§ 135-5.1. Optional retirement program for The University of North Carolina.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation shall be limited to (i) University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program or (ii) individuals eligible under G.S. 135-5.6 or G.S. 135-5.7, and who, in either case, also meet any of the following criteria:

(1) Administrators and faculty of The University of North Carolina with the rank of instructor or above.

(2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b).

(3) Nonfaculty instructional and research staff who are exempt from the North Carolina Human Resources Act, as defined by the provisions of G.S. 126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics.

(4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the North Carolina Human Resources Act who either had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or have sought membership as required in subsection (b) of this section. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of contracts under subsection (b) of this section or deposited in trust on the participant's behalf.

(5) To the extent allowed under G.S. 135-5.6, employees of The University of North Carolina Health Care System, subject to rules for eligibility and participation as may be adopted by the Board of Governors in the Optional Retirement Program plan document.

(6) Employees hired on or after January 1, 2013.

(b) Participation in the Optional Retirement Program shall be governed as follows:

(1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.

(2) Eligible University personnel initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective on the date of entry into eligible service. For purposes of this provision, the Optional Retirement Program shall be permitted to file individual election forms with the Retirement System using electronic transmission.

(3) Except as provided under G.S. 135-5.6 and G.S. 135-5.7, an election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.

(4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.

(5) If any participant in the Optional Retirement Program having less than five years of total membership service under any combination of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited. Consistent with Section 401(a) of the Internal Revenue Code, no part of the corpus or income of the Optional Retirement Program, or any trust established under that Program, may be (within the taxable year or thereafter) used for purposes other than for the exclusive benefit of participants and their beneficiaries, except that contributions made under a good faith mistake of fact may be returned, consistent with the rules adopted by the University.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by The University of North Carolina. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

(1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;

(2) The relation of these rights and benefits to the amount of contributions to be made;

(3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and

(4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, the University of North Carolina Health Care System, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement.

(h) The Board of Governors of The University of North Carolina shall ensure that the Optional Retirement Program contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for University personnel who are eligible for membership in the Teachers' and State Employees' Retirement System and have elected participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the Optional Retirement Program trust fund(s). (1971, c. 338, s. 2; c. 916; 1973, c. 1425; 1977, c. 1070; 1985, c. 309; 1987 (Reg. Sess., 1988), c. 1086, s. 28; 2001-424, s. 32.27; 2003-356, s. 1; 2006-172, ss. 2, 3; 2011-145, ss. 29.26, 29.27; 2012-142, ss. 25.11, 25.12; 2012-193, s. 11; 2013-288, s. 5; 2013-382, s. 9.1(c); 2023-134, s. 4.10(o); 2025-19, s. 5.1(e).)