

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

H

2

**HOUSE BILL 359
Committee Substitute Favorable 5/9/13**

Short Title: Retirement Administrative Changes Act of 2013-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO ADMINISTRATION OF THE STATE RETIREMENT
3 SYSTEMS THAT WILL EXTEND THE TRANSFER BENEFIT OPTION TO
4 PARTICIPANTS IN THE 403(B) SUPPLEMENTAL RETIREMENT PLAN, CLARIFY
5 THE TIMING OF THE SOCIAL SECURITY OFFSET FOR LONG-TERM DISABILITY
6 BENEFITS, ESTABLISH A 415(M) BENEFITS PRESERVATION ARRANGEMENT
7 AS ALLOWED UNDER FEDERAL LAW, AND PROVIDE THAT DOMESTIC
8 RELATIONS ORDERS DIVIDING INTERESTS UNDER THE RETIREMENT SYSTEM
9 MUST BE SUBMITTED ON APPROVED FORMS.

10 The General Assembly of North Carolina enacts:

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

12 "(m2) Special Retirement Allowance. – At any time coincident with or following
13 retirement, a member may make a one-time election to transfer any portion of the member's
14 eligible accumulated contributions, not including any Roth after-tax contributions and the
15 earnings thereon, from the Supplemental Retirement Income Plan of North Carolina
16 ~~of Carolina~~, the North Carolina Public Employee Deferred Compensation ~~Plan~~Plan, or the
17 North Carolina Public School Teachers' and Professional Educators' Investment Plan to this
18 Retirement System and receive, in addition to the member's basic service, early or disability
19 retirement allowance, a special retirement allowance which shall be based upon the member's
20 transferred balance. Notwithstanding anything to the contrary, a member may not transfer such
21 amounts as will cause the member's retirement allowance under the System to exceed the
22 amount allowable under G.S. 135-18.7(b). The Board of Trustees may establish a minimum
23 amount that must be transferred if a transfer is elected. The member may elect a special
24 retirement allowance with no postretirement increases or a special retirement allowance with
25 annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index.
26 Postretirement increases on any other allowance will not apply to the special retirement
27 allowance. The Board of Trustees shall provide educational materials to the members who
28 apply for the transfer authorized by this section. Those materials shall describe the special
29 retirement allowance and shall explain (i) the relationship between the transferred balance and
30 the monthly benefit; and (ii) how the member's heirs may be impacted by the election to make
31 this transfer and any costs and fees involved.

32 For the purpose of determining the special retirement allowance, the Board of Trustees shall
33 adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality
34 and such other tables as may be necessary based upon actual experience. A single set of
35 mortality and such other tables will be used for all members, with factors differing only based
36 on the age of the member and the election of postretirement increases. The Board of Trustees



1 shall modify the mortality and such other tables every five years, as shall be deemed necessary,
2 based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a
3 member who transfers the member's eligible accumulated contributions from the Supplemental
4 Retirement Income Plan of North ~~Carolina~~ or Carolina, the North Carolina Public Employee
5 Deferred Compensation ~~Plan~~ Plan, or the North Carolina Public School Teachers' and
6 Professional Educators' Investment Plan to this Retirement System shall be taxed for North
7 Carolina State Income Tax purposes on the special retirement allowance the same as if that
8 special retirement allowance had been paid directly by the Supplemental Retirement Income
9 Plan of North ~~Carolina~~ or Carolina, the North Carolina Public Employee Deferred
10 Compensation ~~Plan~~ Plan, or the North Carolina Public School Teachers' and Professional
11 Educators' Investment Plan. The Teachers' and State Employees' Retirement System shall be
12 responsible to determine the taxable amount, if any, and report accordingly.

13 The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess
14 a one-time flat administrative fee not to exceed the actual cost of the administrative expenses
15 relating to these transfers.

