

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 399
Education/Higher Education Committee Substitute Adopted 4/17/19
Pensions and Retirement and Aging Committee Substitute Adopted 5/6/19
House Committee Substitute Favorable 6/18/19

Short Title: Rehire High-Need Teachers.

(Public)

Sponsors:

Referred to:

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR RETIRED TEACHERS TO RETURN TO WORK IN HIGH-NEED
3 SCHOOLS WITHOUT ADVERSELY IMPACTING THE RETIRED TEACHERS'
4 BENEFITS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 20 of Chapter 115C of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 115C-302.4. High-need retired teachers.**

9 (a) Definitions. – The following definitions apply in this section:

10 (1) High-need retired teacher. – A beneficiary of the Teachers' and State
11 Employees' Retirement System of North Carolina who meets both of the
12 following requirements:

- 13 a. Retired on or before February 1, 2019, after attaining (i) the age of at
14 least 65 with five years of creditable service, (ii) the age of at least 60
15 with 25 years of creditable service, or (iii) 30 years of creditable
16 service.
17 b. Is reemployed by a local board of education to teach at a high-need
18 school.

19 (2) High-need school. – A school that, at any point on or after July 1, 2017, meets
20 one of the following criteria:

- 21 a. Is a Title I school. As used in this sub-subdivision, a Title I school is a
22 school identified under Part A of Title I of the Elementary and
23 Secondary Education Act of 1965, as amended.
24 b. Receives an overall school performance grade of D or F, as calculated
25 by the State Board of Education pursuant to G.S. 115C-83.15(d).

26 (3) STEM. – Science, technology, engineering, and mathematics.

27 (b) Salary Level. – A high-need retired teacher shall be compensated as follows:

28 (1) Except as provided in subdivision (2) of this subsection, a high-need retired
29 teacher shall be paid on the first step of the teacher salary schedule.

30 (2) If a high-need retired teacher serves as a teacher in any of the following
31 licensure areas, he or she shall be paid on the sixth step of the teacher salary
32 schedule:

- 33 a. STEM.
34 b. Special education.



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1 (c) No State Salary Supplements or Increase in Salary. – A high-need retired teacher shall
2 not receive any State salary supplement or State bonus. A high-need retired teacher shall not
3 move beyond the salary steps prescribed by subsection (b) of this section, regardless of the length
4 of time spent as a high-need retired teacher.

5 (d) Local Salary Supplement. – A high-need retired teacher shall receive any local salary
6 supplements that are given to employees of the local board of education.

7 (e) Term of Contract. – A contract between the local board of education and a high-need
8 retired teacher shall be for a term of no more than one school year.

9 (f) Identification of STEM and Special Education Licensure Areas. – The Superintendent
10 of Public Instruction shall identify and provide to each local school administrative unit a list of
11 STEM and special education licensure areas that qualify for reemployment pursuant to
12 subdivision (b)(2) of this section. Local school administrative units shall make the list of STEM
13 and special education licensure areas available to high-need retired teachers."

14 **SECTION 2.(a)** G.S. 135-3(8) is amended by adding a new sub-subdivision to read:

15 "g. Notwithstanding sub-subdivisions c. and d. of this subdivision, the
16 computation of postretirement earnings of a beneficiary under this
17 subdivision, who retired on or before February 1, 2019, and who has
18 been retired at least six months, shall not include earnings while the
19 beneficiary is employed to teach as a high-need retired teacher, as
20 defined under G.S. 115C-302.4(a)(1). The Department of Public
21 Instruction shall certify to the Retirement System that a beneficiary is
22 employed to teach by a local board of education as a high-need retired
23 teacher, as defined under G.S. 115C-302.4(a)(1).

24 Beneficiaries employed under this sub-subdivision are not entitled
25 to any benefits otherwise provided under this Chapter as a result of this
26 period of employment."

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

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

50 **SECTION 3.** G.S. 135-1(10) reads as rewritten:

1 "(10) "Employee" shall mean all full-time employees, agents or officers of the State
2 of North Carolina or any of its departments, bureaus and institutions other than
3 educational, whether such employees are elected, appointed or employed:
4 Provided that the term "employee" shall not include any person who is a
5 member of the Consolidated Judicial Retirement System, any member of the
6 General Assembly or Assembly, any part-time or temporary ~~employee-~~
7 ~~employee, or any high-need retired teacher as defined under~~
8 G.S. 115C-302.4(a)(1). Notwithstanding any other provision of law,
9 "employee" shall include all employees of the General Assembly except
10 participants in the Legislative Intern Program, pages, and beneficiaries in
11 receipt of a monthly retirement allowance under this Chapter who are
12 reemployed on a temporary basis. "Employee" also includes any participant
13 whose employment is interrupted by reason of service in the Uniformed
14 Services, as that term is defined in section 4303(16) of the Uniformed Services
15 Employment and Reemployment Rights Act, Public Law 103-353, if that
16 participant was an employee at the time of the interruption; if the participant
17 does not return immediately after that service to employment with a covered
18 employer in this System, then the participant shall be deemed "in service" until
19 the date on which the participant was first eligible to be separated or released
20 from his or her involuntary military service. In all cases of doubt, the Board
21 of Trustees shall determine whether any person is an employee as defined in
22 this Chapter. "Employee" shall also mean every full-time civilian employee
23 of the North Carolina National Guard who is employed pursuant to section
24 709 of Title 32 of the United States Code and paid from federal appropriated
25 funds, but held by the federal authorities not to be a federal employee:
26 Provided, however, that the authority or agency paying the salaries of such
27 employees shall deduct or cause to be deducted from each employee's salary
28 the employee's contribution in accordance with applicable provisions of
29 G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement
30 System; coverage of employees described in this sentence shall commence
31 upon the first day of the calendar year or fiscal year, whichever is earlier, next
32 following the date of execution of an agreement between the Secretary of
33 Defense of the United States and the Adjutant General of the State acting for
34 the Governor in behalf of the State, but no credit shall be allowed pursuant to
35 this sentence for any service previously rendered in the above-described
36 capacity as a civilian employee of the North Carolina National Guard:
37 Provided, further, that the Adjutant General, in the Adjutant General's
38 discretion, may terminate the Retirement System coverage of the
39 above-described North Carolina National Guard employees if a federal
40 retirement system is established for such employees and the Adjutant General
41 elects to secure coverage of such employees under such federal retirement
42 system. Any full-time civilian employee of the North Carolina National Guard
43 described above who is now or hereafter may become a member of the
44 Retirement System may secure Retirement System credit for such service as
45 a North Carolina National Guard civilian employee for the period preceding
46 the time when such employees became eligible for Retirement System
47 coverage by paying to the Retirement System an amount equal to that which
48 would have constituted employee contributions if the employee had been a
49 member during the years of ineligibility, plus interest. Employees of State
50 agencies, departments, institutions, boards, and commissions who are
51 employed in permanent job positions on a recurring basis must work at least

1 30 hours per week for nine or more months per calendar year in order to be
2 covered by the provisions of this ~~subdivision~~-subdivision, except that no
3 high-need retired teacher as defined under G.S. 115C-302.4(a)(1) shall be
4 considered an employee. On and after August 1, 2001, a person who is a
5 nonimmigrant alien and who otherwise meets the requirements of this
6 subdivision shall not be excluded from the definition of "employee" solely
7 because the person holds a temporary or time-limited visa."

8 **SECTION 4.** G.S. 135-48.40(b)(1a) reads as rewritten:

9 "(1a) All retirees who (i) are employed by an employing unit that elects to be
10 covered by this subdivision, (ii) do not qualify for coverage under subdivision
11 (1) of this subsection, and (iii) are determined to be "full-time" by their
12 employing unit in accordance with section 4980H of the Internal Revenue
13 Code and the applicable regulations, as ~~amended~~-amended, or are high-need
14 retired teachers, as defined under G.S. 115C-302.4(a)(1). The employing unit
15 shall pay the employer premiums for retirees who enroll under this
16 subdivision."

17 **SECTION 5.(a)** The State Treasurer shall seek a private letter ruling from the
18 Internal Revenue Service to determine if the provisions of this section relating to the computation
19 of postretirement earnings of retired teachers jeopardize the status of the Teachers' and State
20 Employees' Retirement System.

21 **SECTION 5.(b)** If the Internal Revenue Service determines that the provisions of
22 G.S. 135-3(8)g., as enacted by this section, relating to the computation of postretirement earnings
23 of retired teachers jeopardize the status of the Teachers' and State Employees' Retirement System
24 of North Carolina under the Internal Revenue Code, then this section is repealed 30 days from
25 receipt of that determination by the State Treasurer. Upon receipt of that determination, the State
26 Treasurer shall notify the Revisor of Statutes of the determination and the date of receipt. Within
27 three business days of receipt of the determination, the State Treasurer shall notify all local school
28 administrative units of the repeal of this section and shall publicly notice the receipt of this
29 information on the Department of State Treasurer's Web site. Within three business days of
30 receipt of the notice from the State Treasurer, a local school administrative unit shall notify all
31 high-need retired teachers employed by its local board of education of the repeal of this section.

32 **SECTION 5.(c)** Notwithstanding any other provision of law to the contrary, in order
33 to pay costs associated with the administration of the provisions of this section, the Retirement
34 Systems Division of the Department of State Treasurer may increase receipts from the retirement
35 assets of the Teachers' and State Employees' Retirement System or pay costs associated with the
36 administration directly from the retirement assets. Costs associated with the administration of the
37 provisions of this section shall not exceed fifty thousand dollars (\$50,000) to obtain the private
38 letter ruling from the Internal Revenue Service required under subsection (a) of this section.

39 **SECTION 5.(d)** Any beneficiary that is employed to teach by a local board of
40 education as a high-need retired teacher, as defined in G.S. 115C-302.4(a)(1), shall not be eligible
41 to elect into a position that would lead him or her to be eligible to accrue any additional benefits
42 under G.S. 135-3(8). Any failure of a local board of education or a beneficiary to comply with
43 the foregoing shall be corrected by the Retirement System as it determines may be appropriate
44 under State and federal law. Any costs of the correction, as determined by the Retirement System,
45 shall be the sole responsibility of the local board of education and shall be transferred to the
46 Pension Accumulation Fund under G.S. 135-8, under rules adopted by the Board of Trustees.

47 **SECTION 6.** This act becomes effective July 1, 2019, and expires June 30, 2021.