for life but  
7 is guaranteed that the sum of the special allowance payments will equal the  
8 total of the transferred amount. Under this payment option, if the member  
9 dies before receiving the total transferred amount, the special retirement  
10 allowance will continue to be paid to the member's designated beneficiary  
11 for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or  
12 6 is not selected, the member's designated beneficiary or the member's estate  
13 shall be paid any remaining balance of the transferred amount.

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

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

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

22 "(b) After the commencement of benefits under this section, the benefits payable under  
23 the terms of this section during the first 36 months of the long-term disability period shall be  
24 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable  
25 to the participant or beneficiary prior to the beginning of the short-term disability period as may  
26 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent  
27 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would  
28 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced  
29 by any primary Social Security disability benefits to which the beneficiary may be entitled,  
30 effective as of the first of the month following the month of initial entitlement, and by monthly  
31 payments for Workers' Compensation to which the participant or beneficiary may be entitled.  
32 When primary Social Security disability benefits are increased by cost-of-living adjustments,  
33 the increased reduction shall be applied in the first month following the month in which the  
34 member becomes entitled to the increased Social Security benefit. The monthly benefit shall be  
35 further reduced by the amount of any monthly payments from the federal Department of  
36 Veterans Affairs, any other federal agency or any payments made under the provisions of  
37 G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same  
38 disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00)  
39 a month. However, a disabled participant may elect to receive any salary continuation as  
40 provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall  
41 not extend the first 36 consecutive calendar months of the long-term disability period. An  
42 election to receive any salary continuation for any part of any given day shall be in lieu of any  
43 long-term benefit payable for that day, provided further, any lump-sum payout for vacation  
44 leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in  
45 lieu of any long-term benefit otherwise payable. Provided that, in any event, a beneficiary's  
46 benefit shall be reduced during the first 36 months of the long-term disability period by an  
47 amount, as determined by the Board of Trustees, equal to a primary Social Security retirement  
48 benefit to which the beneficiary might be entitled.

49 After 36 months of long-term disability, no further benefits are payable under the terms of  
50 this section unless the member has been approved and is in receipt of primary Social Security  
51 disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of

1 1/12th of the annual base rate of compensation last payable to the participant or beneficiary  
2 prior to the beginning of the short-term disability period as may be adjusted for percentage  
3 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual  
4 longevity payment to which the participant or beneficiary would be eligible, to a maximum of  
5 three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security  
6 disability benefits to which the beneficiary may be entitled, effective as of the first of the month  
7 following the month of initial entitlement, and by monthly payments for Workers'  
8 Compensation to which the participant or beneficiary may be entitled. When primary Social  
9 Security disability benefits are increased by cost-of-living adjustments, the increased reduction  
10 shall be applied in the first month following the month in which the member becomes entitled  
11 to the increased Social Security benefit. The monthly benefit shall be further reduced by the  
12 amount of any monthly payments from the federal Department of Veterans Affairs, for  
13 payments from any other federal agency, or for any payments made under the provisions of  
14 G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same  
15 disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00)  
16 a month.

