

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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SENATE BILL 276

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

Sponsors: Senators Alexander and Burgin (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 15, 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; AND  
13 CLAWING BACK DISABILITY INCOME PLAN OVERPAYMENTS UNDER THE  
14 OPTIONAL RETIREMENT PROGRAM.

15 The General Assembly of North Carolina enacts:

16  
17 **PART I. ADMINISTRATIVE CHANGES RELATED TO CONTRIBUTION-BASED**  
18 **BENEFIT CAP LIABILITIES UNDER THE LOCAL GOVERNMENTAL**  
19 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**  
20 **EMPLOYEES' RETIREMENT SYSTEM**

21  
22 **AUTHORIZATION FOR LOCAL GOVERNMENT EMPLOYERS TO PRE-FUND**  
23 **CONTRIBUTION-BASED BENEFIT CAP LIABILITIES TO THE LOCAL**  
24 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM**

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

26 "**§ 159-30.1. Trust for other post-employment benefits.**

27 (a) Trust. – A local government, a public authority, an entity eligible to participate in the  
28 Local Government ~~Employee's~~ Employees' Retirement System, or a local school administrative  
29 unit may establish and fund an irrevocable trust for the purpose of paying (i) post-employment  
30 benefits for which the entity is ~~liable~~ liable or (ii) contribution-based benefit cap liabilities to the  
31 Local Governmental Employees' Retirement System. The irrevocable trust must be established  
32 by resolution or ordinance of the entity's governing board. The resolution or ordinance must state  
33 the purposes for which the trust is created and the method of determining and selecting the Fund's  
34 trustees. The resolution or ordinance establishing the trust may be amended from time to time,  
35 but an amendment may not authorize the use of monies in the trust for a purpose not stated in the  
36 resolution or ordinance establishing the trust."



1  
2 **AUTHORIZATION TO COLLECT ADDITIONAL CONTRIBUTIONS FROM**  
3 **EMPLOYING UNITS UNDER THE TEACHERS' AND STATE EMPLOYEES'**  
4 **RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES'**  
5 **RETIREMENT SYSTEM FOR PENSION SPIKING LIABILITIES**

6 **SECTION 1.2.(a)** G.S. 128-30(d) is amended by adding a new subdivision to read:

7 "(4a) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of  
8 the fiscal year following 90 days after the assessment of a contribution-based  
9 benefit cap liability that is not paid as a lump-sum payment, the required  
10 employer contribution rate for an employer shall be adjusted to include an  
11 additional contribution amount equal to a rate per centum that is estimated to  
12 extinguish the contribution-based benefit cap liability on an amortization  
13 schedule selected by the Board that has been applied to unfunded liabilities in  
14 the most recent actuarial valuation."

15 **SECTION 1.2.(b)** G.S. 135-8(f) is amended by adding a new subdivision to read:

16 "(5) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of  
17 the fiscal year following 90 days after the assessment of a contribution-based  
18 benefit cap liability that is not paid as a lump-sum payment, the required  
19 employer contribution rate for an employer shall be adjusted to include an  
20 additional contribution amount equal to a rate per centum that is estimated to  
21 extinguish the contribution-based benefit cap liability on an amortization  
22 schedule selected by the Board that has been applied to unfunded liabilities in  
23 the most recent actuarial valuation."

24 **SECTION 1.2.(c)** This section applies to assessments imposed on or after the  
25 effective date of this act to reduce an employer's contribution-based benefit cap liability.  
26

27 **CLARIFICATION OF WHEN CONTRIBUTION-BASED BENEFIT CAP LIABILITY**  
28 **PAYMENTS ARE DUE FOR PURPOSES OF TRIGGERING INTERCEPTIONS OF**  
29 **STATE APPROPRIATIONS FROM EMPLOYING UNITS UNDER THE LOCAL**  
30 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**  
31 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

