

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

SESSION LAW 2015-168  
HOUSE BILL 276

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

(b3) A charter school seeking to become a participating employer in the Retirement System prior to the end of the initial year of operation shall be granted provisional entry into the Retirement System for one year. In the event the employee or employer contributions required under G.S. 135-8(f) are not received by the date set by the Board of Trustees, the Board of Trustees may revoke the charter school's provisional entry into the Retirement System. The Board must notify a charter school in writing not less than 90 days prior to revoking a charter school's provisional entry into the Retirement System. One year after the charter school was granted provisional entry into the Retirement System, the charter school shall undergo an actuarial and financial review as required by the Board of Trustees.



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

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

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

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

- (1) The application meets the requirements set out in this Article.
- (2) All members of the board of directors of the charter school have signed a written statement acknowledging and accepting the estimate provided under subsection (b5) of this section and the provisions of G.S. 135-8(i).
- (3) The charter school has not been identified as inadequate by the State Board of Education as provided in G.S. 115C-218.95(b).
- (4) The charter school's most recent audited financial statements and independent audit report demonstrate that it is financially sound and can meet the financial obligations of participation in the Retirement System.

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

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

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

(d) No retirement benefit, death benefit, or other benefit payable under the Retirement System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers' and State Employees' Retirement System on account of employment with a charter school with respect to any employee, or with respect to any beneficiary of an employee, of a charter school whose board of directors does not elect to become that is not a participating employer in the Retirement System under this section.

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

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

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

**"§ 120-114. Actuarial notes; Retirement System cost estimates."**

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

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

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

"(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 as otherwise provided in this Chapter, through its governing body, may declare its intent to withdraw completely from the Retirement System as follows:

- (1) The employer shall notify its employees and the Board of Trustees, in writing, of its action. An employer shall automatically be considered to have requested a complete withdrawal from the Retirement System the date the employer permanently ceases to employ active members. A withdrawing employer shall be required to make a lump-sum withdrawal liability payment to the Board of Trustees as provided by this section.
- (2) Complete withdrawal by an employer shall be the first day of the month following the date the employer ceases to employ active members or the first day of the month following 60 days from the date the Board of Trustees receives the employer's written request to withdraw. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subdivision (5) of this subsection.
- (3) After complete withdrawal, all employees of the withdrawing employer shall be ineligible to accrue future benefits with the Retirement System due to employment with the withdrawing employer. The withdrawing employer shall be ineligible to elect to become a participating employer in the Retirement System, as provided in G.S. 135-5.3, for five years after its complete withdrawal date.
- (4) All active or inactive members of the employer shall be eligible for benefits accrued with the Retirement System up to the complete withdrawal date. However, no retirement allowance or return of accumulated contributions shall be paid until the member actually terminates employment and completely separates from active service with the withdrawing employer, and there is no intent or agreement, express or implied, to return to service with the withdrawing employer.
- (5) On the date of complete withdrawal, the withdrawal liability of an employer is the greater of one thousand dollars (\$1,000) or the amount determined by a. multiplied by the ratio of b. to c., as follows:
  - a. The excess of the actuarial present value of the vested accrued benefits of the Retirement System's members over the market value of its assets, both as of the date of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date based on the plan provisions and actuarial assumptions used in the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date, except the interest rate assumption shall be reduced by an amount determined by the consulting actuary to reflect the increased investment, mortality, and other actuarial risk for the exiting agency's participants.
  - b. The total present value of accrued benefits of all active members of the withdrawing employer as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
  - c. The total present value of accrued benefits of all active members of the Retirement System as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
- (6) The actuarial costs to determine the amount described in subdivision (5) of this subsection shall be paid by the withdrawing employer. An employer that does not pay the lump-sum withdrawal liability payment described in subdivision (5) of this subsection and the actuarial costs to determine this

withdrawal liability within 90 days of the complete withdrawal date will continue to be a participating employer. No withdrawal liability payment shall be required if an employer exits before the end of the first year following the date of participation or if the Board of Trustees revokes entry as provided in G.S. 135-5.3(b8).

- (7) Upon the complete withdrawal of the employer, the Retirement System shall have no further legal obligation to the employer or its employees, nor shall the Retirement System be held accountable for the continued future accrual of any retirement benefit rights to which the employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the employer's complete withdrawal from the Retirement System shall be the sole legal responsibility of the withdrawing employer, and the withdrawing employer shall indemnify and hold harmless the Retirement System, its Board of Trustees, its employees, and the State of North Carolina from any 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 Retirement System."

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

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

- (1) The employer shall notify its employees and the Board of Trustees, in writing, of its action. A withdrawing employer shall be required to make a lump-sum withdrawal liability payment to the Board of Trustees as provided by this section.
- (2) Complete withdrawal by an employer shall be the first day of the month following the date the Board of Trustees receives the employer's written notification. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subdivision (5) of this subsection.
- (3) After complete withdrawal, all employees of the withdrawing employer shall be ineligible to accrue future benefits with the Retirement System due to employment with the withdrawing employer.
- (4) All active or inactive members of the employer shall be eligible for benefits accrued with the Retirement System up to the complete withdrawal date. However, no retirement allowance or return of accumulated contributions shall be paid until the member actually terminates employment and completely separates from active service with the withdrawing employer, and there is no intent or agreement, express or implied, to return to service with the withdrawing employer.
- (5) On the date of complete withdrawal, the withdrawal liability of an employer is the greater of one thousand dollars (\$1,000) or the amount determined by a. multiplied by the ratio of b. to c., as follows:
  - a. The excess of the actuarial present value of the vested accrued benefits of the Retirement System's members over the market value of its assets, both as of the date of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date based on the plan provisions and actuarial assumptions used in the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date, except the interest rate assumption shall be reduced by an amount determined by the consulting actuary to reflect the increased investment, mortality, and other actuarial risk for the exiting agency's participants.
  - b. The total present value of accrued benefits of all active members of the withdrawing employer as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.

- c. The total present value of accrued benefits of all active members of the Retirement System as of the last actuarial valuation adopted by the Board of Trustees prior to the complete withdrawal date.
- (6) The actuarial costs to determine the amount described in subdivision (5) of this subsection shall be paid by the withdrawing employer. An employer that does not pay the lump-sum withdrawal liability payment described in subdivision (5) of this subsection and the actuarial costs to determine this withdrawal liability within 90 days of the complete withdrawal date will continue to be a participating employer.
- (7) Upon the complete withdrawal of the employer, the Retirement System shall have no further legal obligation to the employer or its employees, nor shall the Retirement System be held accountable for the continued future accrual of any retirement benefit rights to which the employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the employer's complete withdrawal from the Retirement System shall be the sole legal responsibility of the withdrawing employer, and the withdrawing employer shall indemnify and hold harmless the Retirement System, its Board of Trustees, its employees, and the State of North Carolina from any 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 Retirement 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 proceedings 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 proceedings 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.(a)** G.S. 135-4(jj) reads as rewritten:

"(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. The-Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to

the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan beginning no less than 90 days after the retirement of the member and ending no less than one year after the retirement of the member. Payment under such an installment plan must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period."

**SECTION 7.(b)** G.S. 128-26(y) reads as rewritten:

"(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. The-Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan beginning no less than 90 days after the retirement of the member and ending no less than one year after the retirement of the member. Payment under such an installment plan must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period."

**SECTION 8.** Sections 5, 6, and 7 of this act become effective when this act becomes law. The remainder of the act becomes effective January 1, 2016.

In the General Assembly read three times and ratified this the 22<sup>nd</sup> day of July, 2015.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 1:33 p.m. this 23<sup>rd</sup> day of July, 2015