

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 376
Committee Substitute Favorable 6/8/11

Short Title: Retirement Technical Corrections.-AB

(Public)

Sponsors:

Referred to:

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES GOVERNING
3 THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE
4 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 135-45.2(f) reads as rewritten:

7 "(f) Former employees who are receiving disability retirement benefits or disability
8 income benefits pursuant to Article 6 of Chapter 135 of the General Statutes or who are
9 approved for those benefits but not in receipt of the benefits due to lump-sum payouts of
10 ~~vacation and bonus~~ vacation, bonus, and sick leave, provided the former employee has at least
11 five years of contributory retirement service with an employing unit of a State-supported
12 retirement system, shall be eligible for the benefit provisions of this Plan, as set forth in this
13 Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in
14 which such former employee is no longer eligible for disability retirement benefits or disability
15 income benefits pursuant to Article 6 of this Chapter."

16 SECTION 2.(a) G.S. 135-3(8)c1. reads as rewritten:

17 "c1. Within 90 days of the end of each month in which a beneficiary is
18 reemployed under the provisions of sub-subdivision c. of this
19 subdivision, each employer shall provide a report for that month on
20 each reemployed beneficiary, including the terms of the
21 reemployment, the date of the reemployment, and the amount of the
22 monthly compensation. If such a report is not received within the
23 required 90 days, the Board shall assess the employer with a penalty
24 of ten percent (10%) of the compensation of the unreported
25 reemployed beneficiaries during the months for which the employer
26 did not report the reemployed beneficiaries, with a minimum penalty
27 of twenty-five dollars (\$25.00). If after being assessed a penalty, an
28 employer provides clear and convincing evidence that the failure to
29 report resulted from a lack of oversight or some other event beyond
30 the employer's control and was not a deliberate attempt to omit the
31 reporting of reemployed beneficiaries, the Board may reduce the
32 penalty to not less than two percent (2%) of the compensation of the
33 unreported reemployed beneficiaries during the months for which the
34 employer failed to report, with a minimum penalty of twenty-five
35 dollars (\$25.00). Upon receipt by the employer of notice that a
36 penalty has been assessed under this sub-subdivision, the employer



1 shall remit the payment of the penalty to the Retirement System, in
2 one lump sum, no later than 90 days from the date of the notice."

3 **SECTION 2.(b)** G.S. 128-24(5)c1. reads as rewritten:

4 "c1. Within 90 days of the end of each month in which a beneficiary is
5 reemployed under the provisions of sub-subdivision c. of this
6 subdivision, each employer shall provide a report for that month on
7 each reemployed beneficiary, including the terms of the
8 reemployment, the date of the reemployment, and the amount of the
9 monthly compensation. If such a report is not received within the
10 required 90 days, the Board shall assess the employer with a penalty
11 of ten percent (10%) of the compensation of the unreported
12 reemployed beneficiaries during the months for which the employer
13 did not report the reemployed beneficiaries, with a minimum penalty
14 of twenty-five dollars (\$25.00). If after being assessed a penalty, an
15 employer provides clear and convincing evidence that the failure to
16 report resulted from a lack of oversight or some other event beyond
17 the employer's control and was not a deliberate attempt to omit the
18 reporting of reemployed beneficiaries, the Board may reduce the
19 penalty to not less than two percent (2%) of the compensation of the
20 unreported reemployed beneficiaries during the months for which the
21 employer failed to report, with a minimum penalty of twenty-five
22 dollars (\$25.00). Upon receipt by the employer of notice that a
23 penalty has been assessed under this sub-subdivision, the employer
24 shall remit the payment of the penalty to the Retirement System, in
25 one lump sum, no later than 90 days from the date of the notice."

