

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 168
Committee Substitute Favorable 3/17/21
Committee Substitute #2 Favorable 3/23/21

Short Title: Retirement Administrative Changes Act of 2021.-AB

(Public)

Sponsors:

Referred to:

March 1, 2021

1 A BILL TO BE ENTITLED
2 AN ACT MAKING ADMINISTRATIVE CHANGES RELATED TO
3 CONTRIBUTION-BASED BENEFIT CAP LIABILITIES UNDER THE LOCAL
4 GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM (LGERS) AND THE
5 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM (TSERS);
6 CLARIFYING WITHDRAWAL LIABILITIES UNDER LGERS AND TSERS;
7 CLARIFYING AND STANDARDIZING THE DEFINITION OF "ACTUARIAL
8 EQUIVALENT" UNDER LGERS AND TSERS; REQUIRING EMPLOYING UNITS TO
9 ADOPT WRITTEN POLICIES FOR SPECIAL SEPARATION BUYOUTS FOR LAW
10 ENFORCEMENT OFFICERS; GIVING THE DEPARTMENT OF STATE TREASURER
11 AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES LIMITED
12 AUTHORITY TO ADOPT ADMINISTRATIVE FEES UNDER CERTAIN PLANS;
13 CLAWING BACK DISABILITY INCOME PLAN OVERPAYMENTS UNDER THE
14 OPTIONAL RETIREMENT PROGRAM; AND ADDRESSING SPECIAL RETIREMENT
15 ALLOWANCE PAYMENTS UPON THE DEATH OF THE DESIGNATED
16 BENEFICIARY.

17 The General Assembly of North Carolina enacts:

18
19 **PART I. ADMINISTRATIVE CHANGES RELATED TO CONTRIBUTION-BASED**
20 **BENEFIT CAP LIABILITIES UNDER THE LOCAL GOVERNMENTAL**
21 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**
22 **EMPLOYEES' RETIREMENT SYSTEM**

23
24 **AUTHORIZATION FOR LOCAL GOVERNMENT EMPLOYERS TO PRE-FUND**
25 **CONTRIBUTION-BASED BENEFIT CAP LIABILITIES TO THE LOCAL**
26 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM**

27 **SECTION 1.1.** G.S. 159-30.1(a) reads as rewritten:

28 **"§ 159-30.1. Trust for other post-employment benefits.**

29 (a) Trust. – A local government, a public authority, an entity eligible to participate in the
30 Local Government ~~Employee's~~ Employees' Retirement System, or a local school administrative
31 unit may establish and fund an irrevocable trust for the purpose of paying (i) post-employment
32 benefits for which the entity is ~~liable~~ liable or (ii) contribution-based benefit cap liabilities to the
33 Local Governmental Employees' Retirement System. The irrevocable trust must be established
34 by resolution or ordinance of the entity's governing board. The resolution or ordinance must state
35 the purposes for which the trust is created and the method of determining and selecting the Fund's



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1 trustees. The resolution or ordinance establishing the trust may be amended from time to time,
2 but an amendment may not authorize the use of monies in the trust for a purpose not stated in the
3 resolution or ordinance establishing the trust."
4

5 **AUTHORIZATION TO COLLECT ADDITIONAL CONTRIBUTIONS FROM**
6 **EMPLOYING UNITS UNDER THE TEACHERS' AND STATE EMPLOYEES'**
7 **RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES'**
8 **RETIREMENT SYSTEM FOR PENSION SPIKING LIABILITIES**

9 **SECTION 1.2.(a)** G.S. 128-30(d) is amended by adding a new subdivision to read:

10 "(4a) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of
11 the fiscal year following 90 days after the assessment of a contribution-based
12 benefit cap liability that is not paid as a lump-sum payment, the required
13 employer contribution rate for an employer shall be adjusted to include an
14 additional contribution amount equal to a rate per centum that is estimated to
15 extinguish the contribution-based benefit cap liability on an amortization
16 schedule selected by the Board that has been applied to unfunded liabilities in
17 the most recent actuarial valuation."

18 **SECTION 1.2.(b)** G.S. 135-8(f) is amended by adding a new subdivision to read:

19 "(5) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of
20 the fiscal year following 90 days after the assessment of a contribution-based
21 benefit cap liability that is not paid as a lump-sum payment, the required
22 employer contribution rate for an employer shall be adjusted to include an
23 additional contribution amount equal to a rate per centum that is estimated to
24 extinguish the contribution-based benefit cap liability on an amortization
25 schedule selected by the Board that has been applied to unfunded liabilities in
26 the most recent actuarial valuation."