17 Notwithstanding the foregoing, but subject to an additional integration with the five-year  
18 and 10-year retirement vesting provisions as set forth in this paragraph, the long-term disability  
19 benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social  
20 Security disability benefit until the earliest date at which the beneficiary who became a member  
21 prior to August 1, 2011, is eligible for an unreduced service retirement allowance from the  
22 Retirement System, at which time the beneficiary would receive a retirement allowance  
23 calculated on the basis of the beneficiary's average final compensation at the time of disability  
24 as adjusted to reflect compensation increases subsequent to the time of disability and the  
25 creditable service accumulated by the beneficiary, including creditable service while in receipt  
26 of benefits under the Plan. In the case of any long-term disability beneficiary who became a  
27 member on and after August 1, 2011, and ordinarily would not be eligible for a retirement  
28 benefit without 10 years of membership service, for purposes of this conversion from long-term  
29 disability to service retirement, and for that purpose only, noncontributory creditable service  
30 granted while in receipt of disability benefits under this Article shall be deemed to be  
31 membership service, through the completion of 10 years of combined membership and  
32 noncontributory service on short-term and long-term disability benefits in total. In the event the  
33 beneficiary has not been approved and is not in receipt of a primary Social Security disability  
34 benefit, the long-term disability benefit shall cease after the first 36 months of the long-term  
35 disability period. When such a long-term disability recipient begins receiving this unreduced  
36 service retirement allowance from the System, that recipient shall not be subject to the  
37 six-month waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled  
38 to a restoration of the long-term disability benefit in the event the Social Security  
39 Administration grants a retroactive approval for primary Social Security disability benefits with  
40 a benefit effective date within the first 36 months of the long-term disability period. In such  
41 event, the long-term disability benefit shall be restored retroactively to the date of cessation."

42 **SECTION 3.(a)** Chapter 135 of the General Statutes is amended by adding a new  
43 Article to read:

44 "Article 7.

45 "Qualified Excess Benefit Arrangement.

46 **"§ 135-150. Definitions.**

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

49 (1) "Board of Trustees" means the Board of Trustees established by G.S. 135-6.

50 (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as  
51 amended from time to time.

- 1           (3)    "Payee" means a retired member, or the survivor beneficiary of a member or  
2           retired member.
- 3           (4)    "Qualified Excess Benefit Arrangement" means the qualified excess benefit  
4           arrangement under section 415(m) of the Internal Revenue Code established  
5           under this Article.
- 6           (5)    "Retirement System" means the Teachers' and State Employees' Retirement  
7           System.

8    **"§ 135-151. Qualified Excess Benefit Arrangement.**

9           (a)    The Qualified Excess Benefit Arrangement (QEBA) is established effective January  
10          1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA  
11          is solely to provide the part of a retirement allowance or benefit that would otherwise have been  
12          payable by a Retirement System except for the limitations under section 415(b) of the Internal  
13          Revenue Code. The QEBA, as set forth in this Article, is intended to constitute a qualified  
14          governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

15          (b)    Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee  
16          shall participate in the QEBA for any calendar year, or portion of the calendar year, during  
17          which he or she receives a retirement allowance or benefit payment on and after January 1,  
18          2014, from the Teachers' and State Employees' Retirement System that is reduced due to the  
19          application of the maximum benefit provisions of section 415(b) of the Internal Revenue Code.  
20          For purposes of the QEBA, a payee is a retired member or survivor beneficiary of a member or  
21          retired member who is receiving monthly retirement benefit payments from a Retirement  
22          System.

23          (c)    Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a  
24          payee shall receive each month, commencing on and after January 1, 2014, a monthly  
25          supplemental benefit equal to the difference between the amount of that payee's monthly  
26          retirement benefit paid under the Teachers' and State Employees' Retirement System on and  
27          after January 1, 2014, and the amount that would have been payable to that payee from the  
28          Teachers' and State Employees' Retirement System in that month if not for the reduction due to  
29          the application of section 415(b) of the Internal Revenue Code. That supplemental benefit shall  
30          be computed and payable under the same terms, at the same time, and to the same person as the  
31          related benefit payable under the Retirement System. A payee cannot elect to defer the receipt  
32          of all or any part of the supplemental payments due under the QEBA. The supplemental benefit  
33          paid under this section shall be taxable under North Carolina law in the same manner as the  
34          benefit paid under the Teachers' and State Employees' Retirement System.

35          (d)    Funding of the QEBA. – The QEBA shall be unfunded within the meaning of  
36          federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise  
37          shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary  
38          engaged by the Board of Trustees, shall determine the employer contributions required to pay  
39          the benefits due under the QEBA for each fiscal year. The required contributions shall be paid  
40          by all participating employers. The required contributions shall be deposited in a separate fund  
41          from the fund into which regular employer contributions are deposited for the Retirement  
42          System. The benefit liability for the QEBA shall be determined each fiscal year, and assets  
43          shall not be accumulated to pay benefits in future fiscal years.