26 **SECTION 3.(a)** G.S. 135-5(c) reads as rewritten:

27 "(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1,
28 1988. – The provisions of this subsection shall not be applicable to members in service on or
29 after January 1, 1988. Upon the application of a member or of his employer, any member who
30 has had five or more years of creditable service may be retired by the Board of Trustees, on the
31 first day of any calendar month, not less than one day nor more than 120 days next following
32 the date of filing such application, on a disability retirement allowance: Provided, that the
33 medical board, after a medical examination of such member, shall certify that such member is
34 mentally or physically incapacitated for the further performance of duty, that such incapacity
35 was incurred at the time of active employment and has been continuous thereafter, that such
36 incapacity is likely to be permanent, and that such member should be retired; Provided further
37 the medical board shall determine if the member is able to engage in gainful employment and,
38 if so, the member may still be retired and the disability retirement allowance as a result thereof
39 shall be reduced as in subsection (e) below. Provided further, that the medical board shall not
40 certify any member as disabled who:

- 41 (1) Applies for disability retirement based upon a mental or physical incapacity
42 which existed when the member first established membership in the system;
43 or
44 (2) Is in receipt of any payments on account of the same disability which existed
45 when the member first established membership in the system.

46 The Board of Trustees shall require each employee upon enrolling in the retirement system
47 to provide information on the membership application concerning any mental or physical
48 incapacities existing at the time the member enrolls.

49 Supplemental disability benefits heretofore provided are hereby made a permanent part of
50 disability benefits after age 65, and shall not be discontinued at age 65.

1 Notwithstanding the requirement of five or more years of creditable service to the contrary,
2 a member who is a law-enforcement officer and who has had one year or more of creditable
3 service and becomes incapacitated for duty as the natural and proximate result of an accident
4 occurring while in the actual performance of duty, and meets all other requirements for
5 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
6 allowance.

7 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
8 with an early or service retirement benefit has the right, within three years of his retirement, to
9 convert to an allowance with disability retirement benefits without modification of any election
10 of optional allowance previously made; provided, the beneficiary presents clear and convincing
11 evidence that the beneficiary would have met all applicable requirements for disability
12 retirement benefits while still in service as a member. The allowance on account of disability
13 retirement benefits to the beneficiary shall be retroactive to the effective date of early or service
14 retirement.

15 Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member
16 who met all other requirements for disability retirement benefits, except whose death occurred
17 before the first day of the calendar month in which the member's disability retirement
18 allowance was to be due and payable, may elect to receive the reduced retirement allowance
19 provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return
20 of accumulated contributions, provided the following conditions apply:

- 21 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
22 ~~member's death, one and only one beneficiary is eligible to receive a return~~
23 ~~of accumulated contributions at the time of his death, one and only one~~
24 ~~person, contributions, and~~
25 (2) The member had not instructed the Board of Trustees in writing that he did
26 not wish the provision of this subsection to apply."

27 **SECTION 3.(b)** G.S. 128-27(c) reads as rewritten:

28 "(c) Disability Retirement Benefits. – Upon the application of a member or of his
29 employer, any member who has had five or more years of creditable service may be retired by
30 the Board of Trustees, on the first day of any calendar month, not less than one day nor more
31 than 120 days next following the date of filing such application, on a disability retirement
32 allowance: Provided, that the medical board, after a medical examination of such member, shall
33 certify that such member is mentally or physically incapacitated for the further performance of
34 duty, that such incapacity was incurred at the time of active employment and has been
35 continuous thereafter, that such incapacity is likely to be permanent, and that such member
36 should be retired; Provided further the medical board shall determine if the member is able to
37 engage in gainful employment and, if so, the member may still be retired and the disability
38 retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided
39 further, that the Medical Board shall not certify any member as disabled who:

- 40 (1) Applies for disability retirement based upon a mental or physical incapacity
41 which existed when the member first established membership in the system;
42 or
43 (2) Is in receipt of any payments on account of the same disability which existed
44 when the member first established membership in the system.

45 The Board of Trustees shall require each employee upon enrolling in the retirement system
46 to provide information on the membership application concerning any mental or physical
47 incapacities existing at the time the member enrolls.

48 Notwithstanding the requirement of five or more years of creditable service to the contrary,
49 a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue
50 squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable
51 service and becomes incapacitated for duty as the natural and proximate result of an accident

1 occurring while in the actual performance of duty, and meets all other requirements for
2 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
3 allowance.

