

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 168
Committee Substitute Favorable 3/17/21
Committee Substitute #2 Favorable 3/23/21
Senate Pensions and Retirement and Aging Committee Substitute Adopted 6/10/21

Short Title: Retirement Administrative Changes Act of 2021.-AB (Public)

Sponsors:

Referred to:

March 1, 2021

1 A BILL TO BE ENTITLED
2 AN ACT MAKING ADMINISTRATIVE CHANGES RELATED TO
3 CONTRIBUTION-BASED BENEFIT CAP LIABILITIES UNDER THE LOCAL
4 GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM (LGERS) AND THE
5 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM (TSERS);
6 CLARIFYING WITHDRAWAL LIABILITIES UNDER LGERS AND TSERS;
7 CLARIFYING AND STANDARDIZING THE DEFINITION OF "ACTUARIAL
8 EQUIVALENT" UNDER LGERS AND TSERS; REQUIRING EMPLOYING UNITS TO
9 ADOPT WRITTEN POLICIES FOR SPECIAL SEPARATION BUYOUTS FOR LAW
10 ENFORCEMENT OFFICERS; GIVING THE DEPARTMENT OF STATE TREASURER
11 AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES LIMITED
12 AUTHORITY TO ADOPT ADMINISTRATIVE FEES UNDER CERTAIN PLANS;
13 CLAWING BACK DISABILITY INCOME PLAN OVERPAYMENTS UNDER THE
14 OPTIONAL RETIREMENT PROGRAM; AND ADDRESSING SPECIAL RETIREMENT
15 ALLOWANCE PAYMENTS UPON THE DEATH OF THE DESIGNATED
16 BENEFICIARY.

17 The General Assembly of North Carolina enacts:

18
19 **PART I. ADMINISTRATIVE CHANGES RELATED TO CONTRIBUTION-BASED**
20 **BENEFIT CAP LIABILITIES UNDER THE LOCAL GOVERNMENTAL**
21 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**
22 **EMPLOYEES' RETIREMENT SYSTEM**

23
24 **AUTHORIZATION FOR LOCAL GOVERNMENT EMPLOYERS TO PRE-FUND**
25 **CONTRIBUTION-BASED BENEFIT CAP LIABILITIES TO THE LOCAL**
26 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM**

27 **SECTION 1.1.** G.S. 159-30.1(a) reads as rewritten:

28 **"§ 159-30.1. Trust for other post-employment benefits.**

29 (a) Trust. – A local government, a public authority, an entity eligible to participate in the
30 Local Government ~~Employee's~~ Employees' Retirement System, or a local school administrative
31 unit may establish and fund an irrevocable trust for the purpose of paying (i) post-employment
32 benefits for which the entity is ~~liable~~ liable or (ii) contribution-based benefit cap liabilities to the
33 Local Governmental Employees' Retirement System. The irrevocable trust must be established
34 by resolution or ordinance of the entity's governing board. The resolution or ordinance must state



1 the purposes for which the trust is created and the method of determining and selecting the Fund's
2 trustees. The resolution or ordinance establishing the trust may be amended from time to time,
3 but an amendment may not authorize the use of monies in the trust for a purpose not stated in the
4 resolution or ordinance establishing the trust."
5

6 **CLARIFICATION OF WHEN CONTRIBUTION-BASED BENEFIT CAP LIABILITY**
7 **PAYMENTS ARE DUE FOR PURPOSES OF TRIGGERING INTERCEPTIONS OF**
8 **STATE APPROPRIATIONS FROM EMPLOYING UNITS UNDER THE LOCAL**
9 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**
10 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

11 **SECTION 1.3.(a)** G.S. 128-30(g)(3) reads as rewritten:

