

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-84
HOUSE BILL 977

AN ACT TO MAKE CLARIFYING AND ADMINISTRATIVE CHANGES TO LAWS RELATING TO THE STATE TREASURER, TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, TO THE LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM LAWS, TO THE STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES, AND TO RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5.4 reads as rewritten:

"§ 135-5.4. Optional retirement program for State-funded community colleges.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the North Carolina Community Colleges System, ("System"). 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 the presidents of the community colleges all of whom are appointed after the implementation of the Program and who elect membership as required by subsection (b) of this ~~section~~section on or before June 30, 2018. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

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

- (1) Employees initially appointed on or after the implementation of the Optional Retirement Program and on or before June 30, 2018, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.
- (2) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- (3) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.
- (4) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of the System and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of the employing institution shall be



forfeited and shall either (i) be refunded to the employing institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

...."

SECTION 2.(a) G.S. 135-18.10 reads as rewritten:

"§ 135-18.10. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.

(a) Except as provided in G.S. 135-4(gg), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- (1) The federal or State offense is committed while serving as an elected government official.
- (2) The conduct on which the federal or State offense is based is directly related to the member's service as an elected government official.

...

(c) The offenses under the laws of this State covered by this section are as follows:

- (1) A felony violation of any of the following provisions of the General Statutes:
 - a. Article ~~29, 30, or~~29 of Chapter 14, Bribery.
 - b. Article 30 of Chapter 14, Obstructing Justice.
 - c. Article 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening) or 14, Secret Listening.
 - d. ~~G.S. 14-228 (Buying~~G.S. 14-228, Buying and selling offices),
or offices.
 - e. Part 1 of Article 14 of Chapter ~~120 of the General Statutes (Code of Legislative Ethics),~~120, Code of Legislative Ethics.
 - f. Part 1 of Article 21 ~~or~~of Chapter 163A, Absentee Ballot.
 - g. Article 22 of Chapter ~~163A of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns).~~163A, Regulation of Election Campaigns – Corrupt Practices and Other Offenses Against the Elective Franchise.
 - h. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
 - i. G.S. 14-91, Embezzlement of State property by public officers and employees.
 - j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
 - k. G.S. 14-99, Embezzlement of taxes by officers.
 - l. Subsection (a) of G.S. 14-454.1, Accessing government computers.
 - m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources.
 - n. G.S. 14-456.1, Denial of government computer services to an authorized user.
- (2) Perjury or false information as follows:
 - a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
 - b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.

c. Perjury under Article 23 of Chapter 163A of the General Statutes.

(d) All monies forfeited under this section shall be remitted to the Civil Penalty and Forfeiture Fund."

SECTION 2.(b) G.S. 128-38.4 reads as rewritten:

"§ 128-38.4. Forfeiture of retirement benefits for certain felonies committed while serving as elected government official.

(a) Except as provided in G.S. 128-26(w), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

- (1) The federal or State offense is committed while serving as an elected government official.
- (2) The conduct on which the federal or State offense is based is directly related to the member's service as an elected government official.

...

(c) The offenses under the laws of this State covered by this section are as follows:

(1) A felony violation of any of the following provisions of the General Statutes:

- a. Article 29, 30, or 29 of Chapter 14, Bribery.
- b. Article 30 of Chapter 14, Obstructing Justice.
- c. Article 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening) or 14, Secret Listening.
- d. G.S. 14-228 (Buying G.S. 14-228, Buying and selling offices), or offices.
- e. Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of Legislative Ethics), 120, Code of Legislative Ethics.
- f. Part 1 of Article 21 of Chapter 163A, Absentee Ballot.
- g. Article 22 of Chapter 163A of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns), 163A, Regulation of Election Campaigns – Corrupt Practices and Other Offenses Against the Elective Franchise.
- h. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
- i. G.S. 14-91, Embezzlement of State property by public officers and employees.
- j. G.S. 14-92, Embezzlement of funds by public officers and trustees.
- k. G.S. 14-99, Embezzlement of taxes by officers.
- l. Subsection (a) of G.S. 14-454.1, Accessing government computers.
- m. Subsection (a1) of G.S. 14-455, Damaging computers, computer programs, computer systems, computer networks, and resources.
- n. G.S. 14-456.1, Denial of government computer services to an authorized user.

