

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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**HOUSE BILL 1415**  
**Committee Substitute Favorable 5/23/07**  
**Senate Pensions, Retirement & Aging Committee Substitute Adopted 6/28/07**

Short Title: Disability Benefits.

(Public)

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Sponsors:

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Referred to:

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April 12, 2007

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE THAT A MEMBER OF THE TEACHERS' AND STATE  
3 EMPLOYEES' RETIREMENT SYSTEM SHALL NOT BE DENIED  
4 SHORT-TERM DISABILITY BENEFITS DUE TO AN ABSENCE FOR  
5 MILITARY SERVICE AND TO AMEND THE LAW PROVIDING LONG-TERM  
6 DISABILITY BENEFITS FOR MEMBERS OF THE TEACHERS' AND STATE  
7 EMPLOYEES' RETIREMENT SYSTEM.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 135-105(a) reads as rewritten:

10 "(a) Any participant who becomes disabled and is no longer able to perform his  
11 usual occupation may, after at least 365 calendar days succeeding his date of initial  
12 employment as a teacher or employee and at least one year of contributing membership  
13 service, receive a benefit commencing on the first day succeeding the waiting period;  
14 provided that the participant's employer and attending physician shall certify that such  
15 participant is mentally or physically incapacitated for the further performance of duty,  
16 that such incapacity was incurred at the time of active employment and has been  
17 continuous thereafter; provided further that the requirement for one year of contributing  
18 membership service must have been earned within 36 calendar months immediately  
19 preceding the date of disability and further, salary continuation used during the period  
20 as provided in G.S. 135-104 shall count toward the aforementioned one year  
21 requirement. Notwithstanding the provisions of this section, a participant who would  
22 have qualified for a benefit under this section but for service in the uniformed services  
23 shall not be denied a benefit under this section because of that absence for military  
24 service if that service meets the requirements of the Uniformed Services Employment  
25 and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq.

26 Notwithstanding the requirement that the incapacity was incurred at the time of  
27 active employment, any participant who becomes disabled while on an employer  
28 approved leave of absence and who is eligible for and in receipt of temporary total

1 benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97  
2 of the General Statutes, will be eligible for all benefits provided under this Article."

3 **SECTION 2.** G.S. 135-106 reads as rewritten:

4 **"§ 135-106. Long-term disability benefits.**

5 (a) **(Effective August 1, 2007)** Upon the application of a beneficiary or  
6 participant or of his legal representative or any person deemed by the Board of Trustees  
7 to represent the participant or beneficiary, any beneficiary or participant who has had  
8 five or more years of membership service may receive long-term disability benefits  
9 from the Plan upon approval by the Board of Trustees, commencing on the first day  
10 succeeding the conclusion of the short-term disability period provided for in  
11 G.S. 135-105, provided the beneficiary or participant makes application for such benefit  
12 within 180 days after the short-term disability period ceases, after salary continuation  
13 payments cease, or after monthly payments for Workers' Compensation cease,  
14 whichever is later; Provided, that the beneficiary or participant withdraws from active  
15 service by terminating employment as a teacher or State employee; Provided, that the  
16 Medical Board shall certify that such beneficiary or participant is ~~unable to perform any~~  
17 ~~occupation or employment commensurate to the beneficiary's or participant's education,~~  
18 ~~training, or experience, which is available in the same commuting area for State~~  
19 ~~employees or within the same local school administrative unit for school personnel,~~  
20 ~~without an adverse impact on the beneficiary's or participant's career status, and in~~  
21 ~~which the beneficiary or participant can be expected to earn not less than sixty five~~  
22 ~~percent (65%) of that beneficiary's or participant's predisability earnings, mentally or~~  
23 ~~physically incapacitated for the further performance of duty, that such incapacity was~~  
24 incurred at the time of active employment and has been continuous thereafter, and that  
25 such incapacity is likely to be permanent; Provided further that the Medical Board shall  
26 not certify any beneficiary or participant as disabled who is in receipt of any payments  
27 on account of the same incapacity which existed when the beneficiary first established  
28 membership in the Retirement System. The Board of Trustees may extend this 180-day  
29 filing requirement upon receipt of clear and convincing evidence that application was  
30 delayed through no fault of the disabled beneficiary or participant and was delayed due  
31 to the employers' miscalculation of the end of the 180-day filing period. However, in no  
32 instance shall the filing period be extended beyond an additional 180 days.

