A BILL TO BE ENTITLED
AN ACT TO EMPOWER EMPLOYING AGENCIES TO ADMINISTER STATE SHORT-TERM DISABILITY BENEFITS, TO MODERNIZE THE MEDICAL REVIEW BOARD, TO ADDRESS OVERPAYMENTS OWED TO THE DISABILITY INCOME PLAN BY MEMBERS OF THE OPTIONAL RETIREMENT PROGRAM, AND TO MAKE TECHNICAL AND CONFORMING CHANGES RELATED TO THESE OBJECTIVES.

The General Assembly of North Carolina enacts:

PART I. EMPOWER EMPLOYING AGENCIES TO ADMINISTER STATE SHORT-TERM DISABILITY BENEFIT

SECTION 1.(a) G.S. 135-102(a) reads as rewritten:
"(a) Except as otherwise provided under G.S. 135-105, the provisions of this Article shall be administered by the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System and all expenses in connection with the administration of the Plan, except for expenses incurred by and properly charged to the employer, shall be charged against and paid from the trust fund as created and provided in this Article."

SECTION 1.(b) G.S. 135-105 reads as rewritten:
"§ 135-105. Short-term disability benefits.
(a) Any participant who becomes disabled and is no longer able to perform his or her usual occupation may receive a short-term disability benefit commencing on the first day succeeding the waiting period provided all of the following conditions are met:
(1) Application for the benefit occurs at least 365 calendar days succeeding the participant's date of initial employment as a teacher or employee.
(2) The participant has at least one year of contributing membership service earned within 36 calendar months immediately preceding the date of disability. Salary continuation used during the period as provided in G.S. 135-104 shall count toward this one-year requirement.
(3) Application for the benefit occurs no later than 365 days following the first day of the waiting period.
(4) The participant's employer and attending physician certify that the participant is mentally or physically incapacitated for the further performance of duty.
(5) The participant's incapacity was incurred at the time of active employment and has been continuous thereafter.

As to the requirement that a participant applying for short term disability benefits have at least one year of contributing membership service within the 36 calendar months immediately
preceding the date of disability, a participant who would have qualified for a benefit under this
section but for service in the uniformed services shall not be denied a benefit under this section
because of that interruption for military service provided all other requirements of this section
are met.

Notwithstanding the requirement that the incapacity was incurred at the time of active
employment, any participant who becomes disabled while on an employer approved leave of
absence and who is eligible for and in receipt of temporary total benefits under The North
Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be
eligible for all benefits provided under this Article.

(b) The benefits as provided for in subsection (a) of this section shall commence on the
first day following the waiting period and shall be payable for a period of 365 days as long as the
participant continues to meet the definition of disability. Disability provided the participant is
not in receipt of long-term disability benefits under G.S. 135-106. However, a disabled
participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of
short-term disability benefits; provided further, such election shall not extend the 365 days
duration of short-term payments. An election to receive any salary continuation for any part of a
given day shall be in lieu of any short-term benefit otherwise 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 short-term benefit otherwise
payable.

... (d1) For short-term disability benefits that begin on and after July 1, 2019, the provisions
of this section shall be administered by the employer. The benefits during the first 12 months of
the short-term disability period, including benefits from a preliminary determination of eligibility
for long-term disability under subsection (f) of this section, Short-term disability benefits shall
be the full responsibility of and paid by the employer.

(e) During the While in receipt of a short-term disability period, benefit under this
section, a beneficiary may return to service for trial rehabilitation for periods of not greater than
40 continuous days of service. Such return will not cause the beneficiary to become a participant
and will not require a new waiting period or short-term disability period to commence unless a
different incapacity occurs. The period of rehabilitative employment shall not extend the period
of the short-term disability benefits.

(f) A participant or beneficiary of short-term disability benefits or his legal representative
or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the
employer of the participant or beneficiary, may request the Board of Trustees to have the Medical
Board make a determination of eligibility for the short-term disability benefits as provided in this
section or to make a preliminary determination of eligibility for the long-term disability benefits
as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability
benefits shall not preclude the requirement that the Medical Board make a determination of
eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary
beyond the benefit period of 365 days for an additional period of not more than 365 days; provided
the Medical Board determines that the beneficiary's disability is temporary and likely
to end within the extended period of short-term disability benefits. During the extended period
of short-term disability benefits, payment of benefits shall be made by the Plan directly to the
beneficiary. This extended period of short-term disability benefits shall be treated in the same
manner as long-term disability payments for the purposes of G.S. 135-108.