(2) Perjury or false information as follows:

- a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.
- b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.
- c. Perjury under Article 22 of Chapter 163A of the General Statutes.

(d) All monies forfeited under this section shall be remitted to the Civil Penalty and Forfeiture Fund."

SECTION 2.(c) G.S. 161-50.4 is amended by adding a new subsection to read:

"(c) A county register of deeds who is otherwise eligible to receive a monthly pension under this Article shall cease to be eligible upon forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A."

SECTION 2.(d) G.S. 161-50.5 is amended by adding a new subsection to read:

"(d1) Monthly pensions payable under this Article will cease upon the ineligibility of a pensioner under G.S. 161-50.4(c) due to the forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A."

SECTION 2.(e) This section is effective when it becomes law. Subsections (a) and (b) of this section apply to offenses committed on or after that date. Subsections (c) and (d) of this section apply to the forfeiture of any retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A occurring on or after that date.

SECTION 3.(a) G.S. 135-5.3(f) reads as rewritten:

"(f) The board of directors of a charter school may elect to cease participation in the Retirement System for all of its employees by following the procedure in G.S. 135-8(i). Notwithstanding the requirement under G.S. 135-8(i)(6) that a charter school's withdrawal liability be paid in a lump sum, if the withdrawal liability of a charter school as calculated under G.S. 135-8(i)(5) is greater than two million dollars (\$2,000,000), the Board of Trustees may allow a charter school to pay the required lump sum amount on an installment payment plan that meets the following requirements:

- (1) Fifty percent (50%) of the withdrawal liability must be paid within 90 days of the complete withdrawal date.
- (2) The remaining fifty percent (50%) of the withdrawal liability shall be made in no greater than 36 equal monthly payments.

Notwithstanding G.S. 135-8(i)(2), the complete withdrawal by a charter school that is under an approved installment payment plan shall be the date of the Board of Trustees approval of the installment payment plan. All provisions of this Article relating to the complete withdrawal of an employer from the Retirement System shall be applicable to the charter school as of that date.

The Retirement System shall have a lien upon the real property of a charter school that has received approval under this subsection from the Board of Trustees to pay the lump sum amount required under G.S. 135-8(i)(6) on installment at the time that the installment agreement is entered into and in the amount of the total withdrawal liability owed by the charter school. This lien shall attach to the real property upon the approval of the installment payment plan by the Board of Trustees and shall be perfected upon filing in the office of the clerk of superior court in each county in which the real property is situated. The priority of the lien shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. The Retirement System may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes."

SECTION 3.(b) This section is effective when it becomes law and applies to charter schools electing to cease participation in the Teachers' and State Employees' Retirement System on or after that date. Priority of the lien over nongovernmental liens and rights, created under subsection (a) of this section, shall apply only to nongovernmental liens and rights that have attached to the applicable property on or after the effective date of this section.

SECTION 4.(a) G.S. 147-86.57(3) reads as rewritten:

"(3) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like."

SECTION 4.(b) G.S. 147-86.42(5a) reads as rewritten:

"(5a) "Investment" means a commitment or contribution of funds or property, whatever the source, or a loan or other extension of credit. It does not include ~~indirect~~ beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like."

SECTION 5.(a) G.S. 143B-426.24 is amended by adding a new subsection to read:

"(h2) The administrative costs of the North Carolina Public Employee Deferred Compensation Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees."

SECTION 5.(b) G.S. 115C-341.2 is amended by adding a new subsection to read:

"(c) The administrative costs of the North Carolina Public School Teachers' and Professional Educators' Investment Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees."

SECTION 6.(a) G.S. 159-3 is amended by adding a new subsection to read:

"(g) An individual serving on the Local Government Commission 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 individual was not acting within the scope of that individual's official duties.
- (2) The individual was not acting in good faith.
- (3) The individual committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The individual derived an improper personal financial benefit, either directly or indirectly, from the transaction.
- (5) The individual incurred the liability from the operation of a motor vehicle."