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

48          (f)    Assets Subject to Claims of Creditors. – A payee, or a payee's beneficiary or heirs,  
49          shall have no right to, and shall have no property interest in, any assets held to support the  
50          liabilities created under this Article. To the extent that any person acquires the right to receive

1 benefits under the QEBA, that right shall be no greater than the right of any unsecured general  
2 creditor of the State of North Carolina or such other applicable employer under this Article.

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

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

13 (i) Reservation of Power to Change. – The General Assembly reserves the right at any  
14 time and, from time to time, to modify or amend, in whole or in part, any or all of the  
15 provisions of the QEBA. No member of the Retirement System and no beneficiary of such a  
16 member shall be deemed to have acquired any vested right to a supplemental payment under  
17 this Article.

18 (j) Sunset of Eligibility to Participate in the QEBA. – No member of the Teachers' and  
19 State Employees' Retirement System retiring on or after January 1, 2015, shall be eligible to  
20 participate in the QEBA, and the Retirement System shall not pay any new retiree more  
21 retirement benefits than allowed under the limitations of section 415(b) of the Internal Revenue  
22 Code."

23 **SECTION 3.(b)** Article 3 of Chapter 128 of the General Statutes is amended by  
24 adding a new section to read:

25 **"§ 128-38.10. Qualified Excess Benefit Arrangement.**

26 (a) The following words and phrases as used in this section, unless a different meaning  
27 is plainly required by the context, have the following meanings:

28 (1) "Board of Trustees" means the Board of Trustees established by  
29 G.S. 128-28.

30 (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as  
31 amended from time to time.

32 (3) "Payee" means a retired member, or the survivor beneficiary of a member or  
33 retired member.

34 (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit  
35 arrangement under section 415(m) of the Internal Revenue Code established  
36 under this Article.

37 (5) "Retirement System" means the North Carolina Local Governmental  
38 Employees' Retirement System.

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

46 (c) Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee  
47 shall participate in the QEBA for any calendar year, or portion of the calendar year, during  
48 which he or she receives a retirement allowance or benefit payment on and after January 1,  
49 2014, from the North Carolina Local Governmental Employees' Retirement System that is  
50 reduced due to the application of the maximum benefit provisions of section 415(b) of the  
51 Internal Revenue Code. For purposes of the QEBA, a payee is a retired member or survivor

1 beneficiary of a member or retired member who is receiving monthly retirement benefit  
2 payments from a Retirement System.

3 (d) Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a  
4 payee shall receive each month, commencing on and after January 1, 2014, a monthly  
5 supplemental benefit equal to the difference between the amount of that payee's monthly  
6 retirement benefit paid under the North Carolina Local Governmental Employees' Retirement  
7 System on and after January 1, 2014, and the amount that would have been payable to that  
8 payee from the North Carolina Local Governmental Employees' Retirement System in that  
9 month if not for the reduction due to the application of section 415(b) of the Internal Revenue  
10 Code. That supplemental benefit shall be computed and payable under the same terms, at the  
11 same time, and to the same person as the related benefit payable under the Retirement System.  
12 A payee cannot elect to defer the receipt of all or any part of the supplemental payments due  
13 under the QEBA. The supplemental benefit paid under this section shall be taxable under North  
14 Carolina law in the same manner as the benefit paid under the North Carolina Local  
15 Governmental Employees' Retirement System.

16 (e) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of  
17 federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise  
18 shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary  
19 engaged by the Board of Trustees, shall determine the employer contributions required to pay  
20 the benefits due under the QEBA for each fiscal year. The required contributions shall be paid  
21 by all participating employers. The required contributions shall be deposited in a separate fund  
22 from the fund into which regular employer contributions are deposited for the underlying  
23 Retirement System. The benefit liability for the QEBA shall be determined each fiscal year and  
24 assets shall not be accumulated to pay benefits in future fiscal years.

