

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-405
HOUSE BILL 359**

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

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 shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a member who transfers the member's eligible accumulated contributions from ~~the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan~~ an eligible retirement plan pursuant to this subsection to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the ~~Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan~~ eligible plan or the plan through which the transfer was made, whichever is most favorable to the member. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

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

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

- (1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.
- (2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

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

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

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

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

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

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

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

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

"Article 7.

"Qualified Excess Benefit Arrangement.

"§ 135-150. Definitions.

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

- (1) "Board of Trustees" means the Board of Trustees established by G.S. 135-6.
- (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (3) "Payee" means a retired member, or the survivor beneficiary of a member or retired member.
- (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit arrangement under section 415(m) of the Internal Revenue Code established under this Article.
- (5) "Retirement System" means the Teachers' and State Employees' Retirement System.

"§ 135-151. Qualified Excess Benefit Arrangement.

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

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

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

(d) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary

engaged by the Board of Trustees, shall determine the employer contributions required to pay the benefits due under the QEBA for each fiscal year. The required contributions shall be paid by all participating employers. The required contributions shall be deposited in a separate fund from the fund into which regular employer contributions are deposited for the Retirement System. The benefit liability for the QEBA shall be determined each fiscal year, and assets shall not be accumulated to pay benefits in future fiscal years.

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

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

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

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

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

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

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

"§ 128-38.10. Qualified Excess Benefit Arrangement.

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

- (1) "Board of Trustees" means the Board of Trustees established by G.S. 128-28.
- (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (3) "Payee" means a retired member, or the survivor beneficiary of a member or retired member.
- (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit arrangement under section 415(m) of the Internal Revenue Code established under this Article.
- (5) "Retirement System" means the North Carolina Local Governmental Employees' Retirement System.

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

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

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

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

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

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

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

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

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

(k) Sunset of Eligibility to Participate in the QEBA. – No member of the North Carolina Local Governmental Employees' Retirement System retiring on or after January 1, 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any new retiree more retirement benefits than allowed under the limitations of section 415(b) of the Internal Revenue Code."

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

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

Except for the applications of the provisions of 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 person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Application for System approval of a domestic relations order dividing a person's interest under the Retirement System shall be accompanied by an order consistent with the system-designed template order provided on the System's Web site. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

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

"§ 128-31. Exemptions from execution.

Except for the applications of the provisions of 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 person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Application for System approval of a domestic relations order dividing a person's interest under the Retirement System shall be accompanied by an order consistent with the system-designed template order provided on the System's Web site. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

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

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

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

1. For a member who earns at least three years' membership service after restoration to service, creditable service earned while in receipt of disability benefits under Article 6 of this Chapter shall count as membership service for this purpose only, and the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification. In the alternative, the member may receive a refund of the member's accumulated contributions for the

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

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

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

- (1) When the reinstatement to service is by court order, final decision of an Administrative Law Judge, or decision of the State Personnel Commission, and is:
 - a. Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or
 - ~~(2)~~b. After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.
- (2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum amount equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, taking into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate

against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

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

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

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

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

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

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

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

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

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

SECTION 8. Section 3 of this act becomes effective January 1, 2014. Section 5 of this act becomes effective January 1, 2012, and applies to persons retiring on or after that date. Section 4 of this act becomes effective September 1, 2013. The remainder of this act becomes effective July 1, 2013.

In the General Assembly read three times and ratified this the 24th day of July, 2013.

s/ Louis M. Pate, Jr.
Deputy President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:50 a.m. this 23rd day of August, 2013