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

33 "(3) In the event the employee or employer contributions required under this  
34 section are not received by the date set by the Board of Trustees and provided  
35 that a one-time exception has not been agreed upon in advance due to exigent  
36 circumstances, the Board shall assess the employer with a penalty, in lieu of  
37 interest, of 1% per month with a minimum penalty of twenty-five dollars  
38 (\$25.00). The Board may waive one penalty per employer every five years if  
39 the Board finds that the employer has consistently demonstrated good-faith  
40 efforts to comply with the set deadline. If within 90 days after request therefor  
41 by the Board any employer shall not have provided the System with the  
42 records and other information required hereunder or if the full accrued amount  
43 of the contributions provided for under this section due from members  
44 employed by an employer or from an employer shall not have been received  
45 by the System from the chief fiscal officer of such employer within 30 days  
46 after the last due date as herein provided, then, notwithstanding anything  
47 herein or in the provisions of any other law to the contrary, upon notification  
48 by the Board to the State Treasurer as to the default of such employer as herein  
49 provided, any distributions which might otherwise be made to such employer,  
50 or the municipality or county of which such employer is an integral part, from  
51 any funds of the State or any funds collected by the State shall be withheld

1 from such employer until notice from the Board to the State Treasurer that  
2 such employer is no longer in default.

3 In the event that an employer fails to submit payment of any required  
4 contributions or payments to the Retirement Systems Division, other than the  
5 one percent (1%) payment provided for in the first paragraph of this  
6 subdivision, within 90 days after the date set by the Board of Trustees, the  
7 Board shall notify the State Treasurer of its intent to collect the delinquent  
8 contributions and other payments due to the Retirement Systems Division and  
9 request an interception of State appropriations due to the participating  
10 employer.

11 Except as provided in this subdivision, upon notification by the Board of  
12 Trustees to the State Treasurer and the Office of State Budget and  
13 Management as to the default of the employer, the Office of State Budget and  
14 Management shall withhold from any State appropriation due to that employer  
15 an amount equal to the sum of all delinquent contributions and other debts due  
16 to the Retirement Systems Division and shall transmit that amount to the  
17 Retirement Systems Division. For the purposes of this subsection, the date set  
18 by the Board of Trustees for payment of the contribution-based benefit cap  
19 liability shall be 12 months after the member's effective date of  
20 ~~retirement~~retirement, or the first day of the month coincident with or next  
21 following six months after the date of the invoice, whichever is later."

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

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

43 In the event that an employer fails to submit payment of any required  
44 contributions or payments to the Retirement Systems Division, other than the  
45 one percent (1%) payment provided for in the first paragraph of this  
46 subdivision, within 90 days after the date set by the Board of Trustees, the  
47 Board shall notify the State Treasurer of its intent to collect the delinquent  
48 contributions and other payments due to the Retirement Systems Division and  
49 request an interception of State appropriations due to the participating  
50 employer.

1 Except as provided in this subdivision, upon notification by the Board of  
2 Trustees to the State Treasurer and the Office of State Budget and  
3 Management as to the default of the employer, the Office of State Budget and  
4 Management shall withhold from any State appropriation due to that employer  
5 an amount equal to the sum of all delinquent contributions and other debts due  
6 to the Retirement Systems Division and shall transmit that amount to the  
7 Retirement Systems Division. For the purposes of this subsection, the date set  
8 by the Board of Trustees for payment of the contribution-based benefit cap  
9 liability shall be 12 months after the member's effective date of  
10 ~~retirement~~retirement, or the first day of the month coincident with or next  
11 following six months after the date of the invoice, whichever is later."

12 **SECTION 1.3.(c)** This section applies to contribution-based benefit cap liability  
13 payments due from an employer on or after the effective date of this act.  
14

15 **PART II. CLARIFICATION OF WITHDRAWAL LIABILITIES UNDER THE LOCAL**  
16 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**  
17 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

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

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

23 ...."

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

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

31 ...."

32 **SECTION 2.1.(c)** This section applies to a participation withdrawal by an employing  
33 unit on or after the effective date of this act.  
34

35 **PART III. CLARIFICATION AND STANDARDIZATION OF THE DEFINITION OF**  
36 **"ACTUARIAL EQUIVALENT" UNDER THE LOCAL GOVERNMENTAL**  
37 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**  
38 **EMPLOYEES' RETIREMENT SYSTEM**

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

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

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

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

47 **SECTION 3.1.(c)** This section applies to benefit calculations performed on or after  
48 the effective date of this act.  
49

50 **PART IV. MANDATORY ADOPTION OF WRITTEN POLICIES FOR CERTAIN**  
51 **SPECIAL SEPARATION BUYOUTS FOR LAW ENFORCEMENT OFFICERS**

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

2   "**§ 143-166.43. Separation buyouts for law enforcement officers.**

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

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

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

20  
21 **PART V. AUTHORIZATION FOR THE DEPARTMENT OF STATE TREASURER**  
22 **AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES TO ADOPT**  
23 **ADMINISTRATIVE FEES UNDER THE SUPPLEMENTAL RETIREMENT PLAN OF**  
24 **NORTH CAROLINA, THE NORTH CAROLINA DEFERRED COMPENSATION**  
25 **PLAN, AND THE NORTH CAROLINA PUBLIC SCHOOL TEACHERS' AND**  
26 **PROFESSIONAL EDUCATORS' INVESTMENT PLAN**

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

28   "**§ 135-91. Administration.**

29       ...