12 "(3) In the event the employee or employer contributions required under this
13 section are not received by the date set by the Board of Trustees and provided
14 that a one-time exception has not been agreed upon in advance due to exigent
15 circumstances, the Board shall assess the employer with a penalty, in lieu of
16 interest, of 1% per month with a minimum penalty of twenty-five dollars
17 (\$25.00). The Board may waive one penalty per employer every five years if
18 the Board finds that the employer has consistently demonstrated good-faith
19 efforts to comply with the set deadline. If within 90 days after request therefor
20 by the Board any employer shall not have provided the System with the
21 records and other information required hereunder or if the full accrued amount
22 of the contributions provided for under this section due from members
23 employed by an employer or from an employer shall not have been received
24 by the System from the chief fiscal officer of such employer within 30 days
25 after the last due date as herein provided, then, notwithstanding anything
26 herein or in the provisions of any other law to the contrary, upon notification
27 by the Board to the State Treasurer as to the default of such employer as herein
28 provided, any distributions which might otherwise be made to such employer,
29 or the municipality or county of which such employer is an integral part, from
30 any funds of the State or any funds collected by the State shall be withheld
31 from such employer until notice from the Board to the State Treasurer that
32 such employer is no longer in default.

33 In the event that an employer fails to submit payment of any required
34 contributions or payments to the Retirement Systems Division, other than the
35 one percent (1%) payment provided for in the first paragraph of this
36 subdivision, within 90 days after the date set by the Board of Trustees, the
37 Board shall notify the State Treasurer of its intent to collect the delinquent
38 contributions and other payments due to the Retirement Systems Division and
39 request an interception of State appropriations due to the participating
40 employer.

41 Except as provided in this subdivision, upon notification by the Board of
42 Trustees to the State Treasurer and the Office of State Budget and
43 Management as to the default of the employer, the Office of State Budget and
44 Management shall withhold from any State appropriation due to that employer
45 an amount equal to the sum of all delinquent contributions and other debts due
46 to the Retirement Systems Division and shall transmit that amount to the
47 Retirement Systems Division. For the purposes of this subsection, the date set
48 by the Board of Trustees for payment of the contribution-based benefit cap
49 liability shall be 12 months after the member's effective date of
50 ~~retirement~~ retirement, or the first day of the month coincident with or next
51 following six months after the date of the invoice, whichever is later."

1 **SECTION 1.3.(b)** G.S. 135-8(f)(3) reads as rewritten:

2 "(3) In the event the employee or employer contributions required under this
3 section are not received by the date set by the Board of Trustees and provided
4 that a one-time exception has not been agreed upon in advance due to exigent
5 circumstances, the Board shall assess the employer with a penalty, in lieu of
6 interest, of 1% per month with a minimum penalty of twenty-five dollars
7 (\$25.00). The Board may waive one penalty per employer every five years if
8 the Board finds that the employer has consistently demonstrated good-faith
9 efforts to comply with the set deadline. If within 90 days after request therefor
10 by the Board any employer shall not have provided the System with the
11 records and other information required hereunder or if the full accrued amount
12 of the contributions provided for under this section due from members
13 employed by an employer or from an employer other than the State shall not
14 have been received by the System from the chief fiscal officer of such
15 employer within 30 days after the last due date as herein provided, then,
16 notwithstanding anything herein or in the provisions of any other law to the
17 contrary, upon notification by the Board to the State Treasurer as to the default
18 of such employer as herein provided, any distributions which might otherwise
19 be made to such employer from any funds of the State shall be withheld from
20 such employer until notice from the Board to the State Treasurer that such
21 employer is no longer in default.

22 In the event that an employer fails to submit payment of any required
23 contributions or payments to the Retirement Systems Division, other than the
24 one percent (1%) payment provided for in the first paragraph of this
25 subdivision, within 90 days after the date set by the Board of Trustees, the
26 Board shall notify the State Treasurer of its intent to collect the delinquent
27 contributions and other payments due to the Retirement Systems Division and
28 request an interception of State appropriations due to the participating
29 employer.

30 Except as provided in this subdivision, upon notification by the Board of
31 Trustees to the State Treasurer and the Office of State Budget and
32 Management as to the default of the employer, the Office of State Budget and
33 Management shall withhold from any State appropriation due to that employer
34 an amount equal to the sum of all delinquent contributions and other debts due
35 to the Retirement Systems Division and shall transmit that amount to the
36 Retirement Systems Division. For the purposes of this subsection, the date set
37 by the Board of Trustees for payment of the contribution-based benefit cap
38 liability shall be 12 months after the member's effective date of
39 ~~retirement~~retirement, or the first day of the month coincident with or next
40 following six months after the date of the invoice, whichever is later."

