§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations or municipalities.

(a), (b) Repealed by Session Laws 2015-168, s. 1, effective January 1, 2016.

(b1) The board of directors of a charter school operated by a private nonprofit corporation or a charter school operated by a municipality that has received approval under Article 14A of Chapter 115C of the General Statutes 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 second 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. After the charter school's initial year of provisional entry into the Retirement System, the Board of Trustees may extend the charter school's provisional entry by up to two additional years or the charter school may apply to become a participating employer in the Retirement System. If the Board of Trustees extends the charter school's provisional entry under this subsection, then the charter school may apply to become a participating employer in the Retirement System at any time during the extended period of provisional entry.

(b4) A charter school applying to become a participating employer in the Retirement System after the end of the initial period, or during the extended period, of provisional entry shall undergo an actuarial review and a financial review as required by the Board of Trustees prior to a decision on the application.

(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 required under this section will be based on financial statements and independent audit reports or functionally equivalent reports submitted to the Board of Trustees by the charter school. Any charter school that is unable to provide this required information shall not be granted entry into the Retirement System.

(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 continually low-performing by the State Board of Education as provided in G.S. 115C-218.94.

(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, if the charter school applied for entry within two years of the charter school's effective date of entry.

(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.

(b10) Any charter school approved by the Board of Trustees contingent upon receiving a financially sound independent audit report pursuant to subsection (b8) of this section shall continue its period of provisional entry for up to one year or until the Board has denied their application for entry in the Retirement System, whichever is earlier. The charter school shall cease participation in the Retirement System the first of the month following the month its (i) provisional period ends or (ii) the application is denied by the Board.

(c) A charter school board's election to become a participating employer in the Retirement System under this section 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 that is not a participating employer in the Retirement System.

(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). Notwithstanding the requirement under G.S. 135-8(i)(6) that a charter school's withdrawal liability be paid in a lump sum, if the withdrawal liability of a charter school as calculated under G.S. 135-8(i)(5) is greater than two million dollars ($2,000,000), the Board of Trustees may allow a charter school to pay the required lump sum amount on an installment payment plan that meets the following requirements:

(1) Fifty percent (50%) of the withdrawal liability must be paid within 90 days of the complete withdrawal date.

(2) The remaining fifty percent (50%) of the withdrawal liability shall be made in no greater than 36 equal monthly payments.

Notwithstanding G.S. 135-8(i)(2), the complete withdrawal by a charter school that is under an approved installment payment plan shall be the date of the Board of Trustees approval of the installment payment plan. All provisions of this Article relating to the complete withdrawal of an employer from the Retirement System shall be applicable to the charter school as of that date.

The Retirement System shall have a lien upon the real property of a charter school that has received approval under this subsection from the Board of Trustees to pay the lump sum amount required under G.S. 135-8(i)(6) on installment at the time that the installment agreement is entered into and in the amount of the total withdrawal liability owed by the charter school. This lien shall attach to the real property upon the approval of the installment payment plan by the Board of Trustees and shall be perfected upon filing in the office of the clerk of superior court in each county in which the real property is situated. The priority of the lien shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. The Retirement System may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes. (1998-212, s. 9.14A(b); 2014-101, s. 7; 2015-168, s. 1; 2016-79, s. 1.7(c); 2017-98, s. 1; 2018-84, s. 3(a); 2018-145, s. 20(c); 2022-16, s. 1.2; 2023-110, s. 1(s); 2025-19, s. 1.1.)