27 **SECTION 1.2.(c)** This section applies to assessments imposed on or after the
28 effective date of this act to reduce an employer's contribution-based benefit cap liability.
29

30 **CLARIFICATION OF WHEN CONTRIBUTION-BASED BENEFIT CAP LIABILITY**
31 **PAYMENTS ARE DUE FOR PURPOSES OF TRIGGERING INTERCEPTIONS OF**
32 **STATE APPROPRIATIONS FROM EMPLOYING UNITS UNDER THE LOCAL**
33 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**
34 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

35 **SECTION 1.3.(a)** G.S. 128-30(g)(3) reads as rewritten:

36 "(3) In the event the employee or employer contributions required under this
37 section are not received by the date set by the Board of Trustees and provided
38 that a one-time exception has not been agreed upon in advance due to exigent
39 circumstances, the Board shall assess the employer with a penalty, in lieu of
40 interest, of 1% per month with a minimum penalty of twenty-five dollars
41 (\$25.00). The Board may waive one penalty per employer every five years if
42 the Board finds that the employer has consistently demonstrated good-faith
43 efforts to comply with the set deadline. If within 90 days after request therefor
44 by the Board any employer shall not have provided the System with the
45 records and other information required hereunder or if the full accrued amount
46 of the contributions provided for under this section due from members
47 employed by an employer or from an employer shall not have been received
48 by the System from the chief fiscal officer of such employer within 30 days
49 after the last due date as herein provided, then, notwithstanding anything
50 herein or in the provisions of any other law to the contrary, upon notification
51 by the Board to the State Treasurer as to the default of such employer as herein

1 provided, any distributions which might otherwise be made to such employer,
2 or the municipality or county of which such employer is an integral part, from
3 any funds of the State or any funds collected by the State shall be withheld
4 from such employer until notice from the Board to the State Treasurer that
5 such employer is no longer in default.

6 In the event that an employer fails to submit payment of any required
7 contributions or payments to the Retirement Systems Division, other than the
8 one percent (1%) payment provided for in the first paragraph of this
9 subdivision, within 90 days after the date set by the Board of Trustees, the
10 Board shall notify the State Treasurer of its intent to collect the delinquent
11 contributions and other payments due to the Retirement Systems Division and
12 request an interception of State appropriations due to the participating
13 employer.

14 Except as provided in this subdivision, upon notification by the Board of
15 Trustees to the State Treasurer and the Office of State Budget and
16 Management as to the default of the employer, the Office of State Budget and
17 Management shall withhold from any State appropriation due to that employer
18 an amount equal to the sum of all delinquent contributions and other debts due
19 to the Retirement Systems Division and shall transmit that amount to the
20 Retirement Systems Division. For the purposes of this subsection, the date set
21 by the Board of Trustees for payment of the contribution-based benefit cap
22 liability shall be 12 months after the member's effective date of
23 ~~retirement~~retirement, or the first day of the month coincident with or next
24 following six months after the date of the invoice, whichever is later."

25 **SECTION 1.3.(b)** G.S. 135-8(f)(3) reads as rewritten:

26 "(3) In the event the employee or employer contributions required under this
27 section are not received by the date set by the Board of Trustees and provided
28 that a one-time exception has not been agreed upon in advance due to exigent
29 circumstances, the Board shall assess the employer with a penalty, in lieu of
30 interest, of 1% per month with a minimum penalty of twenty-five dollars
31 (\$25.00). The Board may waive one penalty per employer every five years if
32 the Board finds that the employer has consistently demonstrated good-faith
33 efforts to comply with the set deadline. If within 90 days after request therefor
34 by the Board any employer shall not have provided the System with the
35 records and other information required hereunder or if the full accrued amount
36 of the contributions provided for under this section due from members
37 employed by an employer or from an employer other than the State shall not
38 have been received by the System from the chief fiscal officer of such
39 employer within 30 days after the last due date as herein provided, then,
40 notwithstanding anything herein or in the provisions of any other law to the
41 contrary, upon notification by the Board to the State Treasurer as to the default
42 of such employer as herein provided, any distributions which might otherwise
43 be made to such employer from any funds of the State shall be withheld from
44 such employer until notice from the Board to the State Treasurer that such
45 employer is no longer in default.

46 In the event that an employer fails to submit payment of any required
47 contributions or payments to the Retirement Systems Division, other than the
48 one percent (1%) payment provided for in the first paragraph of this
49 subdivision, within 90 days after the date set by the Board of Trustees, the
50 Board shall notify the State Treasurer of its intent to collect the delinquent
51 contributions and other payments due to the Retirement Systems Division and

1 request an interception of State appropriations due to the participating
2 employer.