(h) If, at any time, a beneficiary of short-term disability benefits is approved to receive
long-term disability benefits under G.S. 135-106, then the short-term disability benefit shall
cease on the effective date of the long-term disability benefit. No participant shall receive both
short-term and long-term disability benefits for the same time period."

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SECTION 1.(c) G.S. 135-106(a) reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period benefit payment under G.S. 135-105 ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, and that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to the conclusion of the cessation of short-term disability period benefit payments or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 1.(d) G.S. 135-106 is amended by adding a new subsection to read:

"(a1) Long-term disability benefits under this section shall commence the first day of the month following the date of approval of the application for benefits."

SECTION 1.(e) 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
paragraphs.

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, effective as of the first of the month following the month of initial entitlement.

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, 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 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 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 1.(f)** G.S. 135-5(a)(5) reads as rewritten:
"(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made electronic submission or written application for long-term or extended short term disability benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan’s Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his or her application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended, if applicable, or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, or the first day of the month following the month in which the member terminated the member's employment, whichever is later."

**SECTION 1.(g)** This section becomes effective July 1, 2020, and applies to short-term and long-term disability benefits applied for on or after that date, as determined by receipt of the application by the employer.

**PART II. MODERNIZING THE MEDICAL REVIEW BOARD**

**SECTION 2.(a)** G.S. 135-1(12) reads as rewritten:
"(12) "Medical board" means the board of physicians provided for in G.S. 135-6."

**SECTION 2.(b)** G.S. 135-101(10) reads as rewritten:
"(10) "Medical Review Board" shall mean the board of physicians as provided in G.S. 135-102(d)."

**SECTION 2.(c)** G.S. 128-21(12) reads as rewritten:
"(12) "Medical board" means the board of physicians provided for in G.S. 128-28, subsection (f)."

**SECTION 2.(d)** G.S. 135-53(10) reads as rewritten:
"(10) "Medical board" means the board of physicians provided for in G.S. 135-6."

**SECTION 2.(e)** G.S. 120-4.8(8) reads as rewritten:
"(8) "Medical Review Board" means the board of physicians provided for in G.S. 135-6, which shall determine disability as provided in this Article."

**SECTION 2.(f)** G.S. 135-6(k) reads as rewritten:
"(k) Medical Review Board. – The Board of Trustees shall designate a medical board Medical Review Board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board Medical Review Board members. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of
this Chapter, and shall investigate all essential statements and certificates by or on behalf of a
member in connection with an application for disability retirement, and shall report in writing to
the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A
person serving on the medical board Medical Review Board shall be immune individually from
civil liability for monetary damages, except to the extent covered by insurance, for any act or
failure to act arising out of that service, except where any of the following apply:

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

**SECTION 2.(g)** G.S. 135-6 is amended by adding a new subsection to read:

"(k1) Duties of the Medical Review Board. – The Medical Review Board shall have the
following duties and powers:

(1) Arrange for and review medical examinations required under the provision of
this Chapter.
(2) Review applications for disability retirement or disability income benefits
under Article 6 of this Chapter.
(3) Delegate the review of any medical examinations, records, applications, or
other documents to other licensed health care providers. Any certifications
required to be made by the Medical Review Board may not be delegated;
however, the Medical Review Board may rely upon the determinations of a
third party in making that certification.
(4) Require independent medical examinations, vocational assessments, gainful
employment determinations, or other assessments necessary for the Medical
Review Board to make any determinations required under this Chapter. The
Medical Review Board may contract with entities outside of the Department
to conduct any assessment determined to be necessary by the Medical Review
Board. Any certifications required to be made by the Medical Review Board
may not be delegated; however, the Medical Review Board may rely upon the
determinations of a third party in making that certification.
(5) Expedite reviews and determinations in accordance with rules adopted by the
State Treasurer and the Board of Trustees."

**SECTION 2.(h)** G.S. 128-28(l) reads as rewritten:

"(l) Medical Review Board. – The Board of Trustees shall designate a Medical Review
Board to be composed of not less than three nor more than five physicians not eligible to
participate in the Retirement System. The Board of Trustees may structure appointment
requirements and term durations for those medical board Medical Review Board members.
If required, other physicians may be employed to report on special cases. The Medical Board
shall arrange for and pass upon all medical examinations required under the provisions of this
Chapter, and shall investigate all essential statements and certificates by or on behalf of a member
in connection with an application for disability retirement, and shall report in writing to the Board
of Trustees its conclusion and recommendations upon all the matters referred to it. A person
serving on the medical board shall be immune individually from civil liability for monetary
damages, except to the extent covered by insurance, for any act or failure to act arising out of
that service, except where any of the following apply:

(1) The person was not acting within the scope of that person’s official duties.
(2) The person was not acting in good faith.
(3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.

