

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 276  
Committee Substitute Favorable 4/21/15

Short Title: Agency Participation Procedures Act of 2015.

(Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE AGENCY PARTICIPATION PROCEDURES ACT OF 2015.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 135-5.3 reads as rewritten:

**"§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.**

(a) ~~The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after this section becomes law, and shall be filed with the Retirement System and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election to participate, membership in the System is effective as of the date the board makes the election to participate. For each charter school employee who is employed after the date the board makes the election, membership in the System is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under [former] G.S. 115C-238.29D in 1997 or 1998.~~

(b) ~~No later than 30 days after both parties have signed the written charter under G.S. 115C-218.15, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under [former] G.S. 115C-238.29D [or G.S. 115C-218.5] after 1998.~~

(b1) The board of directors of a charter school operated by a private nonprofit corporation and that has received State Board of Education approval under G.S. 115C-218.5 may elect to become a participating employer in the Retirement System in accordance with this Article.

(b2) A charter school desiring to participate in the Retirement System shall file with the Board of Trustees an application for participation on a form approved by the Board of Trustees. In the application, the charter school shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this Chapter, and to transmit the contributions to the Board of Trustees. The charter school shall also agree to make the employer's contributions



1 for the participation in the Retirement System of all employees entering the service of the  
2 employer, after the charter school's participation begins, who shall become members.

3 (b3) A charter school seeking to become a participating employer in the Retirement  
4 System prior to the end of the initial year of operation shall be granted provisional entry into  
5 the Retirement System for one year. In the event the employee or employer contributions  
6 required under G.S. 135-8(f) are not received by the date set by the Board of Trustees, the  
7 Board of Trustees may revoke the charter school's provisional entry into the Retirement  
8 System. One year after the charter school was granted provisional entry into the Retirement  
9 System, the charter school shall undergo an actuarial and financial review as required by the  
10 Board of Trustees.

11 (b4) A charter school seeking to become a participating employer in the Retirement  
12 System after the end of the initial year of operation shall undergo an actuarial and financial  
13 review as required by the Board of Trustees prior to entry into the System.

14 (b5) The actuarial review will result in an estimate of the amount of the withdrawal  
15 liability that would be required under G.S. 135-8(i) to cease participation in the System after  
16 five years and the amount that would be required to cease participation after 10 years. The cost  
17 of this actuarial review shall be paid by the charter school and shall not exceed two thousand  
18 five hundred dollars (\$2,500). A charter school that was granted provisional entry into the  
19 Retirement System shall not be required to pay the cost of this actuarial review, and this cost  
20 may be classified as costs of administering investment programs under G.S. 147-69.3.

21 (b6) The financial review will be based on financial statements and independent audit  
22 reports held by the Local Government Commission or functionally equivalent financial  
23 statements and independent audit reports submitted to the Board of Trustees by the charter  
24 school.

25 (b7) The Board of Trustees may grant final approval of the application if it finds the  
26 following:

27 (1) The application meets the requirements set out in this Article.

28 (2) All members of the board of directors of the charter school have signed a  
29 written statement acknowledging and accepting the estimate provided under  
30 subsection (b5) of this section and the provisions of G.S. 135-8(i).

31 (3) The charter school has not been identified as inadequate by the State Board  
32 of Education as provided in G.S. 115C-218.95(b).

33 (4) The charter school's most recent audited financial statements and  
34 independent audit report demonstrate that it is financially sound and can  
35 meet the financial obligations of participation in the Retirement System.

36 (b8) Upon acceptance by the Board of Trustees of the application to become a  
37 participating employer, the charter school shall be a fully participating employer in the  
38 Retirement System. The Board may make the final decision for acceptance of the application  
39 contingent upon the receipt of a financially sound independent audit report for the fiscal year  
40 ending prior to acceptance of the application.

41 (b9) For each charter school employee who is employed on or before the date the charter  
42 school is granted entry into the System, membership in the System is effective as of the date of  
43 entry. For each charter school employee who is employed after the date the charter school is  
44 granted entry into the System, membership in the System is effective as of the date of that  
45 employee's entry into eligible service. Provisional entry is considered entry into the System for  
46 the purpose of this subsection.

47 (c) A charter school board's election to become a participating employer in the  
48 Retirement System under this section is irrevocable and shall require all eligible employees of  
49 the charter school to participate.

50 (d) No retirement benefit, death benefit, or other benefit payable under the Retirement  
51 System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers'

1 and State Employees' Retirement System on account of employment with a charter school with  
2 respect to any employee, or with respect to any beneficiary of an employee, of a charter school  
3 ~~whose board of directors does not elect to become~~ that is not a participating employer in the  
4 Retirement System under this section.

5 (e) The board of directors of each charter school shall notify each of its employees as to  
6 whether the board elected to become a participating employer in the Retirement System under  
7 this section. This notification shall be in writing and shall be provided within 30 days of the  
8 board's election or at the time an initial offer for employment is made, whichever occurs last. If  
9 the board did not elect to join the Retirement System, the notice shall include a statement that  
10 the employee shall have no legal recourse against the board or the State for any possible credit  
11 or reimbursement under the Retirement System. The employee shall provide written  
12 acknowledgment of the employee's receipt of the notification under this subsection.

