

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

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**HOUSE BILL 358**  
**Committee Substitute Favorable 5/2/13**

Short Title: Retirement Technical Corrections.-AB

(Public)

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Sponsors:

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Referred to:

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March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATUTES  
AFFECTING THE STATE RETIREMENT SYSTEMS.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 143-166.30(d) reads as rewritten:

"(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan," established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

All contributions to the Plan shall be credited to the individual accounts of participants, and except as provided in subsection (g1) of this section, shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, to the Teachers' and State Employees' Retirement System and receive, in addition to



1 his basic service, early or disability retirement allowance a special retirement allowance which  
2 shall be based on his eligible accumulated account balance at the date of the transfer of the  
3 assets."

4 **SECTION 1.(b)** G.S. 143-166.50(e) reads as rewritten:

5 "(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement  
6 Officers. – As of January 1, 1986, all law-enforcement officers employed by a local  
7 government employer, are participating members of the Supplemental Retirement Income Plan  
8 as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions  
9 transferred from the Law-Enforcement Officers' Retirement System, participants may make  
10 voluntary contributions to the Supplemental Retirement Income Plan to be credited to the  
11 designated individual accounts of participants; ~~provided, in no instance shall the total~~  
12 ~~contributions by a participant exceed ten percent (10%) of a participant's compensation within~~  
13 ~~any calendar year.~~ participants. From July 1, 1987, until July 1, 1988, local government  
14 employers of law enforcement officers shall contribute an amount equal to at least two percent  
15 (2%) of participating local officers' monthly compensation to the Supplemental Retirement  
16 Income Plan to be credited to the designated individual accounts of participating local officers;  
17 and on and after July 1, 1988, local government employers of law enforcement officers shall  
18 contribute an amount equal to five percent (5%) of participating local officers' monthly  
19 compensation to the Supplemental Retirement Income Plan to be credited to the designated  
20 individual accounts of participating local officers.

21 Additional contributions shall also be made to the individual accounts of all participants in  
22 the Plan, except for Sheriffs, on a per capita equal-share basis from the sum of one dollar and  
23 twenty-five cents (\$1.25) for each cost of court collected under G.S. 7A-304.

24 Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible  
25 accumulated contributions, not including any Roth after-tax contributions and the earnings  
26 thereon, to the Local Governmental Employees' Retirement System and receive, in addition to  
27 his basic service, early or disability retirement allowance a special retirement allowance which  
28 shall be based on his eligible accumulated account balance at the date of the transfer of the  
29 assets."

30 **SECTION 2.(a)** G.S. 128-26(a) reads as rewritten:

31 "(a) Each person who becomes a member during the first year of his or her employer's  
32 participation, and who was an employee of the same employer at any time during the year  
33 immediately preceding the date of participation, shall file a detailed statement of all service  
34 rendered by him or her to that employer prior to the date of participation for which he or she  
35 claims credit.

36 A participating employer may allow prior service credit to any of its employees on account  
37 of: their earlier service to the aforesaid employer; or, their earlier service to any other employer  
38 as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state,  
39 territory, or other governmental subdivision of the United States other than this State.

40 A participating employer may allow prior service credit to any of its employees on account  
41 of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such  
42 service prior to the establishment of the Teachers' and State Employees' Retirement System on  
43 July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum  
44 an amount calculated on the basis of compensation the employee earned when the employee  
45 first entered membership and the employee contribution rate at that time together with interest  
46 thereon from year of first membership to year of payment shall be one half of the calculated  
47 cost.

48 (a1) With respect to a member retiring on or after July 1, 1967, the governing board of a  
49 participating unit may allow credit for any period of military service in the Armed Forces of the  
50 United States if the person returned to the service of the person's employer within two years  
51 after having been honorably discharged, or becoming entitled to be discharged, released, or

1 separated from such the Armed Forces of the United States; provided that, notwithstanding the  
2 above provisions, any member having credit for not less than 10 years of otherwise creditable  
3 service may be allowed credit for such military services which are not creditable in any other  
4 governmental retirement system; provided further, that a member will receive credit for  
5 military service under the provisions of this paragraph only if the member submits satisfactory  
6 evidence of the military service claimed and the participating unit of which the member is an  
7 employee agrees to grant credit for such military service prior to January 1, 1972.