(4) The person derived an improper financial benefit, either directly or indirectly, from the transaction.

(5) The person incurred the liability from the operation of a motor vehicle."

SECTION 2.(i) G.S. 128-28 is amended by adding a new subsection to read:

"(l1) Duties of the Medical Review Board. – The Medical Review Board shall have the following duties and powers:

1. Arrange for and review medical examinations required under the provision of this Chapter.

2. Review applications for disability retirement or disability income benefits under this Article.

3. Delegate the review of any medical examinations, records, applications, or other documents to other licensed health care providers. Any certifications required to be made by the Medical Review Board may not be delegated; however, the Medical Review Board may rely upon the determinations of a third party in making that certification.

4. Require independent medical examinations, vocational assessments, gainful employment determinations, or other assessments necessary for the Medical Review Board to make any determinations required under this Chapter. The Medical Review Board may contract with entities outside of the Department to conduct any assessment determined to be necessary by the Medical Review Board. Any certifications required to be made by the Medical Review Board may not be delegated; however, the Medical Review Board may rely upon the determinations of a third party in making that certification.

5. Expedite reviews and determinations in accordance with rules adopted by the State Treasurer and the Board of Trustees."
beneficiary or participant makes application for such benefit within 180 days after the short-term disability benefit payment under G.S. 135-105 ceases, after salary continuation payments cease or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Board of Trustees or the Medical Review Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, and that such incapacity is likely to be permanent; Provided further that the Board of Trustees or the Medical Review Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Review Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Review Board, the long-term disability benefit shall be suspended until the beneficiary submits to an examination, and should this refusal last for one year, the benefit may be terminated by the Board of Trustees. If the Medical Review Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Review Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Review Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to the cessation of short-term disability benefit payments or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

SECTION 2.(m) G.S. 135-106(c1) reads as rewritten:

"(c1) During the long-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 36 months of continuous service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence regardless of whether the beneficiary is unable to continue in service due to the same incapacity or a different incapacity.

A beneficiary who, during a period of trial rehabilitation, is unable to continue in service may be entitled to a restoration of the long-term disability benefit provided that the Board of Trustees or the Medical Review Board certifies that the beneficiary is disabled in accordance with the laws in effect at the time of the Board's original approval for long-term disability benefits, either due to the same or a different incapacity, notwithstanding the requirement the incapacity has been continuous. In the event that the Board of Trustees or the Medical Review Board determines that the long-term disability benefit should be restored, the restored benefit should be calculated in
accordance with G.S. 135-106(b); should include any post-disability benefit adjustments as
provided by G.S. 135-108; and shall continue as long as the beneficiary remains disabled until
the beneficiary has received a total of 36 long-term disability payments. Continuation of
long-term disability benefit payments beyond 36 total payments shall be dependent upon
approval for primary Social Security disability benefits as required by G.S. 135-106(b).

A beneficiary who returns to service for a period of trial rehabilitation and who has continued
in service for greater than 36 continuous months shall again become a participant, and any
subsequent incapacity shall be treated as a new incapacity causing a new waiting period to begin.
Such a beneficiary may be entitled to additional long-term disability benefits on account of the
new incapacity provided the beneficiary meets all other requirements notwithstanding the
requirement of five years of membership service within the 96 calendar months prior to becoming
disabled or the cessation of continuous salary continuation payments."

SECTION 2.(n) G.S. 136-106(d) reads as rewritten:
"(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and
been approved by the Medical Board for long-term disability benefits may make an irrevocable
election, within 90 days from the date of notification of such approval, and prior to receipt of any
long-term disability benefit payments, to receive a return of accumulated contributions from the
Retirement System or to forfeit all pending and accrued rights to the long-term disability benefit
including any ancillary benefits and retire on an early service retirement allowance, effective
with the return the later of the following dates:

(1) The first day of the month following the end of the short-term period, or
receive a return of accumulated contributions from the Retirement System, if
applicable.
(2) The first day of the month following the month in which the member
terminated the member's employment.
(3) The first day of the month following the month in which the beneficiary was
approved for long-term disability benefits, whichever is later."