3 Except as provided in this subdivision, upon notification by the Board of
4 Trustees to the State Treasurer and the Office of State Budget and
5 Management as to the default of the employer, the Office of State Budget and
6 Management shall withhold from any State appropriation due to that employer
7 an amount equal to the sum of all delinquent contributions and other debts due
8 to the Retirement Systems Division and shall transmit that amount to the
9 Retirement Systems Division. For the purposes of this subsection, the date set
10 by the Board of Trustees for payment of the contribution-based benefit cap
11 liability shall be 12 months after the member's effective date of
12 ~~retirement~~retirement, or the first day of the month coincident with or next
13 following six months after the date of the invoice, whichever is later."

14 **SECTION 1.3.(c)** This section applies to contribution-based benefit cap liability
15 payments due from an employer on or after the effective date of this act.
16

17 **PART II. CLARIFICATION OF WITHDRAWAL LIABILITIES UNDER THE LOCAL**
18 **GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS'**
19 **AND STATE EMPLOYEES' RETIREMENT SYSTEM**

20 **SECTION 2.1.(a)** G.S. 128-30(i) reads as rewritten:

21 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is allowed
22 to cease participation in the Retirement System by the General Assembly or by sale, dissolution,
23 or otherwise changing to a business or legal form not eligible for participation as an employer in
24 the Retirement System under federal law shall do the following:

25"

26 **SECTION 2.1.(b)** G.S. 135-8(i) reads as rewritten:

27 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is allowed
28 to cease participation in the Retirement System by the General ~~Assembly~~Assembly; by sale,
29 dissolution, or otherwise changing to a business or legal form not eligible for participation as an
30 employer in the Retirement System under federal law; or as otherwise provided in this Chapter,
31 through its governing body, may declare its intent to withdraw completely from the Retirement
32 System as follows:

33"

34 **SECTION 2.1.(c)** This section applies to a participation withdrawal by an employing
35 unit on or after the effective date of this act.
36

37 **PART III. CLARIFICATION AND STANDARDIZATION OF THE DEFINITION OF**
38 **"ACTUARIAL EQUIVALENT" UNDER THE LOCAL GOVERNMENTAL**
39 **EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE**
40 **EMPLOYEES' RETIREMENT SYSTEM**

41 **SECTION 3.1.(a)** G.S. 128-21(2) reads as rewritten:

42 "(2) "Actuarial equivalent" shall mean a benefit of equal value when computed at
43 ~~regular interest~~ upon the basis of ~~such mortality tables~~ actuarial assumptions
44 as shall be adopted by the Board of Trustees."

45 **SECTION 3.1.(b)** G.S. 135-1(2) reads as rewritten:

46 "(2) "Actuarial equivalent" shall mean a benefit of equal value when computed
47 upon the basis of ~~such mortality tables~~ actuarial assumptions as shall be
48 adopted by the Board of ~~Trustees, and regular interest.~~ Trustees."

49 **SECTION 3.1.(c)** This section applies to benefit calculations performed on or after
50 the effective date of this act.
51

1 **PART IV. MANDATORY ADOPTION OF WRITTEN POLICIES FOR CERTAIN**
2 **SPECIAL SEPARATION BUYOUTS FOR LAW ENFORCEMENT OFFICERS**

3 **SECTION 4.1.(a)** G.S. 143-166.43 reads as rewritten:

4 "**§ 143-166.43. Separation buyouts for law enforcement officers.**

5 (a) Any State department, agency, or institution, or any local government employer, may,
6 in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves
7 employment prior to reaching the officer's eligibility for a separation allowance under this
8 Article. The lump sum separation buyout shall be paid from funds available and shall not exceed
9 the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41
10 or G.S. 143-166.42.

11 (b) Prior to the transfer by a State department, agency, or institution, or any local
12 government employer, of a lump sum separation buyout described in subsection (a) of this section
13 to the Teachers' and State Employees' Retirement System (TSERS) pursuant to G.S. 135-5(m2)
14 or to the Local Governmental Employees' Retirement System (LGERS) pursuant to
15 G.S. 128-27(m2), the State department, agency, or institution, or the local government employer,
16 shall have in place a written policy duly adopted by the employing unit that does not allow
17 employees to choose between accepting the lump sum separation buyout as a cash payment or
18 transferring the lump sum separation buyout to TSERS or LGERS."