8 A member retiring on or after July 1, 1971, who is not granted credit for military service  
9 under the provisions of the preceding paragraph will be allowed credit for any period of qualifying service in the Armed Forces of the United States ~~up to the date the member was first~~  
10 ~~eligible to be separated or released therefrom;~~ States, as defined for purposes of reemployment  
11 rights under federal law, provided that the member was an employee as defined in  
12 G.S. 128-21(10) at the time the member entered military service, and either ~~of (i) the returning~~  
13 ~~member is in service, with the employer by whom the member was employed when the~~  
14 ~~member entered military service, for a period of not less than 10 years after the member is~~  
15 ~~separated or released from that military service under other than dishonorable conditions or (ii)~~  
16 ~~the following conditions is met:~~are met, in the conjunctive:  
17

- 18 (1) ~~The member returns to service, with the employer by whom the member was~~  
19 ~~employed when the member entered military service, within a period of two~~  
20 ~~years after the member is first eligible to be separated or released from such~~  
21 ~~military service under other than dishonorable conditions.~~
- 22 (2) ~~The member is in service, with the employer by whom the member was~~  
23 ~~employed when the member entered military service, for a period of not less~~  
24 ~~than 10 years after the member is separated or released from the Armed~~  
25 ~~Forces of the United States under other than dishonorable conditions.~~
- 26 (1) The member did not, prior to leaving for military service, provide clear  
27 written notice of an intent not to return to work after military service.
- 28 (2) The member was discharged from uniformed service and returned from the  
29 leave of absence for uniformed service to membership service in this system  
30 within the time limit mandated by federal law for reporting back to work.
- 31 (3) The period of uniformed service, for which additional service credit is  
32 sought, has been verified by suitable documentation and is not eligible for  
33 receipt of benefits under any other retirement system or pension plan.
- 34 (4) All service credit forfeited by a refund pursuant to the provisions of  
35 G.S. 128-27(f) has been purchased.

36 The uniformed service credit allowed under this subsection shall be limited to a maximum  
37 of five years unless otherwise specifically exempted from that durational limitation by federal  
38 law. The salary or compensation of such an employee during the period of qualifying military  
39 service shall be deemed to be that salary or compensation the employee would have received  
40 but for the period of service had the employee remained continuously employed, if the  
41 determination of that salary or compensation is reasonably certain. If the determination of the  
42 salary or compensation is not reasonably certain, then it shall be deemed to be that employee's  
43 average rate of compensation during the 12-month period immediately preceding the period of  
44 service.

45 Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns  
46 to work consistent with the provisions of this subsection concerning return to service within  
47 two years after the member's earliest eligibility for separation or release from military service,  
48 then the member's employer must remit to the System all the employer contributions for the full  
49 period of that member's military service."

50 **SECTION 3.(a)** G.S. 135-1(14) reads as rewritten:

1 "(14) "Membership service" shall mean service as a teacher or State employee  
2 rendered while a member of the Retirement ~~System~~System or membership  
3 service in a North Carolina Retirement System that has been transferred into  
4 this system."

5 **SECTION 3.(b)** G.S. 128-21(14) reads as rewritten:

6 "(14) "Membership service" shall mean service as an employee rendered while a  
7 member of the Retirement ~~System~~System or membership service in a North  
8 Carolina Retirement System that has been transferred into this system."

9 **SECTION 4.(a)** G.S. 135-1(20) reads as rewritten:

10 "(20) "Retirement" under this Chapter means the commencement of monthly  
11 retirement benefits along with termination of employment and the complete  
12 separation from active service with no intent or agreement, express or  
13 implied, to return to service. A retirement allowance under the provisions of  
14 this Chapter may only be granted upon retirement of a member. In order for  
15 a member's retirement to become effective in any month, the member must  
16 render no service, perform no work for an employer, including part-time,  
17 temporary, substitute, or contractor service, work, at any time during the six  
18 months immediately following the effective date of retirement. For purposes  
19 of this subdivision, service-working as a member of a school board or as an  
20 unpaid bona fide volunteer in a local school administrative unit shall not be  
21 considered service. A member who is a full-time faculty member of The  
22 University of North Carolina may effect a retirement allowance under this  
23 Chapter, notwithstanding the six-month requirement above, provided the  
24 member immediately enters the University's Phased Retirement Program for  
25 Tenured Faculty as that program existed on May 25, 2011."

26 **SECTION 4.(b)** G.S. 128-21(19) reads as rewritten:

27 "(19) "Retirement" under this Article shall mean ~~withdrawal~~the commencement  
28 of monthly retirement benefits, along with the termination of employment  
29 and the complete separation from active service with a retirement allowance  
30 granted under the provisions of this Article. no intent or agreement,  
31 expressed or implied, to return to service. A retirement allowance under the  
32 provisions of this Chapter Article may only be granted upon retirement of a  
33 member. In order for a member's retirement to become effective in any  
34 month, the member must render no service, perform no work for a  
35 participating employer, including part-time, part-time, temporary, substitute,  
36 or contractor service, work, at any time during the same month immediately  
37 following the effective date first day of retirement."