41 **SECTION 1.3.(c)** This section applies to contribution-based benefit cap liability
42 payments due from an employer on or after the effective date of this act.

43
44 **PART II. CLARIFICATION OF WITHDRAWAL LIABILITIES UNDER THE LOCAL**
45 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**
46 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

47 **SECTION 2.1.(a)** G.S. 128-30(i) reads as rewritten:

48 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is allowed
49 to cease participation in the Retirement System by the General Assembly or by sale, dissolution,
50 or otherwise changing to a business or legal form not eligible for participation as an employer in
51 the Retirement System under federal law shall do the following:

1 "

2 **SECTION 2.1.(b)** G.S. 135-8(i) reads as rewritten:

3 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is allowed
4 to cease participation in the Retirement System by the ~~General Assembly~~ Assembly; by sale,
5 dissolution, or otherwise changing to a business or legal form not eligible for participation as an
6 employer in the Retirement System under federal law; or as otherwise provided in this Chapter,
7 through its governing body, may declare its intent to withdraw completely from the Retirement
8 System as follows:

9 "

10 **SECTION 2.1.(c)** This section applies to a participation withdrawal by an employing
11 unit on or after the effective date of this act.

12
13 **PART III. CLARIFICATION AND STANDARDIZATION OF THE DEFINITION OF**
14 **"ACTUARIAL EQUIVALENT" UNDER THE LOCAL GOVERNMENTAL**
15 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**
16 **EMPLOYEES' RETIREMENT SYSTEM**

17 **SECTION 3.1.(a)** G.S. 128-21(2) reads as rewritten:

18 "(2) "Actuarial equivalent" shall mean a benefit of equal value when computed at
19 ~~regular interest~~ upon the basis of ~~such mortality tables~~ actuarial assumptions
20 as shall be adopted by the Board of Trustees."

21 **SECTION 3.1.(b)** G.S. 135-1(2) reads as rewritten:

22 "(2) "Actuarial equivalent" shall mean a benefit of equal value when computed
23 upon the basis of ~~such mortality tables~~ actuarial assumptions as shall be
24 adopted by the Board of ~~Trustees, and regular interest.~~ Trustees."

25 **SECTION 3.1.(c)** This section applies to benefit calculations performed on or after
26 the effective date of this act.

27
28 **PART IV. MANDATORY ADOPTION OF WRITTEN POLICIES FOR CERTAIN**
29 **SPECIAL SEPARATION BUYOUTS FOR LAW ENFORCEMENT OFFICERS**

30 **SECTION 4.1.(a)** G.S. 143-166.43 reads as rewritten:

31 **"§ 143-166.43. Separation buyouts for law enforcement officers.**

32 (a) Any State department, agency, or institution, or any local government employer, may,
33 in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves
34 employment prior to reaching the officer's eligibility for a separation allowance under this
35 Article. The lump sum separation buyout shall be paid from funds available and shall not exceed
36 the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41
37 or G.S. 143-166.42.

38 (b) Prior to the transfer by a State department, agency, or institution, or any local
39 government employer, of a lump sum separation buyout described in subsection (a) of this section
40 to the Teachers' and State Employees' Retirement System (TSERS) pursuant to G.S. 135-5(m2)
41 or to the Local Governmental Employees' Retirement System (LGERS) pursuant to
42 G.S. 128-27(m2), the State department, agency, or institution, or the local government employer,
43 shall have in place a written policy duly adopted by the employing unit that does not allow
44 employees to choose between accepting the lump sum separation buyout as a cash payment or
45 transferring the lump sum separation buyout to TSERS or LGERS."

46 **SECTION 4.1.(b)** This section applies to lump sum separation buyouts offered to
47 law enforcement officers on or after the effective date of this act by a State department, agency,
48 or institution, or any local government employer.

49
50 **PART V. AUTHORIZATION FOR THE DEPARTMENT OF STATE TREASURER**
51 **AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES TO ADOPT**

1 **ADMINISTRATIVE FEES UNDER THE SUPPLEMENTAL RETIREMENT PLAN OF**
2 **NORTH CAROLINA, THE NORTH CAROLINA DEFERRED COMPENSATION**
3 **PLAN, AND THE NORTH CAROLINA PUBLIC SCHOOL TEACHERS' AND**
4 **PROFESSIONAL EDUCATORS' INVESTMENT PLAN**

5 SECTION 5.1.(a) G.S. 135-91 reads as rewritten:

6 "**§ 135-91. Administration.**

7 ...