13 (f) The board of directors of a charter school may elect to cease participation in the  
14 Retirement System for all of its employees by following the procedure in G.S. 135-8(i)."

15 **SECTION 2.(a)** The catch line of G.S. 120-114 reads as rewritten:

16 "**§ 120-114. Actuarial ~~notes~~; Retirement System advisory letters and cost**  
17 **estimates.**"

18 **SECTION 2.(b)** G.S. 120-114 is amended by adding a new subsection to read:

19 "(f) In addition to the other requirements of this section, if a bill or resolution  
20 contemplates removing a public agency as a participating employer from the Teachers' and  
21 State Employees' Retirement System or the Local Governmental Employees' Retirement  
22 System, the Fiscal Research Division shall obtain an estimate of cost of the withdrawal liability  
23 the agency would owe under procedures established by the Boards of Trustees of the  
24 Retirement Systems."

25 **SECTION 3.(a)** G.S. 135-8 is amended by adding a new subsection to read:

26 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is  
27 allowed to cease participation in the Retirement System by the General Assembly or as  
28 otherwise provided in this Chapter, through its governing body, may declare its intent to  
29 withdraw completely from the Retirement System as follows:

30 (1) The employer shall notify its employees and the Board of Trustees, in  
31 writing, of its action. An employer shall automatically be considered to have  
32 requested a complete withdrawal from the System the date the employer  
33 permanently ceases to employ active members. A withdrawing employer  
34 shall be required to make a lump-sum withdrawal liability payment to the  
35 Board of Trustees as provided by this section.

36 (2) Complete withdrawal by an employer shall be the first day of the month  
37 following the date the employer ceases to employ active members or the first  
38 day of the month following 60 days from the date the Board receives the  
39 employer's written request to withdraw. However, the complete withdrawal  
40 date shall not occur before the withdrawal liability is determined, as  
41 provided in subdivision (5) of this subsection.

42 (3) After complete withdrawal, all employees of the withdrawing employer shall  
43 be ineligible to accrue future benefits with the System due to employment  
44 with the withdrawing employer. The withdrawing employer shall be  
45 ineligible to elect to become a participating employer in the Retirement  
46 System, as provided in G.S. 135-5.3 for five years after its complete  
47 withdrawal date.

48 (4) All active or inactive members of the employer shall be eligible for benefits  
49 accrued with the System up to the complete withdrawal date. However, no  
50 retirement allowance or return of accumulated contributions shall be paid  
51 until the member actually terminates employment and completely separates

1 from active service with the withdrawing employer, and there is no intent or  
2 agreement, express or implied, to return to service with the withdrawing  
3 employer.

4 (5) On the date of complete withdrawal, the withdrawal liability of an employer  
5 is the maximum of one thousand dollars (\$1,000) or the amount determined  
6 by a. multiplied by the ratio of b. to c., as follows:

7 a. The excess of the actuarial present value of the vested accrued  
8 benefits of the System's members over the market value of its assets,  
9 both as of the date of the last actuarial valuation adopted by the  
10 Board of Trustees prior to the complete withdrawal date based on the  
11 plan provisions and actuarial assumptions used in the last actuarial  
12 valuation adopted by the Board of Trustees prior to the complete  
13 withdrawal date, except the interest rate assumption shall be reduced  
14 by an amount determined by the consulting actuary to reflect the  
15 increased investment, mortality, and other actuarial risk for the  
16 exiting agency's participants.

17 b. The total present value of accrued benefits of all active members of  
18 the withdrawing employer as of the last actuarial valuation adopted  
19 by the Board of Trustees prior to the complete withdrawal date.

20 c. The total present value of accrued benefits of all active members of  
21 the System as of the last actuarial valuation adopted by the Board of  
22 Trustees prior to the complete withdrawal date.

23 (6) The actuarial costs to determine the amount described in subdivision (5) of  
24 this subsection shall be paid by the withdrawing employer. An employer that  
25 does not pay the lump-sum withdrawal liability payment described in  
26 subdivision (5) of this subsection and the actuarial costs to determine this  
27 withdrawal liability within 90 days of the complete withdrawal date will  
28 continue to be a participating employer. No withdrawal liability payment  
29 shall be required if an employer exits before the end of the first year  
30 following the date of participation or if the Board revokes entry as provided  
31 in G.S. 135-5.3(b8).

32 (7) Upon the complete withdrawal of the employer, the System shall have no  
33 further legal obligation to the employer or its employees, nor shall the  
34 System be held accountable for the continued future accrual of any  
35 retirement benefit rights to which the employees may be entitled beyond the  
36 complete withdrawal date. Any litigation regarding the forfeiture of any  
37 benefits because of the employer's complete withdrawal from the System  
38 shall be the sole legal responsibility of the withdrawing employer, and the  
39 withdrawing employer shall indemnify and hold harmless the System, its  
40 Board of Trustees, its employees, and the State of North Carolina from any  
41 claims, losses, costs, damages, expenses, and liabilities, including, without  
42 limitation, court costs, and reasonable attorneys' fees asserted by any person  
43 or entity as a result of the employer's withdrawal from the System."

