Chapter 135.

Retirement System for Teachers and State Employees; Social Security; State Health Plan for Teachers and State Employees.

Article 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

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

(1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of actuarial assumptions as shall be adopted by the Board of Trustees.

(3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(4a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

(4b) Expired pursuant to Session Laws 2021-72, s. 2.1(d), effective July 1, 2022.

(5) "Average final compensation" shall mean the average annual compensation of a member during the four consecutive calendar years of membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Payout of vacation leave shall be included in "average final compensation" only if the payout is received by the member during the four consecutive calendar years of membership service producing the highest average annual compensation of the member. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calculation of "average final compensation" shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.

(7) "Board of Trustees" shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.

(7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal

Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:

1. Performance-based compensation (regardless of whether paid in a lump sum, in periodic installments, or on a monthly basis);
2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
3. Payment of tax consequences for benefits provided by the employer, so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation;
5. Employee contributions to eligible deferred compensation plans; and
6. Effective July 1, 2009, payment of military differential wages.

b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:

1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
2. Travel supplement/allowance (nonaccountable allowance plans);
3. Employer contributions to eligible deferred compensation plans;
4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
5. Reimbursement of uninsured medical expenses;
6. Reimbursement of business expenses;
7. Reimbursement of moving expenses;
8. Reimbursement/payment of personal expenses;
9. Incentive payments for early retirement;
10. Bonuses paid incident to retirement;
10a. Local supplementation as authorized under G.S. 7A-300.1 for Judicial Department employees;
11. Contract buyout/severance payments; and
12. Payouts for unused sick leave.

c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.

(7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are

assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.

(7c) "Conduct directly related to the office or employment" shall mean conduct by the member resulting in a felony conviction that:

a. Is an offense identified in G.S. 115C-270.35(b), and the commission of the offense occurred while the member was employed in a public school or working in a public school subject to a memorandum of understanding.

b. Is an offense which required the revocation of the member's licensure or certification required for the member's employment or office at the time of the commission of the offense.

c. Is conduct that was directly related to the member's employment or office as determined by the Board of Trustees.

(7d) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided under this Article. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Article.

(8a) "Duly acknowledged" means notarized, including electronic notarization, or verified through an identity authentication service approved by the Department of State Treasurer.

(9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include employees of the University of North Carolina Health Care System who are not eligible for participation under G.S. 135-5.6, employees of the East Carolina University School of Medicine or Dental School of Medicine who are not eligible for participation under G.S. 135-5.7, any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law

103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the North Carolina National Guard who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the North Carolina National Guard: Provided, further, that the Adjutant General, in the Adjutant General's discretion, may terminate the Retirement System coverage of the above-described North Carolina National Guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the North Carolina National Guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a North Carolina National Guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if the employee had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis must work at least 30 hours per week for nine or more months per calendar year in order to be covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the University of North Carolina Health Care System, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid. For purposes of reporting under the pronouncements by the Governmental Accounting Standards Board, the Retirement System is a multi-employer plan.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(11b) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds.

(11c) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. "Law-Enforcement Officer" also means a probation/parole officer as defined in this section with respect to any service rendered on or after July 1, 2017.

(12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.

(14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System or membership service in a North Carolina Retirement System that has been transferred into this system.

(15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.

(17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of Transportation shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to 1931.

(17a) "Probation/Parole Officer" shall mean a full-time paid employee of the Division of Community Supervision and Reentry of the Department of Adult Correction whose duties include supervising, evaluating, or otherwise instructing offenders who have been placed on probation, parole, or post-release supervision or have been assigned to any other community-based program operated by the Division of Community Supervision and Reentry.

(18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.

(19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).

(20) "Retirement" under this Chapter, except as otherwise provided, means the commencement of monthly retirement benefits along with termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for an employer, including part-time, temporary, substitute, or contractor work, at any time during the six months immediately following the effective date of retirement. A member who is a full-time faculty member of The University of North Carolina may effect a retirement allowance under this Chapter, notwithstanding the six-month requirement above, provided the member immediately enters the University's Phased Retirement Program for Tenured Faculty as that program existed on May 25, 2011. For purposes of this subdivision, all of the following shall not be considered service or work:

a. Serving as an unpaid bona fide volunteer in a local school administrative unit.
b. Serving as an unpaid bona fide volunteer guardian ad litem in the guardian ad litem program.
c. Serving on an authority, board, commission, committee, council, or other body of the State or of one or more counties, cities, local school administrative units, community colleges, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State, that is authorized to function as legislative, policy-making, quasi-judicial, administrative, or advisory body in a position that does not require membership in the Retirement System.
d. Volunteering in a position normally designated as an unpaid bona fide volunteer position.

(21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.

(24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.

(25) "Teacher" shall mean (i) any teacher, helping teacher, teacher in a job-sharing position under G.S. 115C-326.5 except for a beneficiary in that position, librarian, superintendent principal, supervisor, superintendent of public schools or any full-time employee, city or county, of public instruction, or any full-time employee of the Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State; (ii) who works at least 30 or more hours per week for at least nine or more months per calendar year. The term "teacher" shall not include any employee or teacher in a part-time, temporary, or substitute position, except for a teacher in a job-sharing position. The term "teacher" does not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt,

the Board of Trustees shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher" shall not include any nonimmigrant alien employed in elementary or secondary public schools, whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position, and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

(26) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 81/2; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3; 1987, c. 738, ss. 29(a), 36(a); 1991, c. 51, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 7.31(c); 1998-1, s. 4(g); 2001-424, s. 32.24(b); 2001-426, ss. 2, 3; 2001-513, s. 24; 2002-110, s. 1; 2002-126, ss. 28.6(b), 28.12(a); 2002-174, s. 2; 2003-359, ss. 1, 2; 2004-81, s. 1; 2004-199, s. 34(a); 2005-276, s. 29.28(e); 2006-66, s. 22.21; 2007-143, s. 1; 2009-11, s. 1; 2009-66, s. 6(e), (i); 2009-281, s. 1; 2009-451, s. 26.22; 2010-31, s. 29.7(d); 2011-145, s. 29.24(b); 2011-183, s. 100; 2012-130, s. 6; 2012-185, s. 2(b); 2013-288, ss. 3(a), 4(a); 2013-291, s. 1; 2014-97, s. 4(a); 2015-67, s. 1; 2015-164, s. 4; 2017-57, s. 35.19B(a); 2017-125, s. 1(a); 2017-128, s. 1(a)-(c); 2017-129, s. 4(a); 2017-186, s. 3(a); 2018-85, s. 10; 2019-110, s. 3; 2020-48, s. 1.1(b); 2021-72, s. 2.1(a); 2021-75, s. 3.1(b); 2021-180, s. 19C.9(t), (u); 2023-128, s. 3A(b); 2023-134, s. 4.10(k), (*l*); 2024-9, s. 4(a); 2024-10, s. 4(a).)