25 (f) Treatment of Unused Assets. – Any assets of the QEBA plan not used to pay  
26 benefits in the current fiscal year shall be used for payment of the administrative expenses of  
27 the QEBA for the current or future fiscal years or shall be paid to the Retirement System as an  
28 additional employer contribution.

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

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

39 (i) No Assignment. – Except for the application of the provisions of G.S. 110-136 and  
40 G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under  
41 G.S. 50-20, any supplemental benefit under this section shall be exempt from levy and sale,  
42 garnishment, attachment, or any other process, and shall be unassignable except as specifically  
43 otherwise provided in this section.

44 (j) Reservation of Power to Change. – The General Assembly reserves the right at any  
45 time and, from time to time, to modify or amend, in whole or in part, any or all of the  
46 provisions of the QEBA. No member of the Retirement System and no beneficiary of such a  
47 member shall be deemed to have acquired any vested right to a supplemental payment under  
48 this section.

49 (k) Sunset of Eligibility to Participate in the QEBA. – No member of the North  
50 Carolina Local Governmental Employees' Retirement System retiring on or after January 1,  
51 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any

1 new retiree more retirement benefits than allowed under the limitations of section 415(b) of the  
2 Internal Revenue Code."

3 **SECTION 4.(a)** G.S. 135-9 reads as rewritten:

4 "**§ 135-9. Exemption from garnishment, attachment, etc.**

5 Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq.,  
6 and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a  
7 person to a pension, or annuity, or a retirement allowance, to the return of contributions, the  
8 pension, annuity or retirement allowance itself, any optional benefit or any other right accrued  
9 or accruing to any person under the provisions of this Chapter, and the moneys in the various  
10 funds created by this Chapter, are exempt from levy and sale, garnishment, attachment, or any  
11 other process whatsoever, and shall be unassignable except as in this Chapter specifically  
12 otherwise provided. Application for System approval of a domestic relations order dividing a  
13 person's interest under the Retirement System shall be accompanied by an order consistent with  
14 the system-designed template order provided on the System's Web site. Notwithstanding any  
15 provisions to the contrary, any overpayment of benefits to a member in a State-administered  
16 retirement system or the former Disability Salary Continuation Plan or the Disability Income  
17 Plan of North Carolina may be offset against any retirement allowance, return of contributions  
18 or any other right accruing under this Chapter to the same person, the person's estate, or  
19 designated beneficiary."

20 **SECTION 4.(b)** G.S. 128-31 reads as rewritten:

21 "**§ 128-31. Exemptions from execution.**

22 Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq.,  
23 and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a  
24 person to a pension, an annuity, or a retirement allowance, to the return of contributions, the  
25 pension, annuity or retirement allowance itself, any optional benefit or any other right accrued  
26 or accruing to any person under the provisions of this Article, and the moneys in the various  
27 funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any  
28 other process whatsoever, and shall be unassignable except as in this Article specifically  
29 otherwise provided. Application for System approval of a domestic relations order dividing a  
30 person's interest under the Retirement System shall be accompanied by an order consistent with  
31 the system-designed template order provided on the System's Web site. Notwithstanding any  
32 provisions to the contrary, any overpayment of benefits to a member in a State-administered  
33 retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of  
34 North Carolina may be offset against any retirement allowance, return of contributions or any  
35 other right accruing under this Chapter to the same person, the person's estate, or designated  
36 beneficiary."

37 **SECTION 5.** G.S. 135-3(8)d. reads as rewritten:

38 "d. Should a beneficiary who retired on an early or service retirement  
39 allowance under this Chapter be restored to service as an employee  
40 or teacher, then the retirement allowance shall cease as of the first of  
41 the month following the month in which the beneficiary is restored to  
42 service and the beneficiary shall become a member of the Retirement  
43 System and shall contribute thereafter as allowed by law at the  
44 uniform contribution payable by all members.