44 **SECTION 3.(b)** G.S. 128-30 is amended by adding a new subsection to read:

45 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is  
46 allowed to cease participation in the Retirement System by the General Assembly shall do the  
47 following:

48 (1) The employer shall notify its employees and the Board of Trustees, in  
49 writing, of its action. A withdrawing employer shall be required to make a  
50 lump-sum withdrawal liability payment to the Board of Trustees as provided  
51 by this section.

- 1           (2)    Complete withdrawal by an employer shall be the first day of the month  
2           following the date the Board receives the employer's written notification.  
3           However, the complete withdrawal date shall not occur before the  
4           withdrawal liability is determined, as provided in subdivision (5) of this  
5           subsection.
- 6           (3)    After complete withdrawal, all employees of the withdrawing employer shall  
7           be ineligible to accrue future benefits with the System due to employment  
8           with the withdrawing employer.
- 9           (4)    All active or inactive members of the employer shall be eligible for benefits  
10          accrued with the System up to the complete withdrawal date. However, no  
11          retirement allowance or return of accumulated contributions shall be paid  
12          until the member actually terminates employment and completely separates  
13          from active service with the withdrawing employer, and there is no intent or  
14          agreement, express or implied, to return to service with the withdrawing  
15          employer.
- 16          (5)    On the date of complete withdrawal, the withdrawal liability of an employer  
17          is the maximum of one thousand dollars (\$1,000) or the amount determined  
18          by a. multiplied by the ratio of b. to c., as follows:
- 19           a.    The excess of the actuarial present value of the vested accrued  
20           benefits of the System's members over the market value of its assets,  
21           both as of the date of the last actuarial valuation adopted by the  
22           Board of Trustees prior to the complete withdrawal date based on the  
23           plan provisions and actuarial assumptions used in the last actuarial  
24           valuation adopted by the Board of Trustees prior to the complete  
25           withdrawal date, except the interest rate assumption shall be reduced  
26           by an amount determined by the consulting actuary to reflect the  
27           increased investment, mortality, and other actuarial risk for the  
28           exiting agency's participants.
- 29           b.    The total present value of accrued benefits of all active members of  
30           the withdrawing employer as of the last actuarial valuation adopted  
31           by the Board of Trustees prior to the complete withdrawal date.
- 32           c.    The total present value of accrued benefits of all active members of  
33           the System as of the last actuarial valuation adopted by the Board of  
34           Trustees prior to the complete withdrawal date.
- 35          (6)    The actuarial costs to determine the amount described in subdivision (5) of  
36          this subsection shall be paid by the withdrawing employer. An employer that  
37          does not pay the lump-sum withdrawal liability payment described in  
38          subdivision (5) of this subsection and the actuarial costs to determine this  
39          withdrawal liability within 90 days of the complete withdrawal date will  
40          continue to be a participating employer.
- 41          (7)    Upon the complete withdrawal of the employer, the System shall have no  
42          further legal obligation to the employer or its employees, nor shall the  
43          System be held accountable for the continued future accrual of any  
44          retirement benefit rights to which the employees may be entitled beyond the  
45          complete withdrawal date. Any litigation regarding the forfeiture of any  
46          benefits because of the employer's complete withdrawal from the System  
47          shall be the sole legal responsibility of the withdrawing employer, and the  
48          withdrawing employer shall indemnify and hold harmless the System, its  
49          Board of Trustees, its employees, and the State of North Carolina from any  
50          claims, losses, costs, damages, expenses, and liabilities, including, without

limitation, court costs, and reasonable attorneys' fees asserted by any person or entity as a result of the employer's withdrawal from the System."

**SECTION 4.** G.S. 115C-218.100 is amended by adding a new subsection to read:

"(a1) In the event of a voluntary or involuntary dissolution of the charter school, the funds reserved for closure proceeding in subsection (a) of this section shall be used to pay wages owed to charter school employees, funds owed to the North Carolina Retirement System pursuant to G.S. 135-8, and funds owed to the State Health Plan, in that order. Other expenses shall be paid from the remaining balance in the funds reserved for closure proceeding in subsection (a) of this section."

**SECTION 5.** G.S. 128-21 reads as rewritten:

**"§ 128-21. Definitions.**

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

...  
(17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26. No prior service shall be allowed at any employer for which participation is adopted and approved by the Board of Trustees in this Retirement System on or after August 1, 2015.

...."

**SECTION 6.** G.S. 128-26(a) reads as rewritten:

"(a) Each person who becomes a member during the first year of his or her employer's participation, if and only if that participation begins prior to November 1, 2015, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him or her to that employer prior to the date of participation for which he or she claims credit."

**SECTION 7.** This act becomes effective January 1, 2016.