

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-294  
HOUSE BILL 376

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES GOVERNING  
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. 135-45.2(f) reads as rewritten:

"(f) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes or who are approved for those benefits but not in receipt of the benefits due to lump-sum payouts of ~~vacation and bonus~~ vacation, bonus, and sick leave, provided the former employee has at least five years of contributory retirement service with an employing unit of a State-supported retirement system, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter."

**SECTION 2.(a)** G.S. 135-3(8)c1. reads as rewritten:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board ~~shall~~ may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice."

**SECTION 2.(b)** G.S. 128-24(5)c1. reads as rewritten:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board ~~shall~~ may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer



did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice."

**SECTION 3.(a)** G.S. 135-5(c) reads as rewritten:

"(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. – The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. 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, 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 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 medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (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.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

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 his 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.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) ~~The member had designated as the principal beneficiary, At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions at the time of his death, one and only one person, contributions, and~~
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

**SECTION 3.(b)** 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, 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 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 Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (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 requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

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 his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, 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.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) ~~The member had designated as the principal beneficiary, At the time of the member's death, one and only one beneficiary is eligible to receive a return of accumulated contributions at the time of his death, one and only one person, contributions, and~~
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

**SECTION 4.** G.S. 128-21(19) reads as rewritten:

"(19) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Article. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become

effective in any month, the member must render no service service, including part time, temporary, substitute, or contractor service, at any time during that month, the month immediately following the effective date of retirement."

**SECTION 5.(a)** G.S. 135-4(f)(1) reads as rewritten:

"(1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subdivision, then the member's employer must remit to the System all the employer contributions for the full period of that member's military service."

**SECTION 5.(b)** G.S. 128-26(a) reads as rewritten:

**"§ 128-26. Allowance for service.**

(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

- (1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.
- (2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subsection concerning return to service within two years after the member's earliest eligibility for separation or release from military service,

then the member's employer must remit to the System all the employer contributions for the full period of that member's military service."

**SECTION 6.** 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 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 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 7.** Section 2 of this act becomes effective July 1, 2009, and applies to penalties assessed on or after that date. The remainder of this act becomes effective July 1, 2011.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 4:44 p.m. this 24<sup>th</sup> day of June, 2011