16 The special retirement allowance shall continue for the life of the member and the
17 beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as
18 provided in G.S. 135-5(g), if any. The Board of Trustees, however, shall establish two payment
19 options that guarantee payments as follows:

- 20 (1) A member may elect to receive the special retirement allowance for life but
21 with payments guaranteed for a number of months to be specified by the
22 Board of Trustees. Under this plan, if the member dies before the expiration
23 of the specified number of months, the special retirement allowance will
24 continue to be paid to the member's designated beneficiary for the life of the
25 beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected,
26 the member's designated beneficiary will receive the benefit only for the
27 remainder of the specified number of months. If the member's designated
28 beneficiary dies before receiving payments for the specified number of
29 months, any remaining payments will be paid to the member's estate.
- 30 (2) A member may elect to receive the special retirement allowance for life but
31 is guaranteed that the sum of the special allowance payments will equal the
32 total of the transferred amount. Under this payment option, if the member
33 dies before receiving the total transferred amount, the special retirement
34 allowance will continue to be paid to the member's designated beneficiary
35 for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or
36 6 is not selected, the member's designated beneficiary or the member's estate
37 shall be paid any remaining balance of the transferred amount.

38 The Board of Trustees shall report annually to the Joint Legislative Commission on
39 Governmental Operations on the number of persons who made an election in the previous
40 calendar year, with any recommendations it might make on amendment or repeal based on any
41 identified problems.

42 The General Assembly reserves the right to repeal or amend this subsection, but such repeal
43 or amendment shall not affect any person who has already made the one-time election provided
44 in this subsection."

45 **SECTION 2.** G.S. 135-106(b) reads as rewritten:

46 "(b) After the commencement of benefits under this section, the benefits payable under
47 the terms of this section during the first 36 months of the long-term disability period shall be
48 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable
49 to the participant or beneficiary prior to the beginning of the short-term disability period as may
50 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent
51 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would

1 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced
2 by any primary Social Security disability benefits to which the beneficiary may be entitled,
3 effective as of the first of the month following the month of initial entitlement, and by monthly
4 payments for Workers' Compensation to which the participant or beneficiary may be entitled.
5 When primary Social Security disability benefits are increased by cost-of-living adjustments,
6 the increased reduction shall be applied in the first month following the month in which the
7 member becomes entitled to the increased Social Security benefit. The monthly benefit shall be
8 further reduced by the amount of any monthly payments from the federal Department of
9 Veterans Affairs, any other federal agency or any payments made under the provisions of
10 G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same
11 disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00)
12 a month. However, a disabled participant may elect to receive any salary continuation as
13 provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall
14 not extend the first 36 consecutive calendar months of the long-term disability period. An
15 election to receive any salary continuation for any part of any given day shall be in lieu of any
16 long-term benefit payable for that day, provided further, any lump-sum payout for vacation
17 leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in
18 lieu of any long-term benefit otherwise payable. Provided that, in any event, a beneficiary's
19 benefit shall be reduced during the first 36 months of the long-term disability period by an
20 amount, as determined by the Board of Trustees, equal to a primary Social Security retirement
21 benefit to which the beneficiary might be entitled.

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

41 Notwithstanding the foregoing, but subject to an additional integration with the five-year
42 and 10-year retirement vesting provisions as set forth in this paragraph, the long-term disability
43 benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social
44 Security disability benefit until the earliest date at which the beneficiary who became a member
45 prior to August 1, 2011, is eligible for an unreduced service retirement allowance from the
46 Retirement System, at which time the beneficiary would receive a retirement allowance
47 calculated on the basis of the beneficiary's average final compensation at the time of disability
48 as adjusted to reflect compensation increases subsequent to the time of disability and the
49 creditable service accumulated by the beneficiary, including creditable service while in receipt
50 of benefits under the Plan. In the case of any long-term disability beneficiary who became a
51 member on and after August 1, 2011, and ordinarily would not be eligible for a retirement

1 benefit without 10 years of membership service, for purposes of this conversion from long-term
2 disability to service retirement, and for that purpose only, noncontributory creditable service
3 granted while in receipt of disability benefits under this Article shall be deemed to be
4 membership service, through the completion of 10 years of combined membership and
5 noncontributory service on short-term and long-term disability benefits in total. In the event the
6 beneficiary has not been approved and is not in receipt of a primary Social Security disability
7 benefit, the long-term disability benefit shall cease after the first 36 months of the long-term
8 disability period. When such a long-term disability recipient begins receiving this unreduced
9 service retirement allowance from the System, that recipient shall not be subject to the
10 six-month waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled
11 to a restoration of the long-term disability benefit in the event the Social Security
12 Administration grants a retroactive approval for primary Social Security disability benefits with
13 a benefit effective date within the first 36 months of the long-term disability period. In such
14 event, the long-term disability benefit shall be restored retroactively to the date of cessation."