SECTION 2.(o) G.S. 128-27(c) reads as rewritten:
"(c) Disability Retirement Benefits. – Upon the application of a member or of his
employer, any member who has had five or more years of creditable service may be retired by
the Board of Trustees, on the first day of any calendar month, not less than one day nor more
than 120 days next following the date of filing such application, on a disability retirement
allowance: Provided, that the medical board, Board of Trustees or the Medical Review Board,
after a medical examination of such member, shall certify that such member is mentally or
physically incapacitated for the further performance of duty, that such incapacity was incurred at
the time of active employment and has been continuous thereafter, that such incapacity is likely
to be permanent, and that such member should be retired; Provided further the medical board
Board of Trustees or the Medical Review Board shall determine if the member is able to engage
in gainful employment and, if so, the member may still be retired and the disability retirement
allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that
the Board of Trustees or the Medical Review Board shall not certify any member as disabled
who:

...."

SECTION 2.(p) G.S. 120-4.22(b) reads as rewritten:
"(b) Medical Certification. – After a medical examination of the member, the medical
board shall certify to the Board of Trustees the Board of Trustees or the Medical Review Board
shall certify that the member is mentally or physically incapacitated for further performance of
duty as a member of the General Assembly, that the incapacity was incurred at the time of active
employment and has been continuous thereafter, that the incapacity is likely to be permanent and
whether the member should be retired."

SECTION 2.(q) G.S. 135-59(a) reads as rewritten:
"(a) Upon application by or on behalf of the member, any member in service who has completed five or more years of creditable service and who has not attained his or her sixty-fifth birthday may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance; provided, that the medical board, Board of Trustees or the Medical Review Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; and, provided further, that if a member is removed by the Supreme Court for mental or physical incapacity under the provisions of G.S. 7A-376, no action is required by the medical board medical examination is required under this section and, provided further, the medical board Board of Trustees or the Medical Review Board shall determine if the member is able to engage in gainful employment and, if so, the member shall still be retired and the disability retirement allowance as a result thereof shall be reduced as in G.S. 135-60(d). Provided further, that the medical board shall not certify any member no member shall be certified as disabled who who meets either of the following criteria:

1. Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system;
2. Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the Retirement System to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of this retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement."

SECTION 2.(r) G.S. 135-60(c) reads as rewritten:

"(c) Should the medical board certify to the Board of Trustees that a disability beneficiary who prior to his sixty-fifth birthday of a beneficiary of disability benefits, the Board of Trustees or the Medical Review Board should determine that the beneficiary has recovered to the extent that he the beneficiary would not satisfy the requirements for disability retirement if he the beneficiary if he were an active member of the Retirement System, or if his the beneficiary's disability shall be assumed to have terminated in accordance with subsection (b) above, his then that beneficiary's disability retirement allowance shall thereupon cease, he or she shall be restored as a member of the Retirement System, and the period during which he or she was in receipt of a disability retirement allowance shall not be included in his that member's creditable service."

PART III. DIPNC OVERPAYMENTS OWED BY ORP MEMBERS ON CONVERSION TO SERVICE

SECTION 3.(a) G.S. 135-107 reads as rewritten:

"§ 135-107. Optional Retirement Program.
  (a) Any participant of the Optional Retirement Program who becomes a beneficiary under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the time the beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary
elected to be a member of the Teachers' and State Employees' Retirement System, and shall receive no service accruals as otherwise provided members of the Retirement System under the provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional Retirement Program 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. 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.

(b) If a participant of the Optional Retirement Program owes any overpayment to the Plan at the time in which the beneficiary would first qualify for an unreduced retirement benefit had the beneficiary elected to be a member of the Teachers' and State Employees' Retirement System, then the participant shall make a payment in full to the Plan of the total amount due. If payment in full of the total amount due is not received by the Plan, then notwithstanding G.S. 135-48.40(a), that beneficiary shall not be eligible for coverage under the North Carolina State Health Plan for Teachers and State Employees until payment in full of the total amount due is received by the Plan.

SECTION 3.(b) This section becomes effective October 1, 2019, and applies to beneficiaries who are participants of the Optional Retirement Program and who would first qualify for unreduced retirement benefits had the beneficiaries elected to be a member of the Teachers' and State Employees' Retirement System on or after that date.