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

33       **(c1)** Subject to the limitations specified in this subsection, the Department of State  
34 Treasurer and the Board of Trustees may adopt a new or amended rule to impose or change  
35 administrative fees under the Plan, provided that the rule is adopted at a public meeting that  
36 complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such  
37 public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the  
38 Department of State Treasurer's public website and, subject to the approval of the Department of  
39 State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day  
40 period preceding the public meeting at which the rule is to be adopted, the Department of State  
41 Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the  
42 adoption or amendment of a rule concerning the imposition of, or a change to, an administrative  
43 fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject  
44 to the approval of the Department of State Treasurer, provide a link or a copy of the adopted rule  
45 to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect  
46 until amended or repealed by the Department of State Treasurer and the Board of Trustees and  
47 are not subject to Article 2A of Chapter 150B of the General Statutes. This subsection applies  
48 only to rules regarding administrative fees charged by the Department of State Treasurer and the  
49 Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina  
50 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional  
51 Educators' Investment Plan. The Department of State Treasurer and the Board of Trustees may

1 not adopt a new or amended rule to impose or change an administrative fee under the Plan that  
2 exceeds the following amounts:

3 (1) One-fourth percent (0.25%) of assets for the Supplemental Retirement Plan of  
4 North Carolina.

5 (2) One-fourth percent (0.25%) of assets for the North Carolina Deferred  
6 Compensation Plan.

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

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

20 ...."

21 **SECTION 5.1.(b)** Any administrative fee established or changed by the Department  
22 of State Treasurer and the Board of Trustees pursuant to rules adopted under G.S. 135-91(c1), as  
23 amended by this section, shall apply prospectively to any amounts owed on or after the effective  
24 date of this act to the Supplemental Retirement Plan of North Carolina, the North Carolina  
25 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional  
26 Educators' Investment Plan.

## 27 28 **PART VI. CLAWBACK OF NORTH CAROLINA DISABILITY INCOME PLAN** 29 **OVERPAYMENTS**

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

31 **"§ 135-107. Optional Retirement Program.**

32 (a) Any participant of the Optional Retirement Program who becomes a beneficiary  
33 under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary  
34 is disabled and is in receipt of a primary Social Security disability benefit until the time the  
35 beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary  
36 elected to be a member of the Teachers' and State Employees' Retirement System, and shall  
37 receive no service accruals as otherwise provided members of the Retirement System under the  
38 provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional  
39 Retirement Program has not been approved and is not in receipt of a primary Social Security  
40 disability benefit, the long-term disability benefit shall cease after the first 36 months of the  
41 long-term disability period. However, a beneficiary shall be entitled to a restoration of the  
42 long-term disability benefit in the event the Social Security Administration grants a retroactive  
43 approval for primary Social Security disability benefits with a benefit effective date within the  
44 first 36 months of the long-term disability period. In such event, the long-term disability benefit  
45 shall be restored retroactively to the date of cessation.

46 (b) If a participant of the Optional Retirement Program owes an overpayment to the  
47 Disability Income Plan at the time the beneficiary would first qualify for an unreduced retirement  
48 benefit had the member elected to be a member of the Teachers' and State Employees' Retirement  
49 System, then the participant shall pay the total overpayment amount due to the Disability Income  
50 Plan. If the participant fails to pay the total amount of the overpayment due to the Disability  
51 Income Plan within six months after the earliest age at which the member could retire on an

1 unreduced retirement allowance, then the participant shall not be allowed to enroll in a new year  
2 of coverage under the North Carolina State Health Plan for Teachers and State Employees until  
3 one of the following occurs:

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

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

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

10  
11 **PART VII. EFFECTIVE DATE**

12 **SECTION 7.1.** This act becomes effective July 1, 2021.