15 **SECTION 3.(a)** Chapter 135 of the General Statutes is amended by adding a new
16 Article to read:

17 "Article 7.

18 "Qualified Excess Benefit Arrangement.

19 **"§ 135-150. Definitions.**

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

- 22 (1) "Board of Trustees" means the Board of Trustees established by G.S. 135-6.
23 (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
24 amended from time to time.
25 (3) "Payee" means a retired member, or the survivor beneficiary of a member or
26 retired member.
27 (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit
28 arrangement under section 415(m) of the Internal Revenue Code established
29 under this Article.
30 (5) "Retirement System" means the Teachers' and State Employees' Retirement
31 System.

32 **"§ 135-151. Qualified Excess Benefit Arrangement.**

33 (a) The Qualified Excess Benefit Arrangement (QEBA) is established effective January
34 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA
35 is solely to provide the part of a retirement allowance or benefit that would otherwise have been
36 payable by a Retirement System except for the limitations under section 415(b) of the Internal
37 Revenue Code. The QEBA, as set forth in this Article, is intended to constitute a qualified
38 governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code.

39 (b) Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee
40 shall participate in the QEBA for any calendar year, or portion of the calendar year, during
41 which he or she receives a retirement allowance or benefit payment on and after January 1,
42 2014, from the Teachers' and State Employees' Retirement System that is reduced due to the
43 application of the maximum benefit provisions of section 415(b) of the Internal Revenue Code.
44 For purposes of the QEBA, a payee is a retired member or survivor beneficiary of a member or
45 retired member who is receiving monthly retirement benefit payments from a Retirement
46 System.

47 (c) Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a
48 payee shall receive each month, commencing on and after January 1, 2014, a monthly
49 supplemental benefit equal to the difference between the amount of that payee's monthly
50 retirement benefit paid under the Teachers' and State Employees' Retirement System on and
51 after January 1, 2014, and the amount that would have been payable to that payee from the

1 Teachers' and State Employees' Retirement System in that month if not for the reduction due to
2 the application of section 415(b) of the Internal Revenue Code. That supplemental benefit shall
3 be computed and payable under the same terms, at the same time, and to the same person as the
4 related benefit payable under the Retirement System. A payee cannot elect to defer the receipt
5 of all or any part of the supplemental payments due under the QEBA.

6 (d) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of
7 federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise
8 shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary
9 engaged by the Board of Trustees, shall determine the employer contributions required to pay
10 the benefits due under the QEBA for each fiscal year. The required contributions shall be paid
11 by all participating employers. The required contributions shall be deposited in a separate fund
12 from the fund into which regular employer contributions are deposited for the Retirement
13 System. The benefit liability for the QEBA shall be determined each fiscal year and assets shall
14 not be accumulated to pay benefits in future fiscal years.

15 (e) Treatment of Unused Assets. – Any assets of the QEBA plan not used to pay
16 benefits in the current fiscal year shall be used for payment of the administrative expenses of
17 the QEBA for the current or future fiscal years or shall be paid to the Retirement System as an
18 additional employer contribution.

19 (f) Assets Subject to Claims of Creditors. – A payee, or a payee's beneficiary or heirs,
20 shall have no right to, and shall have no property interest in, any assets held to support the
21 liabilities created under this Article. To the extent that any person acquires the right to receive
22 benefits under the QEBA, that right shall be no greater than the right of any unsecured general
23 creditor of the State of North Carolina or such other applicable employer under this Article.

24 (g) Administration. – The QEBA shall be administered by the Board of Trustees, which
25 shall compile and maintain all records necessary or appropriate for administration. The Board
26 of Trustees shall have full discretionary authority to interpret, construe, and implement the
27 QEBA and to adopt such rules and regulations as may be necessary or desirable to implement
28 the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

29 (h) No Assignment. – Except for the application of the provisions of G.S. 110-136 and
30 G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under
31 G.S. 50-20, any supplemental benefit under this Article shall be exempt from levy and sale,
32 garnishment, attachment, or any other process, and shall be unassignable except as specifically
33 otherwise provided in this Chapter.

