

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH30226-LL-127 (04/02)

Short Title: Modify Optional Retirement Program.

(Public)

Sponsors: Representative Hackney.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE UNIVERSITY OF NORTH CAROLINA'S OPTIONAL
RETIREMENT PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5.1 reads as rewritten:

"§ 135-5.1. **Optional retirement program for State institutions of higher education.**

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to university personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

(1) ~~administrators~~ Administrators and faculty of the University of North Carolina with the rank of instructor or above, ~~and for the benefit of:~~ above;

~~(4)~~(2) The President and Employees ~~employees~~ of the University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b); ~~and~~

(3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. 126-5(c1)(8); and

1 ~~(2)~~(4) Field faculty of the Cooperative Agriculture Extension Service, and
2 tenure track faculty in North Carolina State University agriculture
3 research programs who are exempt from the State Personnel Act and
4 who are eligible for membership in the Teachers' and State Employees'
5 Retirement System pursuant to ~~GS 135-3(1)~~, G.S. 135-3(1),
6 who in any of the cases described in this subsection (i) had been members of
7 the Optional Retirement Program under the provisions of Chapter 338,
8 Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have
9 sought membership as required in subsection (b), below. Under the
10 Optional Retirement Program, the State and the participant shall
11 contribute, to the extent authorized or required, toward the purchase of
12 such contracts or deposited in such trust on the participant's behalf.

13 (b) Participation in the Optional Retirement Program shall be governed as
14 follows:

- 15 (1) Those participating in the Optional Retirement Program immediately
16 prior to July 1, 1985, under the provisions of Chapter 338, Session
17 Laws of 1971, are deemed automatically enrolled in the Program as
18 established by this section.
- 19 (2) Eligible employees initially appointed on or after July 1, 1985, shall at
20 the same time of entering upon eligible employment elect (i) to join
21 the Retirement System in accordance with the provisions of law
22 applicable thereto or (ii) to participate in the Optional Retirement
23 Program. This election shall be in writing and filed with the
24 Retirement System and with the employing institution and shall be
25 effective as of the date of entry into eligible service.
- 26 (3) An election to participate in the Optional Retirement Program shall be
27 irrevocable. An eligible employee failing to elect to participate in the
28 Optional Retirement Program at the time of entry into eligible service
29 shall automatically be enrolled as a member of the Retirement System.
- 30 (4) No election by an eligible employee of the Optional Retirement
31 Program shall be effective unless it is accompanied by an appropriate
32 application for the issuance of a contract or contracts or trust
33 participation under the Program.
- 34 (5) If any participant having less than ~~five years~~ one year coverage under
35 the Optional Retirement Program leaves the employ of The University
36 of North Carolina and either retires or commences employment with
37 an employer not having a retirement program with the same company
38 underwriting the participant's annuity contract, regardless of whether
39 the annuity contract is held by the participant, a trust, or the
40 Retirement System, the participant's interest in the Optional
41 Retirement Program attributable to contributions of The University of
42 North Carolina shall be forfeited and shall either (i) be refunded to The
43 University of North Carolina and forthwith paid by it to the Retirement
44 System and credited to the pension accumulation fund or (ii) be paid

1 directly to the Retirement System and credited to the pension
2 accumulation fund.

3 (c) Each employing institution shall contribute on behalf of each participant in
4 the Optional Retirement Program an amount equal to a percentage of the participant's
5 compensation as established from time to time by the General Assembly. Each
6 participant shall contribute the amount which he or she would be required to contribute
7 if a member of the Retirement ~~System~~. System (the "required amount" as determined in
8 subsection (c1) of this section). Contributions authorized or required by the provisions
9 of this subsection on behalf of each participant shall be made, consistent with Section
10 414(h) of the Internal Revenue Code, by salary reduction according to ~~rules and~~
11 ~~regulations~~ policies and procedures established by The University of North Carolina.

12 (c1) If a participant is on leave of absence for the sole purpose of acquiring
13 knowledge, talents, or abilities and to increase the efficiency of service to the
14 University, for such leave totaling no more than six years, the participant shall be given
15 the right to contribute the required amount according to policies established by The
16 University of North Carolina. If the participant contributes the required amount, the
17 University shall contribute an amount that would otherwise be required to be
18 contributed pursuant to this section. To the extent that any such contribution by the
19 participant or the University would otherwise exceed Internal Revenue Code Section
20 415(c), any such contribution shall be deposited in the Section 415(c) Plan maintained
21 by the University.

22 (c2) Additional personal contributions may also be made by a participant by
23 payroll deduction or salary reduction to an annuity or retirement income plan
24 established pursuant to G.S. 116-17. Payment of contributions shall be made by the
25 employing institution to the designated company or companies underwriting the
26 annuities or the trustees for the benefit of each participant, and this employer
27 contribution shall not be subject to any State tax if made under the Optional Retirement
28 Program or, otherwise, by salary reduction.

29 (d) The Board of Governors of The University of North Carolina shall designate
30 the company or companies from which contracts are to be purchased or the trustee
31 responsible for the investment of contributions under the Optional Retirement Program,
32 and shall approve the form and contents of such contracts or trust agreement. In making
33 this designation and giving such approval, the Board shall give due consideration to the
34 following:

- 35 (1) The nature and extent of the rights and benefits to be provided by these
36 contracts or trust agreement for participants and their beneficiaries;
- 37 (2) The relation of these rights and benefits to the amount of contributions
38 to be made;
- 39 (3) The suitability of these rights and benefits to the needs of the
40 participants and the interest of the institutions of The University of
41 North Carolina in recruiting and retaining faculty in a national market;
42 and
- 43 (4) The ability of the designated company or companies underwriting the
44 annuity contracts or trust agreement to provide these suitable rights

1 and benefits under such contracts or trust agreement for these
2 purposes.

3 Notwithstanding the provisions of this subsection, no contractual relationship
4 established under the Optional Retirement Program pursuant to the authority granted by
5 Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this
6 section.

7 (e) The Board of Governors of The University of North Carolina may provide for
8 the administration of the Optional Retirement Program and may perform or authorize
9 the performance of all functions necessary for its administration.

10 (f) Any eligible employee electing to participate in the Optional Retirement
11 Program is ineligible for membership in the Retirement System so long as he or she
12 remains employed in any eligible position within The University of North Carolina, and,
13 in this event, he or she shall continue to participate in the Optional Retirement Program.

14 (g) No retirement benefit, death benefit, or other benefit under the Optional
15 Retirement Program shall be paid by the State of North Carolina, or The University of
16 North Carolina, or the Board of Trustees of the Teachers' and State Employees'
17 Retirement System with respect to any employee selecting and participating in the
18 Optional Retirement Program or with respect to any beneficiary of that employee.
19 Benefits shall be payable to participants or their beneficiaries only by the designated
20 company in accordance with the terms of the contracts or trust agreement."

21 **SECTION 2.** This act is effective when it becomes law.