SECTION 6.(b) G.S. 159D-38 is amended by adding a new subsection to read:

"(f) An individual serving on the board of directors for the agency 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 individual was not acting within the scope of that individual's official duties.
- (2) The individual was not acting in good faith.
- (3) The individual committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The individual derived an improper personal financial benefit, either directly or indirectly, from the transaction.
- (5) The individual incurred the liability from the operation of a motor vehicle."

SECTION 7. Article 3B of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-48.4. Conflict with federal law.

If any provision of this Article is in conflict with applicable federal law, federal law shall control to the extent of the conflict."

SECTION 8.(a) G.S. 135-48.23 reads as rewritten:

"§ 135-48.23. Executive Administrator.

(a) The Plan shall have an Executive ~~Administrator and a Deputy Executive Administrator.~~Administrator. The Executive Administrator ~~and the Deputy Executive Administrator~~ positions ~~are~~ is exempt from the provisions of Chapter 126 of the General Statutes as provided in G.S. 126-5(c1).

(b) The Executive Administrator shall be appointed by the State Treasurer. The term of employment and salary of the Executive Administrator shall be set by the State Treasurer. The Executive Administrator may be removed from office by the State Treasurer, and any vacancy in the office of Executive Administrator may be filled by the State Treasurer.

~~(c) The State Treasurer shall appoint the Deputy Executive Administrator. The term of employment and salary of the Deputy Executive Administrator shall be set by the State Treasurer. The Deputy Executive Administrator may be removed from office by the State Treasurer. Any vacancy in the office of the Deputy Executive Administrator may be filled by the State Treasurer.~~

(c1) The State Treasurer may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator, the Board of Trustees, and the State Treasurer in carrying out their duties and responsibilities under this Article. The State Treasurer may designate any managerial, professional, or policy-making positions as exempt from the North Carolina Human Resources Act. All exempt employees shall serve at the pleasure of the State Treasurer, and any vacancies in these positions may be filled by the State Treasurer. Salaries of exempt employees shall be set by the State Treasurer.

(c2) The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of the Executive Administrator's duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor, with an optional alternative comprehensive health benefit plan, or program thereunder, authorized under G.S. 135-48.2, with a preferred provider of institutional or professional hospital and medical care, or with a pharmacy benefit manager shall be done only with the consent of the State Treasurer.

(d) The Executive Administrator shall quarterly make reports and recommendations on the Plan to the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

SECTION 8.(b) G.S. 126-5(c1)(23) reads as rewritten:

"(23) The Executive Administrator ~~and the Deputy Executive Administrator~~ of the State Health Plan for Teachers and State Employees."

SECTION 9. G.S. 135-48.20 reads as rewritten:

"§ 135-48.20. Board of Trustees established.

(a) There is established the Board of Trustees of the State Health Plan for Teachers and State Employees.

...

(j) In making appointments, the appointing authorities shall appoint individuals from the following ~~areas of expertise:~~categories:

- (1) ~~Actuarial science.~~Individuals with expertise in actuarial science or health economics.
- (2) ~~Health economics.~~
- (3) ~~Health~~Individuals with expertise in health benefits and administration.
- (4) ~~Health~~Individuals with expertise in health law and policy.
- (5) Physicians who are licensed to practice medicine in this State.

In making appointments to the Board under this section, each appointing authority shall consult with all other appointing authorities prior to making its own appointments to ensure that each of the areas of expertise listed in subdivisions (1) through ~~(4)~~(5) of this subsection is represented by at least one member of the Board.

...."

SECTION 10. G.S. 90-414.8 reads as rewritten:

"§ 90-414.8. North Carolina Health Information Exchange Advisory Board.