34 (i) Reservation of Power to Change. – The General Assembly reserves the right at any
35 time and, from time to time, to modify or amend, in whole or in part, any or all of the
36 provisions of the QEBA. No member of the Retirement System and no beneficiary of such a
37 member shall be deemed to have acquired any vested right to a supplemental payment under
38 this Article.

39 (j) Sunset of Eligibility to Participate in the QEBA. – No member of the Teachers' and
40 State Employees' Retirement System retiring on or after January 1, 2015, shall be eligible to
41 participate in the QEBA, and the Retirement System shall not pay any new retiree more
42 retirement benefits than allowed under the limitations of section 415(b) of the Internal Revenue
43 Code."

44 **SECTION 3.(b)** Article 3 of Chapter 128 of the General Statutes is amended by
45 adding a new section to read:

46 **"§ 128-38.10. Qualified Excess Benefit Arrangement.**

47 (a) The following words and phrases as used in this section, unless a different meaning
48 is plainly required by the context, have the following meanings:

- 49 (1) "Board of Trustees" means the Board of Trustees established by G.S. 128-
50 28.

1 (2) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
2 amended from time to time.

3 (3) "Payee" means a retired member, or the survivor beneficiary of a member or
4 retired member.

5 (4) "Qualified Excess Benefit Arrangement" means the qualified excess benefit
6 arrangement under section 415(m) of the Internal Revenue Code established
7 under this Article.

8 (5) "Retirement System" means the North Carolina Local Governmental
9 Employees' Retirement System.

10 (b) The Qualified Excess Benefit Arrangement (QEBA) is established effective January
11 1, 2014, and placed under the management of the Board of Trustees. The purpose of the QEBA
12 is solely to provide the part of a retirement allowance or benefit that would otherwise have been
13 payable by the North Carolina Local Governmental Employees' Retirement System except for
14 the limitations under section 415(b) of the Internal Revenue Code. The QEBA, as set forth in
15 this section, is intended to constitute a qualified governmental excess benefit arrangement
16 under section 415(m) of the Internal Revenue Code.

17 (c) Eligibility to Participate in the QEBA. – Effective as of January 1, 2014, a payee
18 shall participate in the QEBA for any calendar year, or portion of the calendar year, during
19 which he or she receives a retirement allowance or benefit payment on and after January 1,
20 2014, from the North Carolina Local Governmental Employees' Retirement System that is
21 reduced due to the application of the maximum benefit provisions of section 415(b) of the
22 Internal Revenue Code. For purposes of the QEBA, a payee is a retired member or survivor
23 beneficiary of a member or retired member who is receiving monthly retirement benefit
24 payments from a Retirement System.

25 (d) Supplemental Benefit Payable Under the QEBA. – Effective January 1, 2014, a
26 payee shall receive each month, commencing on and after January 1, 2014, a monthly
27 supplemental benefit equal to the difference between the amount of that payee's monthly
28 retirement benefit paid under the North Carolina Local Governmental Employees' Retirement
29 System on and after January 1, 2014, and the amount that would have been payable to that
30 payee from the North Carolina Local Governmental Employees' Retirement System in that
31 month if not for the reduction due to the application of section 415(b) of the Internal Revenue
32 Code. That supplemental benefit shall be computed and payable under the same terms, at the
33 same time, and to the same person as the related benefit payable under the Retirement System.
34 A payee cannot elect to defer the receipt of all or any part of the supplemental payments due
35 under the QEBA.

36 (e) Funding of the QEBA. – The QEBA shall be unfunded within the meaning of
37 federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise
38 shall be made or allowed. The Board of Trustees, upon the recommendation of the actuary
39 engaged by the Board of Trustees, shall determine the employer contributions required to pay
40 the benefits due under the QEBA for each fiscal year. The required contributions shall be paid
41 by all participating employers. The required contributions shall be deposited in a separate fund
42 from the fund into which regular employer contributions are deposited for the underlying
43 Retirement System. The benefit liability for the QEBA shall be determined each fiscal year and
44 assets shall not be accumulated to pay benefits in future fiscal years.