38 **SECTION 4.(c)** G.S. 135-53(16) reads as rewritten:

39 "(16) "Retirement" under this Chapter shall mean the ~~withdrawal~~commencement  
40 of monthly retirement benefits, along with the termination of employment  
41 and the complete separation from active service with a retirement allowance  
42 granted under the provisions of this Chapter. no intent or agreement,  
43 expressed or implied, to return to service. A retirement allowance under the  
44 provisions of this Chapter may only be granted upon retirement of a  
45 member. In order for a member's retirement to become effective in any  
46 month, the member must render no service perform no work, including  
47 part-time, temporary, substitute, or contractor work, at any time during that  
48 month.the same month immediately following the effective first day of  
49 retirement."

50 **SECTION 5.** G.S. 135-5.1(b) reads as rewritten:

51 "(b) Participation in the Optional Retirement Program shall be governed as follows:

1 ...  
2 (2) Eligible employees initially appointed on or after July 1, 1985, shall at the  
3 same time of entering upon eligible employment elect (i) to join the  
4 Retirement System in accordance with the provisions of law applicable  
5 thereto or (ii) to participate in the Optional Retirement Program. This  
6 election shall be in writing and filed with the Retirement System and with  
7 the employing institution and shall be effective as of the date of entry into  
8 eligible service. For purposes of this provision, the Optional Retirement  
9 Program shall be permitted to file individual election forms with the  
10 Retirement System using electronic transmission.

11 ...."

12 **SECTION 6.** G.S. 135-105(d) reads as rewritten:

13 "(d) The provisions of this section shall be administered by the employer and further, the  
14 benefits during the first six months of the short-term disability period shall be the full  
15 responsibility of and paid by the employer; Provided, further, that upon the completion of the  
16 initial six months of the short-term disability period, the employer will continue to be  
17 responsible for the short-term benefits to the participant, however, such employer shall notify  
18 the Plan, at the conclusion of the short-term disability period or upon termination of short-term  
19 disability benefits, if earlier, of the amount of short-term benefits and State Health Insurance  
20 premiums paid by the employer and the Plan shall reimburse the employer the amounts so  
21 paid."

22 **SECTION 7.** G.S. 135-106(d) reads as rewritten:

23 "(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and  
24 been approved by the Medical Board for long-term disability benefits may make an irrevocable  
25 election, within 90 days from the date of notification of such approval, and prior to receipt of  
26 any long-term disability benefit payments, to forfeit all pending and accrued rights to the  
27 long-term disability benefit including any ancillary benefits and retire on an early service  
28 retirement ~~allowance~~ allowance, effective with the first day of the month following the end of  
29 the short-term period, or receive a return of accumulated contributions from the Retirement  
30 System."

31 **SECTION 8.** G.S. 135-111 reads as rewritten:

32 "**§ 135-111. Applicability of other pension laws.**

33 Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption  
34 from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud";  
35 G.S. 135-10.1, entitled "Failure to Respond"; ~~G.S. 135-18.11, entitled "Improper receipt of~~  
36 ~~decendent's retirement allowance or disability benefit";~~ and G.S. 135-17, entitled "Facility of  
37 payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of  
38 this Article."

39 **SECTION 9.(a)** Article 6 of Chapter 135 of the General Statutes is amended by  
40 adding a new section to read:

41 "**§ 135-111.1. Improper receipt of decedent's Disability Income Plan allowance.**

42 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
43 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
44 Disability Income Plan allowance and the person (i) knows that he or she is not entitled to the  
45 decedent's Disability Income Plan allowance, (ii) receives the benefit at least two months after  
46 the date of the beneficiary's death, and (iii) does not attempt to inform this Retirement System  
47 of the beneficiary's death."

48 **SECTION 9.(b)** G.S. 135-18.11 reads as rewritten:

49 "**§ 135-18.11. Improper receipt of decedent's retirement allowance.** ~~allowance or disability~~  
50 ~~benefit.~~

1 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
2 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
3 retirement allowance ~~or a decedent's monthly benefit under the Disability Income Plan of North~~  
4 ~~Carolina~~ and the person (i) knows that he or she is not entitled to the decedent's retirement  
5 allowance, ~~allowance or the monthly disability benefit,~~ (ii) receives the benefit at least two  
6 months after the date of the retiree's or beneficiary's death, and (iii) does not attempt to inform  
7 this Retirement System of the retiree's or beneficiary's death."