(a) Creation and Membership. – There is hereby established the North Carolina Health Information Exchange Advisory Board within the Department of Information Technology. The Advisory Board shall consist of the following ~~4~~12 members:

- (1) The following four members appointed by the President Pro Tempore of the Senate:
 - a. A licensed physician in good standing and actively practicing in this State.
 - b. A patient representative.
 - c. An individual with technical expertise in health data analytics.
 - d. A representative of a behavioral health provider.
- (2) The following four members appointed by the Speaker of the House of Representatives:
 - a. A representative of a critical access hospital.
 - b. A representative of a federally qualified health center.
 - c. An individual with technical expertise in health information technology.
 - d. A representative of a health system or integrated delivery network.
- (3) The following three ex officio, nonvoting members:
 - a. The State Chief Information Officer or a designee.
 - b. The Director of GDAC or a designee.
 - c. The Secretary of Health and Human Services, or a designee.
- (4) The following ex officio, voting member:
 - a. The Executive Administrator of the State Health Plan for Teachers and State Employees, or a designee.

(b) Chairperson. – A chairperson shall be elected from among the members. The chairperson shall organize and direct the work of the Advisory Board.

(c) Administrative Support. – The Department of Information Technology shall provide necessary clerical and administrative support to the Advisory Board.

(d) Meetings. – The Advisory Board shall meet at least quarterly and at the call of the chairperson. A majority of the Advisory Board constitutes a quorum for the transaction of business.

(e) Terms. – In order to stagger terms, in making initial appointments, the President Pro Tempore of the Senate shall designate two of the members appointed under subdivision (1) of subsection (a) of this section to serve for a one-year period from the date of appointment and, the Speaker of the House of Representatives shall designate two members appointed under subdivision (2) of subsection (a) of this section to serve for a one-year period from the date of appointment. The remaining appointed voting members shall serve two-year periods. Future appointees who are voting members shall serve terms of two years, with staggered terms based on this subsection. ~~Voting~~ Appointed voting members may serve up to two consecutive terms, not including the abbreviated two-year terms that establish staggered terms or terms of less than two years that result from the filling of a vacancy. Ex officio, nonvoting and voting members are not subject to these term limits. A vacancy other than by expiration of a term shall be filled by the appointing authority.

(f) Expenses. – Members of the Advisory Board who are State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Advisory Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Advisory Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(g) Duties. – The Advisory Board shall provide consultation to the Authority with respect to the advancement, administration, and operation of the HIE Network and on matters pertaining to health information technology and exchange, generally. In carrying out its responsibilities, the

Advisory Board may form committees of the Advisory Board to examine particular issues related to the advancement, administration, or operation of the HIE Network."

SECTION 11.(a) G.S. 135-48.54 reads as rewritten:

"§ 135-48.54. Optional participation for charter schools operated by private nonprofit corporations.

~~(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after October 28, 1998, and shall be filed with the Plan and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, membership in the Plan is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, membership in the Plan is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under [former] G.S. 115C 238.29D in 1997 or 1998.~~

(b) No later than ~~30 days~~two years after both parties have signed the written charter under G.S. 115C-218.15, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing and filed with the Plan and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service.~~This subsection applies to charter schools that receive State Board of Education approval under [former] G.S. 115C 238.29D [or G.S. 115C 218.5] after 1998.~~

(b1) A charter school making an election to become a participating employing unit in the Plan under this section shall provide notice of the intent to make that election six months prior to making the election; provided that the Plan shall not prohibit a charter school from becoming a participating employing unit solely because that charter school did not provide this notice.

(c) A board's election to become a participating employer in the Plan under this section is irrevocable and shall require all eligible employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to become a participating employer in the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan on account of employment with a charter school.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to become a participating employer in the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

SECTION 11.(b) Notwithstanding the time limitation contained in G.S. 135-48.54, as amended by Section 11(a) of this act, any charter school that has been chartered in accordance with Article 14A of Chapter 115C of the General Statutes that has not voluntarily elected to become a participating employing unit in the State Health Plan for Teachers and State Employees (Plan) as of the effective date of this act may elect to become a participating employing unit in the Plan within two years of the effective date of this act. The election authorized by this section shall be made in accordance with all other requirements of G.S. 135-48.54. A charter school making an election to become a participating employing unit in the Plan under this section shall provide notice of the intent to make that election six months prior to making the election;

provided that the Plan shall not prohibit a charter school from becoming a participating employing unit solely because that charter school did not provide this notice.

SECTION 12. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:46 a.m. this 25th day of June, 2018