33 The Board of Trustees may require each beneficiary who becomes eligible to receive  
34 a long-term disability benefit to have an annual medical review or examination for the  
35 first five years and thereafter once every three years after the commencement of benefits  
36 under this section. However, the Board of Trustees may require more frequent  
37 examinations and upon the advice of the Medical Board shall determine which cases  
38 require such examination. Should any beneficiary refuse to submit to any examination  
39 required by this subsection or by the Medical Board, his long-term disability benefit  
40 shall be suspended until he submits to an examination, and should his refusal last for  
41 one year, his benefit may be terminated by the Board of Trustees. If the Medical Board  
42 finds that a beneficiary is no longer mentally or physically incapacitated for the further  
43 performance of duty, the Medical Board shall so certify this finding to the Board of  
44 Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability

1 benefits effective on the last day of the month in which the Medical Board certifies that  
2 the beneficiary is no longer disabled.

3 As to the requirement of five years of membership service, any participant or  
4 beneficiary who does not have five years of membership service within the 96 calendar  
5 months prior to conclusion of the short-term disability period or cessation of salary  
6 continuation payments, whichever is later, shall not be eligible for long-term disability  
7 benefits.

8 Notwithstanding the requirement that the incapacity was incurred at the time of  
9 active employment, any participant who becomes disabled while on an employer  
10 approved leave of absence and who is eligible for and in receipt of temporary total  
11 benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97  
12 of the General Statutes, will be eligible for all benefits provided under this Article.

13 (b) After the commencement of benefits under this section, the benefits payable  
14 under the terms of this section during the first 36 months of the long-term disability  
15 period shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of  
16 compensation last payable to the participant or beneficiary prior to the beginning of the  
17 short-term disability period as may be adjusted for percentage increases as provided  
18 under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity  
19 payment to which the participant or beneficiary would be eligible, to a maximum of  
20 three thousand nine hundred dollars (\$3,900) per month reduced by any primary Social  
21 Security disability benefits and by monthly payments for Workers' Compensation to  
22 which the participant or beneficiary may be entitled. The monthly benefit shall be  
23 further reduced by the amount of any monthly payments from the federal Veterans  
24 Administration, any other federal agency or any payments made under the provisions of  
25 G.S. 127A-108, to which the participant or beneficiary may be entitled on account of  
26 the same disability. Provided, in any event, the benefit payable shall be no less than ten  
27 dollars (\$10.00) a month. However, a disabled participant may elect to receive any  
28 salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits;  
29 provided such election shall not extend the first 36 consecutive calendar months of the  
30 long-term disability period. An election to receive any salary continuation for any part  
31 of any given day shall be in lieu of any long-term benefit payable for that day, provided  
32 further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or  
33 participant had exhausted the leave and shall be in lieu of any long-term benefit  
34 otherwise payable. ~~Notwithstanding the foregoing, upon the completion of four years~~  
35 ~~from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's~~  
36 ~~benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to~~  
37 ~~a primary Social Security disability benefit to which the beneficiary might be entitled~~  
38 ~~had the beneficiary been awarded Social Security disability benefits.~~ Provided that, in  
39 any event, a beneficiary's benefit shall be reduced during the first 36 months of the  
40 long-term disability period by an amount, as determined by the Board of Trustees, equal  
41 to a primary Social Security retirement benefit to which the beneficiary might be  
42 entitled.

43 After 36 months of long-term disability, no further benefits are payable under the  
44 terms of this section unless the member has been approved and is in receipt of primary

1 Social Security disability benefits. In that case the benefits payable shall be equal to  
2 sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable  
3 to the participant or beneficiary prior to the beginning of the short-term disability period  
4 as may be adjusted for percentage increases as provided under G.S. 135-108, plus  
5 sixty-five percent (65%) of 1/12th of the annual longevity payment to which the  
6 participant or beneficiary would be eligible, to a maximum of three thousand nine  
7 hundred dollars (\$3,900) per month reduced by the primary Social Security disability  
8 benefits and by monthly payments for Workers' Compensation to which the participant  
9 or beneficiary may be entitled. The monthly benefit shall be further reduced by the  
10 amount of any monthly payments from the federal Veterans Administration, for  
11 payments from any other federal agency, or for any payments made under the  
12 provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on  
13 account of the same disability. Provided, in any event, the benefit payable shall be no  
14 less than ten dollars (\$10.00) a month.

15 Notwithstanding the foregoing, the long-term disability benefit is payable so long as  
16 the beneficiary is disabled and is in receipt of a primary Social Security disability  
17 benefit until the earliest date at which the beneficiary is eligible for an unreduced  
18 service retirement allowance from the Retirement System, at which time the beneficiary  
19 would receive a retirement allowance calculated on the basis of the beneficiary's  
20 average final compensation at the time of disability as adjusted to reflect compensation  
21 increases subsequent to the time of disability and the creditable service accumulated by  
22 the beneficiary, including creditable service while in receipt of benefits under the Plan.  
23 In the event the beneficiary has not been approved and is not in receipt of a primary  
24 Social Security disability benefit, the long-term disability benefit shall cease after the  
25 first 36 months of the long-term disability period. However, a beneficiary shall be  
26 entitled to a restoration of the long-term disability benefit in the event the Social  
27 Security Administration grants a retroactive approval for primary Social Security  
28 disability benefits with a benefit effective date within the first 36 months of the  
29 long-term disability period. In such event, the long-term disability benefit shall be  
30 restored retroactively to the date of cessation.

