

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 153  
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Short Title: No Public Retirement for Convicted Felons. (Public)

Sponsors:

Referred to:

February 22, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT A PERSON WHO HAS BEEN CONVICTED OF A FELONY  
3 RELATED TO EMPLOYMENT OR HOLDING OFFICE FROM RECEIVING  
4 RETIREMENT BENEFITS FROM THE TEACHERS' AND STATE EMPLOYEES'  
5 RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES'  
6 RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM,  
7 THE LEGISLATIVE RETIREMENT SYSTEM, THE OPTIONAL RETIREMENT  
8 PROGRAM FOR THE UNIVERSITY OF NORTH CAROLINA, THE OPTIONAL  
9 RETIREMENT PROGRAM FOR STATE-FUNDED COMMUNITY COLLEGES, THE  
10 SUPPLEMENTAL RETIREMENT INCOME PLAN FOR STATE  
11 LAW-ENFORCEMENT OFFICERS, AND THE SUPPLEMENTAL RETIREMENT  
12 INCOME PLAN FOR LOCAL GOVERNMENTAL LAW-ENFORCEMENT OFFICERS.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Article 1 of Chapter 135 of the General Statutes is amended by  
15 adding a new section to read:

16 **"§ 135-18.10A. Forfeiture of retirement benefits for certain felonies related to**  
17 **employment or holding office.**

18 (a) Except as provided in G.S. 135-4(ii), the Board of Trustees shall not pay any  
19 retirement benefits or allowances, except for a return of member contributions plus interest, to  
20 any member who is convicted of any felony under federal law or the laws of this State if all of  
21 the following apply:

22 (1) The offense is committed while the member is in service.

23 (2) The conduct resulting in the member's conviction is directly related to the  
24 member's office or employment.

25 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
26 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
27 procedure that the member's conduct is directly related to the member's office or employment.

28 (c) If a member or former member whose benefits under the System were forfeited  
29 under this section, except for the return of member contributions plus interest, subsequently  
30 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
31 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
32 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
33 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon



1 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
2 contributions that have been received by the individual under the forfeiture provisions of this  
3 section must be made in a total lump-sum payment with interest compounded annually at a rate  
4 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
5 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
6 reinstatement of the service credit forfeited."

7 **SECTION 2.** G.S. 135-4 is amended by adding a new subsection to read:

8 "(ii) If a member who is in service and has not vested in this System on December 1,  
9 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December  
10 1, 2012, then that member shall forfeit all benefits under this System, except for a return of  
11 member contributions plus interest. If a member who is in service and has vested in this System  
12 on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed  
13 after December 1, 2012, then that member is not entitled to any creditable service that accrued  
14 after December 1, 2012."

15 **SECTION 3.** Article 3 of Chapter 128 of the General Statutes is amended by  
16 adding a new section to read:

17 **§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment**  
18 **or holding office.**

19 (a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any  
20 retirement benefits or allowances, except for a return of member contributions plus interest, to  
21 any member who is convicted of any felony under federal law or the laws of this State if all of  
22 the following apply:

23 (1) The offense is committed while the member is in service.

24 (2) The conduct resulting in the member's conviction is directly related to the  
25 member's office or employment.

26 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
27 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
28 procedure that the member's conduct is directly related to the member's office or employment.

29 (c) If a member or former member whose benefits under the System were forfeited  
30 under this section, except for the return of member contributions plus interest, subsequently  
31 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
32 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
33 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
34 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
35 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
36 contributions that have been received by the individual under the forfeiture provisions of this  
37 section must be made in a total lump-sum payment with interest compounded annually at a rate  
38 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
39 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
40 reinstatement of the service credit forfeited."

41 **SECTION 4.** G.S. 128-26 is amended by adding a new subsection to read:

42 "(x) If a member who is in service and has not vested in this System on December 1,  
43 2012, is convicted of an offense listed in G.S. 126-38.5 for acts committed after December 1,  
44 2012, then that member shall forfeit all benefits under this System, except for a return of  
45 member contributions plus interest. If a member who is in service and has vested in this System  
46 on December 1, 2012, is convicted of an offense listed in G.S. 126-38.5 for acts committed  
47 after December 1, 2012, then that member is not entitled to any creditable service that accrued  
48 after December 1, 2012."

49 **SECTION 5.** Article 4 of Chapter 135 of the General Statutes is amended by  
50 adding a new section to read:

1 **"§ 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment**  
2 **or holding office.**

3 (a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any  
4 retirement benefits or allowances, except for a return of member contributions plus interest, to  
5 any member who is convicted of any felony under federal law or the laws of this State if all of  
6 the following apply:

7 (1) The offense is committed while the member is in service.

8 (2) The conduct resulting in the member's conviction is directly related to the  
9 member's office or employment.