45 Upon his subsequent retirement, he shall be paid a retirement  
46 allowance determined as follows:

- 47 1. For a member who earns at least three years' membership  
48 service after restoration to service, creditable service earned  
49 while in receipt of disability benefits under Article 6 of this  
50 Chapter shall count as membership service for this purpose  
51 only, and the retirement allowance shall be computed on the



1 basis of his compensation and service before and after the  
 2 period of prior retirement without restrictions; provided, that  
 3 if the prior allowance was based on a social security leveling  
 4 payment option, the allowance shall be adjusted actuarially  
 5 for the difference between the amount received under the  
 6 optional payment and what would have been paid if the  
 7 retirement allowance had been paid without optional  
 8 modification. In the alternative, the member may receive a  
 9 refund of the member's accumulated contributions for the  
 10 period of service after restoration to service in accordance  
 11 with G.S. 135-5(f).

- 12 2. For a member who does not earn three years' membership  
 13 service after restoration to service, the retirement allowance  
 14 shall be equal to the sum of the retirement allowance to which  
 15 he would have been entitled had he not been restored to  
 16 service, without modification of the election of an optional  
 17 allowance previously made, and the retirement allowance that  
 18 results from service earned since being restored to service;  
 19 provided, that if the prior retirement allowance was based on  
 20 a social security leveling payment option, the prior allowance  
 21 shall be adjusted actuarially for the difference between the  
 22 amount that would have been paid for each month had the  
 23 payment not been suspended and what would have been paid  
 24 if the retirement allowance had been paid without optional  
 25 modification. In the alternative, the member may receive a  
 26 refund of the member's accumulated contributions for the  
 27 period of service after restoration to service in accordance  
 28 with G.S. 135-5(f), or the member may allow this new  
 29 account to remain inactive."

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

31 "(ff) Retroactive Membership Service. – A member who is reinstated to service as an  
 32 employee as defined in G.S. 135-1(10) or as a teacher as defined in G.S. 135-1(25)  
 33 retroactively to the date of prior involuntary termination (~~with backpay and benefits~~) with back  
 34 pay, as defined by the State Personnel Commission, and associated benefits may be allowed  
 35 membership service, after submitting clear and convincing evidence of the  
 36 reinstatement, reinstatement, payment of back pay, and restoration of associated benefits, as  
 37 follows:

- 38 (1) When the reinstatement to service is by court order, final decision of an  
 39 Administrative Law Judge, or decision of the State Personnel Commission,  
 40 and is:  
 41 a. Within 90 days of the involuntary termination, by the payment of  
 42 employee and employer contributions that would have been paid; or  
 43 ~~(2)~~b. After 90 days of the involuntary termination, by the payment of the  
 44 employee and employer contributions that would have been paid plus  
 45 interest compounded annually at a rate equal to the greater of the  
 46 average yield on the pension accumulation fund for the preceding  
 47 calendar year or the actuarial investment rate-of-return assumption,  
 48 as adopted by the Board of Trustees.  
 49 (2) When the reinstatement to service is by settlement agreement voluntarily  
 50 entered into by the affected parties, by the payment of a lump-sum amount  
 51 equal to the full liability of the service credits calculated on the basis of the

1 assumptions used for purposes of the actuarial valuation of the system's  
2 liabilities, taking into account the retirement allowance arising on account of  
3 the additional service credit commencing at the earliest age at which the  
4 member could retire on an unreduced retirement allowance, as determined  
5 by the Board of Trustees upon the advice of the consulting actuary, plus an  
6 administrative fee to be set by the Board of Trustees. Notwithstanding the  
7 foregoing provisions of this subsection that provide for the purchase of  
8 service credits, the terms "full cost," "full liability," and "full actuarial cost"  
9 include assumed annual postretirement allowance increases, as determined  
10 by the Board of Trustees, from the earliest age at which a member could  
11 retire on an unreduced service allowance.