45 (f) Treatment of Unused Assets. – Any assets of the QEBA plan not used to pay
46 benefits in the current fiscal year shall be used for payment of the administrative expenses of
47 the QEBA for the current or future fiscal years or shall be paid to the Retirement System as an
48 additional employer contribution.

49 (g) Assets Subject to Claims of Creditors. – A payee, or a payee's beneficiary or heirs,
50 shall have no right to, and shall have no property interest in, any assets held to support the
51 liabilities created under this section. To the extent that any person acquires the right to receive

1 benefits under the QEBA, that right shall be no greater than the right of any unsecured general
2 creditor of the State of North Carolina or such other applicable employer under this section.

3 (h) Administration. – The QEBA shall be administered by the Board of Trustees, which
4 shall compile and maintain all records necessary or appropriate for administration. The Board
5 of Trustees shall have full discretionary authority to interpret, construe, and implement the
6 QEBA and to adopt such rules and regulations as may be necessary or desirable to implement
7 the provisions of the QEBA in accordance with section 415(m) of the Internal Revenue Code.

8 (i) No Assignment. – Except for the application of the provisions of G.S. 110-136 and
9 G.S. 110-136.3, et seq., or in connection with a court-ordered equitable distribution under
10 G.S. 50-20, any supplemental benefit under this section shall be exempt from levy and sale,
11 garnishment, attachment, or any other process, and shall be unassignable except as specifically
12 otherwise provided in this section.

13 (j) Reservation of Power to Change. – The General Assembly reserves the right at any
14 time and, from time to time, to modify or amend, in whole or in part, any or all of the
15 provisions of the QEBA. No member of the Retirement System and no beneficiary of such a
16 member shall be deemed to have acquired any vested right to a supplemental payment under
17 this section.

18 (k) Sunset of Eligibility to Participate in the QEBA. – No member of the North
19 Carolina Local Governmental Employees' Retirement System retiring on or after January 1,
20 2015, shall be eligible to participate in the QEBA, and the Retirement System shall not pay any
21 new retiree more retirement benefits than allowed under the limitations of section 415(b) of the
22 Internal Revenue Code."

23 **SECTION 4.(a)** G.S. 135-9 reads as rewritten:

24 **"§ 135-9. Exemption from garnishment, attachment, etc.**

25 Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq.,
26 and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a
27 person to a pension, or annuity, or a retirement allowance, to the return of contributions, the
28 pension, annuity or retirement allowance itself, any optional benefit or any other right accrued
29 or accruing to any person under the provisions of this Chapter, and the moneys in the various
30 funds created by this Chapter, are exempt from levy and sale, garnishment, attachment, or any
31 other process whatsoever, and shall be unassignable except as in this Chapter specifically
32 otherwise provided. Application for System approval of a domestic relations order dividing a
33 person's interest under the Retirement System shall be accompanied by an order consistent with
34 the system-designed template order provided on the System's Web site. Notwithstanding any
35 provisions to the contrary, any overpayment of benefits to a member in a State-administered
36 retirement system or the former Disability Salary Continuation Plan or the Disability Income
37 Plan of North Carolina may be offset against any retirement allowance, return of contributions
38 or any other right accruing under this Chapter to the same person, the person's estate, or
39 designated beneficiary."

40 **SECTION 4.(b)** G.S. 128-31 reads as rewritten:

41 **"§ 128-31. Exemptions from execution.**

42 Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq.,
43 and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a
44 person to a pension, an annuity, or a retirement allowance, to the return of contributions, the
45 pension, annuity or retirement allowance itself, any optional benefit or any other right accrued
46 or accruing to any person under the provisions of this Article, and the moneys in the various
47 funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any
48 other process whatsoever, and shall be unassignable except as in this Article specifically
49 otherwise provided. Application for System approval of a domestic relations order dividing a
50 person's interest under the Retirement System shall be accompanied by an order consistent with
51 the system-designed template order provided on the System's Web site. Notwithstanding any

1 provisions to the contrary, any overpayment of benefits to a member in a State-administered
2 retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of
3 North Carolina may be offset against any retirement allowance, return of contributions or any
4 other right accruing under this Chapter to the same person, the person's estate, or designated
5 beneficiary."

6 **SECTION 5.** This act becomes effective January 1, 2014.