31 (c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability  
32 benefits who has earnings during the long-term disability period shall have his  
33 long-term disability benefit reduced when the sum of the net long-term disability benefit  
34 and the earnings equals one hundred percent (100%) of monthly compensation adjusted  
35 as provided under G.S. 135-108. The net long-term benefit shall mean the long-term  
36 benefit amount payable as calculated under (b) above, after the reduction for Social  
37 Security benefits and Workers' Compensation benefits to which the beneficiary might  
38 be ~~entitled.~~ entitled, and after the reduction for any monthly payments from the federal  
39 Veterans Administration, for payments from any other federal agency, or for any  
40 payments made under the provisions of G.S. 127A-108, to which the participant or  
41 beneficiary may be entitled on account of the same disability. The net long-term  
42 disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess  
43 of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the  
44 earnings limitations shall notify the Plan by the fifth of the month succeeding the month

1 in which the earnings were received of the amount of earnings in excess of the  
2 limitations herein provided. Failure to report excess earnings may result in a suspension  
3 or termination of benefits as determined by the Board of Trustees.

4 (c1) During the long-term disability period, a beneficiary may return to service for  
5 trial rehabilitation for periods of not greater than 36 months of continuous service. Such  
6 return will not cause the beneficiary to become a participant and will not require a new  
7 waiting period or short-term disability period to commence regardless of whether the  
8 beneficiary is unable to continue in service due to the same incapacity or a different  
9 incapacity.

10 A beneficiary who, during a period of trial rehabilitation, is unable to continue in  
11 service may be entitled to a restoration of the long-term disability benefit provided that  
12 the Medical Board certifies that the beneficiary is disabled in accordance with the laws  
13 in effect at the time of the Board's original approval for long-term disability benefits,  
14 either due to the same or a different incapacity, notwithstanding the requirement the  
15 incapacity has been continuous. In the event that the Medical Board determines that the  
16 long-term disability benefit should be restored, the restored benefit should be calculated  
17 in accordance with G.S. 135-106(b); should include any post-disability benefit  
18 adjustments as provided by G.S. 135-108; ~~and should not be reduced by an amount~~  
19 ~~equal to a primary Social Security disability benefit to which the beneficiary might be~~  
20 ~~entitled had the beneficiary been awarded Social Security benefits until the beneficiary~~  
21 ~~has been eligible to receive long term disability benefits for 36 months, including any~~  
22 ~~period the beneficiary elected to receive any salary continuation in lieu of the long term~~  
23 ~~benefit, but not including any period of trial rehabilitation. and shall continue as long as~~  
24 the beneficiary remains disabled until the beneficiary has received a total of 36  
25 long-term disability payments. Continuation of long-term disability benefit payments  
26 beyond 36 total payments shall be dependent upon approval for primary Social Security  
27 disability benefits as required by G.S. 135-106(b).

28 A beneficiary who returns to service for a period of trial rehabilitation and who has  
29 continued in service for greater than 36 continuous months shall again become a  
30 participant, and any subsequent incapacity shall be treated as a new incapacity causing a  
31 new waiting period to begin. Such a beneficiary may be entitled to additional long-term  
32 disability benefits on account of the new incapacity provided the beneficiary meets all  
33 other requirements notwithstanding the requirement of five years of membership service  
34 within the 96 calendar months prior to becoming disabled or the cessation of continuous  
35 salary continuation payments.

36 (d) Notwithstanding the foregoing, a participant or beneficiary who has applied  
37 for and been approved by the Medical Board for long-term disability benefits may make  
38 an irrevocable election, within 90 days from the date of notification of such approval,  
39 and prior to receipt of any long-term disability benefit payments, to forfeit all pending  
40 and accrued rights to the long-term disability benefit including any ancillary benefits  
41 and retire on an early service retirement allowance or receive a return of accumulated  
42 contributions from the Retirement System."

43 **SECTION 3.** G.S. 135-107 reads as rewritten:

44 "**§ 135-107. Optional Retirement Program.**

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

17 **SECTION 4.** Sections 2 and 3 of this act become effective August 1, 2007,  
18 but apply only to persons who have less than five years of membership service as of  
19 July 31, 2007. The remainder of this act becomes effective July 1, 2007.