19 **SECTION 4.1.(b)** This section applies to lump sum separation buyouts offered to
20 law enforcement officers on or after the effective date of this act by a State department, agency,
21 or institution, or any local government employer.

22
23 **PART V. AUTHORIZATION FOR THE DEPARTMENT OF STATE TREASURER**
24 **AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES TO ADOPT**
25 **ADMINISTRATIVE FEES UNDER THE SUPPLEMENTAL RETIREMENT PLAN OF**
26 **NORTH CAROLINA, THE NORTH CAROLINA DEFERRED COMPENSATION**
27 **PLAN, AND THE NORTH CAROLINA PUBLIC SCHOOL TEACHERS' AND**
28 **PROFESSIONAL EDUCATORS' INVESTMENT PLAN**

29 **SECTION 5.1.(a)** G.S. 135-91 reads as rewritten:

30 "**§ 135-91. Administration.**

31 ...

32 (c) The Department of State Treasurer and the Board of Trustees shall have full power
33 and authority to adopt rules and regulations for the administration of the Plan, provided they are
34 not inconsistent with the provisions of this Article.

35 (c1) Subject to the limitations specified in this subsection, the Department of State
36 Treasurer and the Board of Trustees may adopt a new or amended rule to impose or change
37 administrative fees under the Plan, provided that the rule is adopted at a public meeting that
38 complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such
39 public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the
40 Department of State Treasurer's public website and, subject to the approval of the Department of
41 State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day
42 period preceding the public meeting at which the rule is to be adopted, the Department of State
43 Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the
44 adoption or amendment of a rule concerning the imposition of, or a change to, an administrative
45 fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject
46 to the approval of the Department of State Treasurer, provide a link or a copy of the adopted rule
47 to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect
48 until amended or repealed by the Department of State Treasurer and the Board of Trustees and
49 are not subject to Article 2A of Chapter 150B of the General Statutes. This subsection applies
50 only to rules regarding administrative fees charged by the Department of State Treasurer and the
51 Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina

1 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional
2 Educators' Investment Plan. The Department of State Treasurer and the Board of Trustees may
3 not adopt a new or amended rule to impose or change an administrative fee under the Plan that
4 exceeds the following amounts:

5 (1) One-fourth percent (0.25%) of assets for the Supplemental Retirement Plan of
6 North Carolina.

7 (2) One-fourth percent (0.25%) of assets for the North Carolina Deferred
8 Compensation Plan.

9 (3) Five hundredths percent (0.05%) of assets for the North Carolina Public
10 School Teachers' and Professional Educators' Investment Plan.

11 (c2) The Department of State Treasurer and Board of Trustees may appoint those agents,
12 contractors, employees and committees as they deem advisable to carry out the terms and
13 conditions of the Plan. In order to promote achievement of long-term investment objectives and
14 to retain key public employees with investment functions, the Board of Trustees shall authorize
15 the State Treasurer to establish market-oriented compensation plans, including salaries and
16 performance-related bonuses, for employees possessing specialized skills or knowledge
17 necessary for the proper administration of the Plan, who shall be exempt from the classification
18 and compensation rules established by the Office of State Human Resources. The design and
19 administration of those compensation plans shall be based on compensation studies conducted
20 by a nationally recognized firm specializing in public fund investment compensation. The
21 compensation and other associated employee benefits shall be apportioned directly from the Plan.
22"

23 **SECTION 5.1.(b)** Any administrative fee established or changed by the Department
24 of State Treasurer and the Board of Trustees pursuant to rules adopted under G.S. 135-91(c1), as
25 amended by this section, shall apply prospectively to any amounts owed on or after the effective
26 date of this act to the Supplemental Retirement Plan of North Carolina, the North Carolina
27 Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional
28 Educators' Investment Plan.

29

30 **PART VI. CLAWBACK OF NORTH CAROLINA DISABILITY INCOME PLAN** 31 **OVERPAYMENTS**

32 **SECTION 6.1.(a)** G.S. 135-107 reads as rewritten:

33 **"§ 135-107. Optional Retirement Program.**

34 (a) Any participant of the Optional Retirement Program who becomes a beneficiary
35 under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary
36 is disabled and is in receipt of a primary Social Security disability benefit until the time the
37 beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary
38 elected to be a member of the Teachers' and State Employees' Retirement System, and shall
39 receive no service accruals as otherwise provided members of the Retirement System under the
40 provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional
41 Retirement Program has not been approved and is not in receipt of a primary Social Security
42 disability benefit, the long-term disability benefit shall cease after the first 36 months of the
43 long-term disability period. However, a beneficiary shall be entitled to a restoration of the
44 long-term disability benefit in the event the Social Security Administration grants a retroactive
45 approval for primary Social Security disability benefits with a benefit effective date within the
46 first 36 months of the long-term disability period. In such event, the long-term disability benefit
47 shall be restored retroactively to the date of cessation.