12 Nothing contained in this subsection shall prevent an employer or member from paying all  
13 or a part of the cost of the retroactive membership service; and to the extent paid by the  
14 employer, the cost paid by the employer shall be credited to the pension accumulation fund;  
15 and to the extent paid by the member, the cost paid by the member shall be credited to the  
16 member's annuity savings account; provided, however, an employer does not discriminate  
17 against any member or group of members in his employ in paying all or any part of the cost of  
18 the retroactive membership service.

19 In the event a member received a return of accumulated contributions subsequent to an  
20 involuntary termination as provided in G.S. 135-5(f), the member may redeposit, within 90  
21 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity  
22 savings fund by single payment an amount equal to the total amount he previously withdrew  
23 plus regular interest and restore the creditable service forfeited upon receiving his return of  
24 accumulated contributions."

25 **SECTION 6.(b)** G.S. 128-26(v) reads as rewritten:

26 "(v) Retroactive Membership Service. – A member who is reinstated to service as an  
27 employee as defined in G.S. 128-21(10) retroactively to the date of prior involuntary  
28 termination (~~with backpay and benefits~~) with back pay and associated benefits may be allowed  
29 membership service, after submitting clear and convincing evidence of the reinstatement,  
30 payment of back pay, and restoration of associated benefits, as follows:

31 (1) When the reinstatement to service is by court order and is:

- 32 a. Within 90 days of the involuntary termination, by the payment of  
33 employee and employer contributions that would have been paid; or  
34 ~~(2)~~b. After 90 days of the involuntary termination, by the payment of the  
35 employee and employer contributions that would have been paid plus  
36 interest compounded annually at a rate equal to the greater of the  
37 average yield on the pension accumulation fund for the preceding  
38 calendar year or the actuarial investment rate-of-return assumption,  
39 as adopted by the Board of Trustees.

40 (2) When the reinstatement to service is by settlement agreement voluntarily  
41 entered into by the affected parties, by the payment of a lump-sum amount  
42 equal to the full liability of the service credits calculated on the basis of the  
43 assumptions used for purposes of the actuarial valuation of the system's  
44 liabilities, taking into account the retirement allowance arising on account of  
45 the additional service credit commencing at the earliest age at which the  
46 member could retire on an unreduced retirement allowance, as determined  
47 by the Board of Trustees upon the advice of the consulting actuary, plus an  
48 administrative fee to be set by the Board of Trustees. Notwithstanding the  
49 foregoing provisions of this subsection that provide for the purchase of  
50 service credits, the terms "full cost," "full liability," and "full actuarial cost"  
51 include assumed annual postretirement allowance increases, as determined

1 by the Board of Trustees, from the earliest age at which a member could  
2 retire on an unreduced service allowance.

3 Nothing contained in this subsection shall prevent an employer or member from paying all  
4 or a part of the cost of the retroactive membership service; and to the extent paid by the  
5 employer, the cost paid by the employer shall be credited to the pension accumulation fund;  
6 and to the extent paid by the member, the cost paid by the member shall be credited to the  
7 member's annuity savings account; provided, however, an employer does not discriminate  
8 against any member or group of members in his employ in paying all or any part of the cost of  
9 the retroactive membership service.

10 In the event a member received a return of accumulated contributions subsequent to an  
11 involuntary termination as provided in G.S. 128-27(f), the member may redeposit, within 90  
12 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity  
13 savings fund by single payment, an amount equal to the total amount he previously withdrew  
14 plus regular interest and restore the creditable service forfeited upon receiving his return of  
15 accumulated contributions."

16 **SECTION 7.** If any provision of this act or its application is held invalid, the  
17 invalidity does not affect other provisions or applications of this act that can be given effect  
18 without the invalid provisions or application, and to this end the provisions of this act are  
19 severable.

20 **SECTION 8.** Section 3 of this act becomes effective January 1, 2014. Section 5 of  
21 this act becomes effective January 1, 2012, and applies to persons retiring on or after that date.  
22 The remainder of this act becomes effective July 1, 2013.