

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-75
HOUSE BILL 168**

AN ACT MAKING ADMINISTRATIVE CHANGES RELATED TO CONTRIBUTION-BASED BENEFIT CAP LIABILITIES UNDER THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM (LGERS) AND THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM (TSERS); CLARIFYING WITHDRAWAL LIABILITIES UNDER LGERS AND TSERS; CLARIFYING AND STANDARDIZING THE DEFINITION OF "ACTUARIAL EQUIVALENT" UNDER LGERS AND TSERS; REQUIRING EMPLOYING UNITS TO ADOPT WRITTEN POLICIES FOR SPECIAL SEPARATION BUYOUTS FOR LAW ENFORCEMENT OFFICERS; GIVING THE DEPARTMENT OF STATE TREASURER AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES LIMITED AUTHORITY TO ADOPT ADMINISTRATIVE FEES UNDER CERTAIN PLANS; CLAWING BACK DISABILITY INCOME PLAN OVERPAYMENTS UNDER THE OPTIONAL RETIREMENT PROGRAM; AND ADDRESSING SPECIAL RETIREMENT ALLOWANCE PAYMENTS UPON THE DEATH OF THE DESIGNATED BENEFICIARY.

The General Assembly of North Carolina enacts:

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

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

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

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

(a) Trust. – A local government, a public authority, an entity eligible to participate in the Local Government ~~Employee's~~ Employees' Retirement System, or a local school administrative unit may establish and fund an irrevocable trust for the purpose of paying (i) post-employment benefits for which the entity is ~~liable~~ liable or (ii) contribution-based benefit cap liabilities to the Local Governmental Employees' Retirement System. The irrevocable trust must be established by resolution or ordinance of the entity's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust."

CLARIFICATION OF WHEN CONTRIBUTION-BASED BENEFIT CAP LIABILITY PAYMENTS ARE DUE FOR PURPOSES OF TRIGGERING INTERCEPTIONS OF STATE APPROPRIATIONS FROM EMPLOYING UNITS UNDER THE LOCAL



GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

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

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

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

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

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

"(3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees and provided that a one-time exception has not been agreed upon in advance due to exigent circumstances, the Board shall assess the employer with a penalty, in lieu of interest, of 1% per month with a minimum penalty of twenty-five dollars (\$25.00). The Board may waive one penalty per employer every five years if the Board finds that the employer has consistently demonstrated good-faith

efforts to comply with the set deadline. If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

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

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

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

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

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

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

...."

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

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

...."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 135-91. Administration.

...

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

(c1) Subject to the limitations specified in this subsection, the Department of State Treasurer and the Board of Trustees may adopt a new or amended rule to impose or change administrative fees under the Plan, provided that the rule is adopted at a public meeting that complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the Department of State Treasurer's public website and, subject to the approval of the Department of State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day period preceding the public meeting at which the rule is to be adopted, the Department of State Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the adoption or amendment of a rule concerning the imposition of, or a change to, an administrative fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject to the approval of the Department of State Treasurer, provide a link or a copy of the adopted rule to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect until amended or repealed by the Department of State Treasurer and the Board of Trustees and are not subject to Article 2A of Chapter 150B of the General Statutes. This subsection applies only to rules regarding administrative fees charged by the Department of State Treasurer and the Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan. The Department of State Treasurer and the Board of Trustees may not adopt a new or amended rule to impose or change an administrative fee under the Plan that exceeds the following amounts:

- (1) Twenty-five thousandths percent (0.025%) of assets for the Supplemental Retirement Income Plan of North Carolina.
- (2) Twenty-five thousandths percent (0.025%) of assets for the North Carolina Deferred Compensation Plan.
- (3) Five hundredths percent (0.05%) of assets for the North Carolina Public School Teachers' and Professional Educators' Investment Plan.

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

...."

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

PART VI. CLAWBACK OF NORTH CAROLINA DISABILITY INCOME PLAN OVERPAYMENTS

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

"§ 135-107. Optional Retirement Program.

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

(b) If a participant of the Optional Retirement Program owes an overpayment to the Disability Income Plan at the time the beneficiary would first qualify for an unreduced retirement benefit had the member elected to be a member of the Teachers' and State Employees' Retirement System, then the participant shall pay the total overpayment amount due to the Disability Income Plan. If the participant fails to pay the total amount of the overpayment due to the Disability Income Plan within six months after the earliest age at which the member could retire on an unreduced retirement allowance, then the participant shall not be allowed to enroll in a new year of coverage under the North Carolina State Health Plan for Teachers and State Employees until one of the following occurs:

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

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

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

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

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

~~specified number of months, any remaining payments will be paid to the member's estate. a one-time payment equal to the initial monthly special retirement allowance, multiplied by the specified number of months, less the total of the monthly payments made to the member."~~

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

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

PART VIII. SEVERABILITY

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

PART IX. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 23rd day of June, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:02 p.m. this 2nd day of July, 2021