48 (b) If a participant of the Optional Retirement Program owes an overpayment to the
49 Disability Income Plan at the time the beneficiary would first qualify for an unreduced retirement
50 benefit had the member elected to be a member of the Teachers' and State Employees' Retirement
51 System, then the participant shall pay the total overpayment amount due to the Disability Income

1 Plan. If the participant fails to pay the total amount of the overpayment due to the Disability
2 Income Plan within six months after the earliest age at which the member could retire on an
3 unreduced retirement allowance, then the participant shall not be allowed to enroll in a new year
4 of coverage under the North Carolina State Health Plan for Teachers and State Employees until
5 one of the following occurs:

- 6 (1) The Disability Income Plan receives from the participant payment in full of
7 the total overpayment due.
8 (2) The participant has made payment arrangements approved by the Executive
9 Director of the Retirement System."

10 **SECTION 6.1.(b)** This section applies to overpayments owed on or after the
11 effective date of this act to the North Carolina Disability Income Plan.
12

13 **PART VII. SPECIAL RETIREMENT ALLOWANCE PAYMENTS UPON THE DEATH** 14 **OF THE DESIGNATED BENEFICIARY**

15 **SECTION 7.1.(a)** G.S. 128-27(m2)(1) reads as rewritten:

- 16 "(1) A member may elect to receive the special retirement allowance for life but
17 with payments guaranteed for a number of months to be specified by the Board
18 of Trustees. Under this plan, if the member dies before the expiration of the
19 specified number of months, the special retirement allowance will continue to
20 be paid to the member's designated beneficiary for the life of the beneficiary,
21 if Option 2, 3 or 6 is selected. If the member's designated beneficiary under
22 Option 2, 3 or 6 begins receiving monthly payments and dies before the
23 specified number of monthly payments have been made in combination to the
24 member and beneficiary, a one-time payment will be paid to the member's
25 legal representatives equal to the initial monthly special retirement allowance,
26 multiplied by the specified number of months, less the total of the monthly
27 payments made to the member and beneficiary. If Option 2, 3 or 6 is not
28 selected, selected, and the member dies before the expiration of the specified
29 number of months, the member's designated beneficiary will receive the
30 benefit only for the remainder of the specified number of months. If the
31 member's designated beneficiary dies before receiving payments for the
32 specified number of months, any remaining payments will be paid to the
33 member's estate a one-time payment equal to the initial monthly special
34 retirement allowance, multiplied by the specified number of months, less the
35 total of the monthly payments made to the member."

36 **SECTION 7.1.(b)** G.S. 135-5(m2)(1) reads as rewritten:

- 37 "(1) A member may elect to receive the special retirement allowance for life but
38 with payments guaranteed for a number of months to be specified by the Board
39 of Trustees. Under this plan, if the member dies before the expiration of the
40 specified number of months, the special retirement allowance will continue to
41 be paid to the member's designated beneficiary for the life of the beneficiary,
42 if Option 2, 3 or 6 is selected. If the member's designated beneficiary under
43 Option 2, 3 or 6 begins receiving monthly payments and dies before the
44 specified number of monthly payments have been made in combination to the
45 member and beneficiary, a one-time payment will be paid to the member's
46 legal representatives equal to the initial monthly special retirement allowance,
47 multiplied by the specified number of months, less the total of the monthly
48 payments made to the member and beneficiary. If Option 2, 3 or 6 is not
49 selected, selected, and the member dies before the expiration of the specified
50 number of months, the member's designated beneficiary will receive the
51 benefit only for the remainder of the specified number of months. If the

1 ~~member's designated beneficiary dies before receiving payments for the~~
2 ~~specified number of months, any remaining payments will be paid to the~~
3 ~~member's estate.~~a one-time payment equal to the initial monthly special
4 retirement allowance, multiplied by the specified number of months, less the
5 total of the monthly payments made to the member."
6

7 **PART VIII. SEVERABILITY**

8 **SECTION 8.1.** If any provision of this act or its application is held invalid, the
9 invalidity does not affect other provisions or applications of this act that can be given effect
10 without the invalid provisions or application, and to this end the provisions of this act are
11 severable.
12

13 **PART IX. EFFECTIVE DATE**

14 **SECTION 9.1.** This act becomes effective July 1, 2021.