8 (c) The Department of State Treasurer and the Board of Trustees shall have full power
9 and authority to adopt rules and regulations for the administration of the Plan, provided they are
10 not inconsistent with the provisions of this Article.

11 (c1) Subject to the limitations specified in this subsection, the Department of State
12 Treasurer and the Board of Trustees may adopt a new or amended rule to impose or change
13 administrative fees under the Plan, provided that the rule is adopted at a public meeting that
14 complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such
15 public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the
16 Department of State Treasurer's public website and, subject to the approval of the Department of
17 State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day
18 period preceding the public meeting at which the rule is to be adopted, the Department of State
19 Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the
20 adoption or amendment of a rule concerning the imposition of, or a change to, an administrative
21 fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject
22 to the approval of the Department of State Treasurer, provide a link or a copy of the adopted rule
23 to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect
24 until amended or repealed by the Department of State Treasurer and the Board of Trustees and
25 are not subject to Article 2A of Chapter 150B of the General Statutes. This subsection applies
26 only to rules regarding administrative fees charged by the Department of State Treasurer and the
27 Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina
28 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional
29 Educators' Investment Plan. The Department of State Treasurer and the Board of Trustees may
30 not adopt a new or amended rule to impose or change an administrative fee under the Plan that
31 exceeds the following amounts:

32 (1) Twenty-five thousandths percent (0.025%) of assets for the Supplemental
33 Retirement Income Plan of North Carolina.

34 (2) Twenty-five thousandths percent (0.025%) of assets for the North Carolina
35 Deferred Compensation Plan.

36 (3) Five hundredths percent (0.05%) of assets for the North Carolina Public
37 School Teachers' and Professional Educators' Investment Plan.

38 (c2) The Department of State Treasurer and Board of Trustees may appoint those agents,
39 contractors, employees and committees as they deem advisable to carry out the terms and
40 conditions of the Plan. In order to promote achievement of long-term investment objectives and
41 to retain key public employees with investment functions, the Board of Trustees shall authorize
42 the State Treasurer to establish market-oriented compensation plans, including salaries and
43 performance-related bonuses, for employees possessing specialized skills or knowledge
44 necessary for the proper administration of the Plan, who shall be exempt from the classification
45 and compensation rules established by the Office of State Human Resources. The design and
46 administration of those compensation plans shall be based on compensation studies conducted
47 by a nationally recognized firm specializing in public fund investment compensation. The
48 compensation and other associated employee benefits shall be apportioned directly from the Plan.

49"

50 SECTION 5.1.(b) Any administrative fee established or changed by the Department
51 of State Treasurer and the Board of Trustees pursuant to rules adopted under G.S. 135-91(c1), as

1 amended by this section, shall apply prospectively to any amounts owed on or after the effective
2 date of this act to the Supplemental Retirement Plan of North Carolina, the North Carolina
3 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional
4 Educators' Investment Plan.

5
6 **PART VI. CLAWBACK OF NORTH CAROLINA DISABILITY INCOME PLAN**
7 **OVERPAYMENTS**

8 **SECTION 6.1.(a)** G.S. 135-107 reads as rewritten:

9 **"§ 135-107. Optional Retirement Program.**

10 (a) Any participant of the Optional Retirement Program who becomes a beneficiary
11 under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary
12 is disabled and is in receipt of a primary Social Security disability benefit until the time the
13 beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary
14 elected to be a member of the Teachers' and State Employees' Retirement System, and shall
15 receive no service accruals as otherwise provided members of the Retirement System under the
16 provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional
17 Retirement Program has not been approved and is not in receipt of a primary Social Security
18 disability benefit, the long-term disability benefit shall cease after the first 36 months of the
19 long-term disability period. However, a beneficiary shall be entitled to a restoration of the
20 long-term disability benefit in the event the Social Security Administration grants a retroactive
21 approval for primary Social Security disability benefits with a benefit effective date within the
22 first 36 months of the long-term disability period. In such event, the long-term disability benefit
23 shall be restored retroactively to the date of cessation.