PART IV. TECHNICAL CHANGES

SECTION 4.(a) G.S. 128-27(e)(4) reads as rewritten:

"(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) (d2), (d3), and (d4), each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 120 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information."

SECTION 4.(b) G.S. 135-5(l) reads as rewritten:

"(l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which Plan, hereinafter referred to as the "Plan," that is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Plan shall be part of the North Carolina Teachers' and State Employees' Benefit Trust, as established under G.S. 135-7(g). All receipts, transfers, appropriations, contributions, investment earnings, and other income belonging to the Plan shall be deposited in the Benefit Trust. All benefits and expenses against the Plan shall be disbursed from the Benefit Trust."
Trust. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members' estates in accordance with the Plan’s benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust’s trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

(1) The following provisions apply to the Plan’s administration of the death benefit for certain members in service:

a. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such a death benefit by the member by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such nominated person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such benefit shall be equal to the greater of:

i. The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs.

ii. The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs.

The death benefit shall be payable apart and separate from the payment of the member’s accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section.

b. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the member's last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs:

(1) After December 31, 1968 and after he has attained age 70; or
(2) After December 31, 1969 and after he has attained age 69; or
(3) After December 31, 1970 and after he has attained age 68; or
(4) After December 31, 1971 and after he has attained age 67; or
(5) After December 31, 1972 and after he has attained age 66; or
(6) After December 31, 1973 and after he has attained age 65; or
(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.
Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection the term "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment.

For all other purposes in this subsection subdivision, the term "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) For the purposes of administering the Plan, the last day of actual service shall be determined as follows:
   a - 1. When employment has been terminated, the last day the member actually worked.
   a - 2. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
   a - 3. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

(3) For a period when if a member is on leave of absence, his then member's status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his or her position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less
than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

g. The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

h. A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits or extended short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service for the purposes of this subdivision and shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph, subdivision.

(2) The following provisions apply to the Plan's administration of an optional death benefit for certain retired members:

a. Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999-2015, who has completed 24 months of contributions, there shall be paid a the following death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System’s Annuity Savings Fund and Pension Accumulation Fund. Fund:

1. For retired members who were deceased on or after July 1, 1998, but before January 1, 1999. This the death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection ($5,000).

2. For retired members who were deceased on or after January 1, 1999, but before July 1, 2004, the death benefit shall be a
lump-sum payment in the amount of six thousand dollars ($6,000).

3. For retired members who were deceased on or after July 1, 2004, but before July 1, 2007, the death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000).

4. For retired members who were deceased on or after July 1, 2007, but before January 1, 2015, the death benefit shall be a lump-sum payment in the amount of ten thousand dollars ($10,000).

Should death occur, if the retired member's death occurs before the completion of twenty-four months of contributions required under this subsection, contributions, then the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.
spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, but before January 1, 2015, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars ($10,000) upon the completion of 24 months of contributions required under this subsection.

Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

b. Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, subdivision of the death of a retired member of the Retirement System on or after January 1, 2015, who has completed 24 months of contributions, there shall be paid a death benefit to the person or persons designated by the member or, if the member has not designated a beneficiary, to the surviving spouse of the deceased retired member or, if not survived by a designated beneficiary or spouse, to the deceased retired member's legal representative; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of the member's death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund, the North Carolina Teachers' and State Employees' Benefit Trust, administered by the Board of Trustees Fund and Pension Accumulation Fund. Employer and non-employer contributions to the Benefit Trust and earnings on those contributions are irrevocable. The assets of the Benefit Trust are dedicated to providing benefits to participants, surviving spouses, and the members' estates in accordance with the Plan's benefit terms. The assets of the Benefit Trust are not subject to the claims of creditors of the employees and non-employees making contributions to the Benefit Trust, are not subject to the claims of any creditors of the Benefit Trust's trustees and administrators, and are not subject to the claims of creditors of members and beneficiaries. Benefit Trust assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

This death benefit shall be a lump-sum payment in the amount of ten thousand dollars ($10,000) upon the completion of 24 months of contributions required under this subsection.
Should death occur if the retired member's death occurs before the completion of 24 months of contributions required under this subsection, contributions, then the deceased retired member's designated beneficiary or beneficiaries, or surviving spouse if there is no surviving beneficiary, or legal representative if not survived by a designated beneficiary or spouse, shall be paid the sum of the retired member's contributions required by this subdivision plus interest to be determined by the Board of Trustees."

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.