4 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
5 with an early or service retirement benefit has the right, within three years of his retirement, to
6 convert to an allowance with disability retirement benefits without modification of any election
7 of optional allowance previously made; provided, the beneficiary would have met all applicable
8 requirements for disability retirement benefits while still in service as a member. The allowance
9 on account of disability retirement benefits to the beneficiary shall be retroactive to the
10 effective date of early or service retirement.

11 Notwithstanding the foregoing, effective April 1, 1991, the surviving designated
12 beneficiary of a deceased member who met all other requirements for disability retirement
13 benefits, except whose death occurred before the first day of the calendar month in which the
14 member's disability retirement allowance was to be due and payable, may elect to receive the
15 reduced retirement allowance provided by a one hundred percent (100%) joint and survivor
16 payment option in lieu of a return of accumulated contributions, provided the following
17 conditions apply:

- 18 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
19 ~~member's death, one and only one beneficiary is eligible to receive a return~~
20 ~~of accumulated contributions at the time of his death, one and only one~~
21 ~~person, contributions, and~~
22 (2) The member had not instructed the Board of Trustees in writing that he did
23 not wish the provision of this subsection to apply."

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

25 "(19) "Retirement" shall mean withdrawal from active service with a retirement
26 allowance granted under the provisions of this Article. A retirement
27 allowance under the provisions of this Chapter may only be granted upon
28 retirement of a member. In order for a member's retirement to become
29 effective in any month, the member must render no ~~service~~ service,
30 including part time, temporary, substitute, or contractor service, at any time
31 during ~~that month.~~ the month immediately following the effective date of
32 retirement."

33 **SECTION 5.(a)** G.S. 135-4(f)(1) reads as rewritten:

34 "(1) Teachers and other State employees who entered the armed services of the
35 United States on or after September 16, 1940, and prior to February 17,
36 1941, and who returned to the service of the State within a period of two
37 years after they were first eligible to be separated or released from such
38 armed services under other than dishonorable conditions shall be entitled to
39 full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a
40 member who has been on military leave returns to work consistent with the
41 provisions of this subdivision, then the member's employer must remit to the
42 System all the employer contributions for the full period of that member's
43 military service."

44 **SECTION 5.(b)** G.S. 128-26(a) reads as rewritten:

45 **"§ 128-26. Allowance for service.**

46 (a) Each person who becomes a member during the first year of his employer's
47 participation, and who was an employee of the same employer at any time during the year
48 immediately preceding the date of participation, shall file a detailed statement of all service
49 rendered by him to that employer prior to the date of participation for which he claims credit.

50 A participating employer may allow prior service credit to any of its employees on account
51 of: their earlier service to the aforesaid employer; or, their earlier service to any other employer

1 as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state,
2 territory, or other governmental subdivision of the United States other than this State.

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

10 With respect to a member retiring on or after July 1, 1967, the governing board of a
11 participating unit may allow credit for any period of military service in the armed forces of the
12 United States if the person returned to the service of his employer within two years after having
13 been honorably discharged, or becoming entitled to be discharged, released, or separated from
14 such armed services; provided that, notwithstanding the above provisions, any member having
15 credit for not less than 10 years of otherwise creditable service may be allowed credit for such
16 military services which are not creditable in any other governmental retirement system;
17 provided further, that a member will receive credit for military service under the provisions of
18 this paragraph only if he submits satisfactory evidence of the military service claimed and the
19 participating unit of which he is an employee agrees to grant credit for such military service
20 prior to January 1, 1972.

21 A member retiring on or after July 1, 1971, who is not granted credit for military service
22 under the provisions of the preceding paragraph will be allowed credit for any period in the
23 armed services of the United States up to the date he was first eligible to be separated or
24 released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time
25 he entered military service, and either of the following conditions is met:

- 26 (1) He returns to service, with the employer by whom he was employed when he
27 entered military service, within a period of two years after he is first eligible
28 to be separated or released from such military service under other than
29 dishonorable conditions.
- 30 (2) He is in service, with the employer by whom he was employed when he
31 entered military service, for a period of not less than 10 years after he is
32 separated or released from such armed services under other than
33 dishonorable conditions.