24 (b) If a participant of the Optional Retirement Program owes an overpayment to the
25 Disability Income Plan at the time the beneficiary would first qualify for an unreduced retirement
26 benefit had the member elected to be a member of the Teachers' and State Employees' Retirement
27 System, then the participant shall pay the total overpayment amount due to the Disability Income
28 Plan. If the participant fails to pay the total amount of the overpayment due to the Disability
29 Income Plan within six months after the earliest age at which the member could retire on an
30 unreduced retirement allowance, then the participant shall not be allowed to enroll in a new year
31 of coverage under the North Carolina State Health Plan for Teachers and State Employees until
32 one of the following occurs:

33 (1) The Disability Income Plan receives from the participant payment in full of
34 the total overpayment due.

35 (2) The participant has made payment arrangements approved by the Executive
36 Director of the Retirement System."

37 **SECTION 6.1.(b)** This section applies to overpayments owed on or after the
38 effective date of this act to the North Carolina Disability Income Plan.

39
40 **PART VII. SPECIAL RETIREMENT ALLOWANCE PAYMENTS UPON THE DEATH**
41 **OF THE DESIGNATED BENEFICIARY**

42 **SECTION 7.1.(a)** G.S. 128-27(m2)(1) reads as rewritten:

43 "(1) A member may elect to receive the special retirement allowance for life but
44 with payments guaranteed for a number of months to be specified by the Board
45 of Trustees. Under this plan, if the member dies before the expiration of the
46 specified number of months, the special retirement allowance will continue to
47 be paid to the member's designated beneficiary for the life of the beneficiary,
48 if Option 2, 3 or 6 is selected. If the member's designated beneficiary under
49 Option 2, 3 or 6 begins receiving monthly payments and dies before the
50 specified number of monthly payments have been made in combination to the
51 member and beneficiary, a one-time payment will be paid to the member's

1 legal representatives equal to the initial monthly special retirement allowance,
2 multiplied by the specified number of months, less the total of the monthly
3 payments made to the member and beneficiary. If Option 2, 3 or 6 is not
4 selected, selected, and the member dies before the expiration of the specified
5 number of months, the member's designated beneficiary will receive the
6 benefit only for the remainder of the specified number of months. If the
7 member's designated beneficiary dies before receiving payments for the
8 specified number of months, any remaining payments will be paid to the
9 member's estate. a one-time payment equal to the initial monthly special
10 retirement allowance, multiplied by the specified number of months, less the
11 total of the monthly payments made to the member."

12 **SECTION 7.1.(b)** G.S. 135-5(m2)(1) reads as rewritten:

13 "(1) A member may elect to receive the special retirement allowance for life but
14 with payments guaranteed for a number of months to be specified by the Board
15 of Trustees. Under this plan, if the member dies before the expiration of the
16 specified number of months, the special retirement allowance will continue to
17 be paid to the member's designated beneficiary for the life of the beneficiary,
18 if Option 2, 3 or 6 is selected. If the member's designated beneficiary under
19 Option 2, 3 or 6 begins receiving monthly payments and dies before the
20 specified number of monthly payments have been made in combination to the
21 member and beneficiary, a one-time payment will be paid to the member's
22 legal representatives equal to the initial monthly special retirement allowance,
23 multiplied by the specified number of months, less the total of the monthly
24 payments made to the member and beneficiary. If Option 2, 3 or 6 is not
25 selected, selected, and the member dies before the expiration of the specified
26 number of months, the member's designated beneficiary will receive the
27 benefit only for the remainder of the specified number of months. If the
28 member's designated beneficiary dies before receiving payments for the
29 specified number of months, any remaining payments will be paid to the
30 member's estate. a one-time payment equal to the initial monthly special
31 retirement allowance, multiplied by the specified number of months, less the
32 total of the monthly payments made to the member."

33 **PART VIII. SEVERABILITY**

34 **SECTION 8.1.** If any provision of this act or its application is held invalid, the
35 invalidity does not affect other provisions or applications of this act that can be given effect
36 without the invalid provisions or application, and to this end the provisions of this act are
37 severable.
38

39 **PART IX. EFFECTIVE DATE**

40 **SECTION 9.1.** This act becomes effective July 1, 2021.
41