8 **SECTION 9.(c)** G.S. 128-38.5 reads as rewritten:

9 **"§ 128-38.5. Improper receipt of decedent's retirement allowance.**

10 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
11 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
12 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's  
13 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's  
14 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the  
15 retiree's or beneficiary's death."

16 **SECTION 9.(d)** G.S. 135-75.2 reads as rewritten:

17 **"§ 135-75.2. Improper receipt of decedent's retirement allowance.**

18 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
19 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
20 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's  
21 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's  
22 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the  
23 retiree's or beneficiary's death."

24 **SECTION 9.(e)** G.S. 120-4.34 reads as rewritten:

25 **"§ 120-4.34. Improper receipt of decedent's retirement allowance.**

26 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
27 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
28 retirement allowance and the person (i) knows that he or she is not entitled to the decedent's  
29 retirement allowance, (ii) receives the benefit at least two months after the date of the retiree's  
30 or beneficiary's death, and (iii) does not attempt to inform this Retirement System of the  
31 retiree's or beneficiary's death."

32 **SECTION 10.** G.S. 143-166.2(d) reads as rewritten:

33 "(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and  
34 all law-enforcement officers employed full-time, permanent part-time, or temporarily by a  
35 sheriff, the State of North Carolina or any county or municipality thereof, whether paid or  
36 unpaid; and all full-time custodial employees and probation and parole officers of the Division  
37 of Adult Correction of the Department of Public Safety; and all full time institutional and  
38 full-time, permanent part-time, and temporary detention employees of the Division of Juvenile  
39 Justice of the Department of Public Safety and full-time, permanent part-time, and temporary  
40 detention officers employed by any sheriff, county or municipality, whether paid or unpaid.  
41 The term "firemen" shall mean both "eligible firemen" as defined in ~~G.S. 58-86-25~~ Article 86  
42 of Chapter 58 of the General Statutes, notwithstanding any age requirements set out in that  
43 Article, and all full-time, permanent part-time and temporary employees of the Division of  
44 Forest Resources, Department of Agriculture and Consumer Services, during the time they are  
45 actively engaged in fire-fighting activities; and shall mean all full-time employees of the North  
46 Carolina Department of Insurance during the time they are actively engaged in fire-fighting  
47 activities, during the time they are training fire fighters or rescue squad workers, and during the  
48 time they are engaged in activities as members of the State Emergency Response Team, when  
49 the Team has been activated; and shall mean all otherwise eligible persons who, while actively  
50 engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue  
51 instructor outside their own department or squad. The term "rescue squad worker" shall mean a

1 person who is dedicated to the purpose of alleviating human suffering and assisting anyone  
2 who is in difficulty or who is injured or becomes suddenly ill by providing the proper and  
3 efficient care or emergency medical services. In addition, this person must belong to an  
4 organized rescue squad which is eligible for membership in the North Carolina Association of  
5 ~~Rescue Squads, and Emergency Medical Services, Inc.~~, and the person must have attended a  
6 minimum of 36 hours of training ~~and meetings~~ in the last calendar year. Each rescue squad  
7 belonging to the North Carolina Association of ~~Rescue Squads, and Emergency Medical~~  
8 ~~Services, Inc.~~, must file a roster of those members meeting the above requirements with the  
9 State Treasurer on or about ~~January 1~~ January 31 of each year, and this roster must be certified  
10 to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a  
11 member of an ambulance service certified by the Department of Health and Human Services  
12 pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and  
13 Human Services shall furnish a list of ambulance service members to the State Treasurer on or  
14 about ~~January 1~~ January 31 of each year. The term "Civil Air Patrol members" shall mean those  
15 senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and  
16 currently certified pursuant to G.S. 143B-1031. The term "fireman" shall also mean county fire  
17 marshals when engaged in the performance of their county duties. The term "rescue squad  
18 worker" shall also mean county emergency services coordinators when engaged in the  
19 performance of their county duties."

20 **SECTION 11.** G.S. 128-26(x) reads as rewritten:

21 "(x) If a member who is in service and has not vested in this System on December 1,  
22 2012, is convicted of an offense listed in G.S. ~~426-38.5-128-38.4A~~ for acts committed after  
23 December 1, 2012, then that member shall forfeit all benefits under this System, except for a  
24 return of member contributions plus interest. If a member who is in service and has vested in  
25 this System on December 1, 2012, is convicted of an offense listed in G.S. ~~426-38.5-128-38.4A~~  
26 for acts committed after December 1, 2012, then that member is not entitled to any creditable  
27 service that accrued after December 1, 2012."

28 **SECTION 12.** Section 9 of this act becomes effective December 1, 2013, and  
29 applies to acts committed on or after that date. The remainder of this act becomes effective July  
30 1, 2013.