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

39 **SECTION 6.** G.S. 135-106(b) reads as rewritten:

40 "(b) After the commencement of benefits under this section, the benefits payable under
41 the terms of this section during the first 36 months of the long-term disability period shall be
42 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable
43 to the participant or beneficiary prior to the beginning of the short-term disability period as may
44 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent
45 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would
46 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced
47 by any primary Social Security disability benefits and by monthly payments for Workers'
48 Compensation to which the participant or beneficiary may be entitled. When primary Social
49 Security disability benefits are increased by cost-of-living adjustments, the increased reduction
50 shall be applied in the first month following the month in which the member becomes entitled
51 to the increased Social Security benefit. The monthly benefit shall be further reduced by the

1 amount of any monthly payments from the federal Department of Veterans Affairs, any other
2 federal agency or any payments made under the provisions of G.S. 127A-108, to which the
3 participant or beneficiary may be entitled on account of the same disability. Provided, in any
4 event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a
5 disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in
6 lieu of long-term disability benefits; provided such election shall not extend the first 36
7 consecutive calendar months of the long-term disability period. An election to receive any
8 salary continuation for any part of any given day shall be in lieu of any long-term benefit
9 payable for that day, provided further, any lump-sum payout for vacation leave shall be treated
10 as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term
11 benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced
12 during the first 36 months of the long-term disability period by an amount, as determined by
13 the Board of Trustees, equal to a primary Social Security retirement benefit to which the
14 beneficiary might be entitled.

15 After 36 months of long-term disability, no further benefits are payable under the terms of
16 this section unless the member has been approved and is in receipt of primary Social Security
17 disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of
18 1/12th of the annual base rate of compensation last payable to the participant or beneficiary
19 prior to the beginning of the short-term disability period as may be adjusted for percentage
20 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual
21 longevity payment to which the participant or beneficiary would be eligible, to a maximum of
22 three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security
23 disability benefits and by monthly payments for Workers' Compensation to which the
24 participant or beneficiary may be entitled. When primary Social Security disability benefits are
25 increased by cost-of-living adjustments, the increased reduction shall be applied in the first
26 month following the month in which the member becomes entitled to the increased Social
27 Security benefit. The monthly benefit shall be further reduced by the amount of any monthly
28 payments from the federal Department of Veterans Affairs, for payments from any other
29 federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the
30 participant or beneficiary may be entitled on account of the same disability. Provided, in any
31 event, the benefit payable shall be no less than ten dollars (\$10.00) a month.

32 Notwithstanding the foregoing, the long-term disability benefit is payable so long as the
33 beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the
34 earliest date at which the beneficiary is eligible for an unreduced service retirement allowance
35 from the Retirement System, at which time the beneficiary would receive a retirement
36 allowance calculated on the basis of the beneficiary's average final compensation at the time of
37 disability as adjusted to reflect compensation increases subsequent to the time of disability and
38 the creditable service accumulated by the beneficiary, including creditable service while in
39 receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not
40 in receipt of a primary Social Security disability benefit, the long-term disability benefit shall
41 cease after the first 36 months of the long-term disability period. When such a long-term
42 disability recipient begins receiving this unreduced service retirement allowance from the
43 System, that recipient shall not be subject to the six-month waiting period set forth in
44 G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term
45 disability benefit in the event the Social Security Administration grants a retroactive approval
46 for primary Social Security disability benefits with a benefit effective date within the first 36
47 months of the long-term disability period. In such event, the long-term disability benefit shall
48 be restored retroactively to the date of cessation."

49 **SECTION 7.** Section 2 of this act becomes effective July 1, 2009, and applies to
50 penalties assessed on or after that date. The remainder of this act becomes effective July 1,
51 2011.