10 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
11 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
12 procedure that the member's conduct is directly related to the member's office or employment.

13 (c) If a member or former member whose benefits under the System were forfeited  
14 under this section, except for the return of member contributions plus interest, subsequently  
15 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
16 reason, then the member or former member may seek a reversal of the benefit forfeiture by  
17 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
18 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
19 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
20 contributions that have been received by the individual under the forfeiture provisions of this  
21 section must be made in a total lump-sum payment with interest compounded annually at a rate  
22 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
23 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
24 reinstatement of the service credit forfeited."

25 **SECTION 6.** G.S. 135-56 is amended by adding a new subsection to read:

26 "(j) If a member who is in service and has not vested in this System on December 1,  
27 2012, is convicted of an offense listed in G.S. 135-75.1A for acts committed after December 1,  
28 2012, then that member shall forfeit all benefits under this System, except for a return of  
29 member contributions plus interest. If a member who is in service and has vested in this System  
30 on December 1, 2012, is convicted of an offense listed in G.S. 135-75.1A for acts committed  
31 after December 1, 2012, then that member is not entitled to any creditable service that accrued  
32 after December 1, 2012."

33 **SECTION 7.** Article 1A of Chapter 120 of the General Statutes is amended by  
34 adding a new section to read:

35 **"§ 120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment**  
36 **or holding office.**

37 (a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any  
38 retirement benefits or allowances, except for a return of member contributions plus interest, to  
39 any member who is convicted of any felony under federal law or the laws of this State if all of  
40 the following apply:

41 (1) The offense is committed while the member is serving as a member of the  
42 General Assembly.

43 (2) The conduct resulting in the member's conviction is directly related to the  
44 member's office.

45 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions  
46 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal  
47 procedure that the member's conduct is directly related to the member's office.

48 (c) If a member or former member whose benefits under the System were forfeited  
49 under this section, except for the return of member contributions plus interest, subsequently  
50 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any  
51 reason, then the member or former member may seek a reversal of the benefit forfeiture by

1 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a  
2 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon  
3 repayment of all accumulated contributions plus interest. Repayment of all accumulated  
4 contributions that have been received by the individual under the forfeiture provisions of this  
5 section must be made in a total lump-sum payment with interest compounded annually at a rate  
6 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year  
7 of repayment. An individual receiving a reversal of benefit forfeiture must receive  
8 reinstatement of the service credit forfeited."

9 **SECTION 8.** G.S. 120-4.12 is amended by adding a new subsection to read:

10 "(g) If a member who is a present member of the General Assembly and who has not  
11 vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 120-4.33A  
12 for acts committed after December 1, 2012, then that member shall forfeit all benefits under  
13 this System, except for a return of member contributions plus interest. If a member who is a  
14 present member of the General Assembly and has vested in this System on December 1, 2012,  
15 is convicted of an offense listed in G.S. 120-4.33A for acts committed after December 1, 2012,  
16 then that member is not entitled to any creditable service that accrued after December 1, 2012."

17 **SECTION 9.** G.S. 15A-1340.16(d)(9) reads as rewritten:

18 "(d) Aggravating Factors. – The following are aggravating factors:

19 ...

20 (9) The defendant held public elected or appointed office or public employment  
21 at the time of the offense and the offense directly related to the conduct of  
22 the ~~office~~ office or employment.

23 ...."

24 **SECTION 10.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

25 "(f) If the court determines that an aggravating factor under subdivision (9) of  
26 subsection (d) of this section has been proven, the court shall notify the State Treasurer of the  
27 fact of the conviction as well as the finding of the aggravating factor. The indictment charging  
28 the defendant with the underlying offense must include notice that the State seeks to prove the  
29 defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the  
30 State will seek to prove that as an aggravating factor."

31 **SECTION 11.** G.S. 135-5.1 is amended by adding a new subsection to read:

32 "(h) The Board of Governors of The University of North Carolina shall ensure that the  
33 Optional Retirement Program contains benefit forfeiture provisions equivalent to those  
34 contained in G.S. 135-18.10A for University personnel who are eligible for membership in the  
35 Teachers' and State Employees' Retirement System and have elected participation in the  
36 Optional Retirement Program. Any funds forfeited shall be deposited in the Optional  
37 Retirement Program trust fund(s)."

38 **SECTION 12.** G.S. 135-5.4 is amended by adding a new subsection to read:

39 "(h) The North Carolina Community College System shall ensure that the Optional  
40 Retirement Program for State-funded community colleges contains benefit forfeiture provisions  
41 equivalent to those contained in G.S. 135-18.10A for community college personnel eligible for  
42 membership in the Teachers' and State Employees' Retirement System and have elected  
43 participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the  
44 Optional Retirement Program trust fund(s)."

