

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 1084
May 26, 2022
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40691-MGp-199

Short Title: Employer Payments for Omitted Membership Svc. (Public)

Sponsors: Representative Torbett.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING AN EMPLOYER PARTICIPATING IN THE TEACHERS' AND
3 STATE EMPLOYEES' RETIREMENT SYSTEM OR THE LOCAL GOVERNMENTAL
4 EMPLOYEES' RETIREMENT SYSTEM TO PAY THE FULL COST FOR OMITTED
5 MEMBERSHIP SERVICE WHEN THE OMISSION IS DUE TO AN EMPLOYER
6 ERROR.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 135-4(v) reads as rewritten:

9 "(v) Omitted Membership Service. – A member who had service as an employee as
10 defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and
11 who was omitted from contributing membership through error may be allowed membership
12 service, after submitting clear and convincing evidence of the error, as follows:

- 13 (1) Within 90 days of the omission, by the payment of employee and employer
14 contributions that would have been paid; or
15 (2) After 90 days and prior to three years of the omission, by the payment of the
16 employee and employer contributions that would have been paid plus interest
17 compounded annually at a rate equal to the greater of the average yield on the
18 pension accumulation fund for the preceding calendar year or the actuarial
19 investment rate-of-return assumption, as adopted by the Board of Trustees; or
20 (3) After three years of the omission, by the payment of an amount equal to the
21 full cost of the service credits calculated on the basis of the assumptions used
22 for the purposes of the actuarial valuation of the system's liabilities, and shall
23 take into account the additional retirement allowance arising on account of
24 such additional service credit commencing at the earliest age at which a
25 member could retire on an unreduced retirement allowance, as determined by
26 the Board of Trustees upon the advice of the consulting actuary, plus an
27 administrative fee to be set by the Board of Trustees. Notwithstanding the
28 foregoing provisions of this subdivision that provide for the purchase of
29 service credits, the terms "full cost", "full liability", and "full actuarial cost"
30 include assumed annual post-retirement allowance increases, as determined
31 by the Board of Trustees, from the earliest age at which a member could retire
32 on an unreduced service allowance.

33 Nothing contained in this subsection shall prevent an employer or member from paying all
34 or a part of the cost of the omitted membership service; ~~and to provided, however, that an~~
35 employer shall pay the full cost of the omitted membership service when discovered three or
36 more years after the omission if the employer acknowledges, in writing, that the omission was



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1 caused by the employer's error. To the extent paid by the employer, the cost paid by the employer
2 shall be credited to the pension accumulation fund; and to the extent paid by the member, the
3 cost paid by the members shall be credited to the member's annuity savings account; provided,
4 however, an employer does not discriminate against any member or group of members in his
5 employ in paying all or any part of the cost of the omitted membership service."

6 **SECTION 2.** G.S. 128-26(m) reads as rewritten:

7 "(m) Omitted Membership Service. – A member who had service as an employee as
8 defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and
9 who was omitted from contributing membership through error may be allowed membership
10 service, after submitting clear and convincing evidence of the error, as follows:

- 11 (1) within 90 days of the omission, by the payment of employee and employer
12 contributions that would have been paid; or
- 13 (2) after 90 days and prior to three years of the omission, by the payment of the
14 employee and employer contributions that would have been paid plus interest
15 compounded annually at a rate equal to the greater of the average yield on the
16 pension accumulation fund for the preceding calendar year or the actuarial
17 investment rate-of-return assumption, as adopted by the Board of Trustees; or
- 18 (3) after three years of the omission, by the payment of an amount equal to the
19 full cost of the service credits calculated on the basis of the assumptions used
20 for the purposes of the actuarial valuation of the System's liabilities, and shall
21 take into account the additional retirement allowance arising on account of
22 such additional service credit commencing at the earliest age at which a
23 member could retire on an unreduced retirement allowance, as determined by
24 the Board of Trustees upon the advice of the consulting actuary, plus an
25 administrative fee to be set by the Board of Trustees. Notwithstanding the
26 foregoing provisions of this subdivision that provide for the purchase of
27 service credits, the terms "full cost", "full liability", and "full actuarial cost"
28 include assumed annual post-retirement allowance increases, as determined
29 by the Board of Trustees, from the earliest age at which a member could retire
30 on an unreduced service allowance.

31 Nothing contained in this subsection shall prevent an employer or member from paying all
32 or a part of the cost of the omitted membership service; ~~and to~~ provided, however, that an
33 employer shall pay the full cost of the omitted membership service when discovered three or
34 more years after the omission if the employer acknowledges, in writing, that the omission was
35 caused by the employer's error. To the extent paid by the employer, the cost paid by the employer
36 shall be credited to the pension accumulation fund; and to the extent paid by the member, the
37 cost paid by the members shall be credited to the member's annuity savings account; provided,
38 however, an employer does not discriminate against any member or group of members in his
39 employ in paying all or any part of the cost of the omitted membership service. In the event an
40 employer pays all or a part of the full actuarial cost as determined in subdivision (3) of this
41 subsection, the employer may, at its option, pay such amount either in a lump sum or by
42 increasing its "accrued liability contribution" for the remainder of its accrued liability period. In
43 the event an employer has satisfied its accrued liability contribution, the employer may amortize
44 its portion of the full actuarial cost over a period not to exceed ten years. The expense of making
45 an actuarial valuation to determine the accrued liability contribution or the additional accrued
46 liability contribution, required to amortize the portion of the full actuarial cost paid by the
47 employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation."

48 **SECTION 3.** This act becomes effective July 1, 2022, and applies to erroneously
49 omitted membership service discovered on or after that date.