45 **SECTION 13.** G.S. 143-166.30 reads as rewritten:

46 **"§ 143-166.30. Retirement benefits for State law-enforcement officers.**

47 ...

48 (d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of  
49 January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter  
50 called the "Plan," established for the benefit of all law-enforcement officers employed by the  
51 State, who shall be participants. The Board of Trustees of the State Retirement System shall

1 administer the Plan and shall, under the terms and conditions otherwise appearing herein,  
2 provide Plan benefits either (i) by establishing a separate trust fund in conformance with  
3 Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as  
4 amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same  
5 benefits for participants. The Plan shall be separate and apart from any retirement systems.

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

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

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

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

31 ...

32 (g) Exemption from Garnishment and Attachment. – Except as provided in subsection  
33 (g1) of this section, ~~The~~ the right of a participant in the Supplemental Retirement Income Plan  
34 to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and  
35 garnishment.

36 (g1) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental  
37 Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under  
38 G.S. 135-18.10A shall also forfeit contributions paid on or after December 1, 2012, on behalf  
39 of the participant by the State to the Supplemental Retirement Income Plan. Any funds  
40 forfeited shall be deposited in the Supplemental Retirement Income Plan.

41 (h) Notwithstanding any other provisions of law, any pending or inchoate rights of a  
42 member of the Law-Enforcement Officers' Retirement System as of their transfer to the State  
43 Retirement System on January 1, 1985, including the rights to a vested deferred retirement  
44 allowance and to commence retirement at certain ages with required years of service as a  
45 law-enforcement officer, shall in no way be diminished; provided, however, in no event may a  
46 member commence retirement and continue membership service with the same Retirement  
47 System.

48 No eligible officer shall be precluded from exercising that officer's pending or inchoate  
49 rights under this section, should the officer elect to make Roth after-tax contributions to the  
50 Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the

1 earnings thereon shall not be subsequently transferred to the Teachers' and State Employees'  
2 Retirement System."

3 **SECTION 14.** G.S.143-166.50 reads as rewritten:

4 "**§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.**

5 ...

6 (e2) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental  
7 Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are  
8 forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after December 1,  
9 2012, on behalf of the participant by local government employers of law enforcement officers  
10 to the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement  
11 Officers. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan."

12 **SECTION 15.** G.S. 135-94 reads as rewritten:

13 "**§ 135-94. Benefits.**

14 (a) The Department of State Treasurer and the Board of Trustees shall establish a  
15 schedule of supplemental retirement income benefits for all members of the Supplemental  
16 Retirement Income Plan, subject to the following limitations:

- 17 (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), The  
18 the balance in each member's account shall be fully vested at all times and  
19 shall not be subject to forfeiture for any reason.
- 20 (2) All amounts maintained in a member's account shall be invested according  
21 to the member's election, as approved by the Department of State Treasurer  
22 and Board of Trustees, including but not limited to, a time deposit account, a  
23 fixed investment account, or a variable investment account. Transfers of  
24 accumulated funds shall be permitted among the various approved forms of  
25 investment.
- 26 (3) The Department of State Treasurer and Board of Trustees shall provide  
27 members with alternative payment options, including survivors' options, for  
28 the distribution of benefits from the Plan upon retirement, disability,  
29 termination, hardship, and death.
- 30 (4) With the consent of the Department of State Treasurer and the Board of  
31 Trustees, amounts may be transferred from other qualified plans to the  
32 Supplemental Retirement Income Plan, provided that the trust from which  
33 such funds are transferred permits the transfer to be made and, the transfer  
34 will not jeopardize the tax status of the Supplemental Retirement Income  
35 Plan.
- 36 (5) At the discretion of the Department of State Treasurer and Board of  
37 Trustees, a loan program may be implemented for members which complies  
38 with applicable State and federal laws and regulations.

39 (b) All provisions of the Plan shall be interpreted and applied by the Department of  
40 State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

41 (c) All benefits under the Plan shall become payable on and after January 1, 1985.

42 (d) Contributions under the Plan may be made on and after January 1, 1985."

43 **SECTION 16.** G.S. 135-95 reads as rewritten:

44 "**§ 135-95. Exemption from garnishment, attachment.**

45 Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2),  
46 G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable  
47 distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income  
48 Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale,  
49 and garnishment."

50 **SECTION 17.** The State Treasurer shall negotiate a memorandum of agreement  
51 with the United States Attorneys for the Eastern, Middle, and Western Districts of North

1 Carolina whereby the prosecutors will notify the State Treasurer of convictions under  
2 G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5(h), and 135-5.4(h).  
3 **SECTION 18.** This act becomes effective December 1, 2012, and applies to  
4 offenses committed on or after that date.