§ 135-5.4. Optional retirement program for State-funded community colleges.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the North Carolina Community Colleges System, ("System"). 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 the presidents of the community colleges all of whom are appointed after the implementation of the Program and who elect membership as required by subsection (b) of this section on or before June 30, 2018. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

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

(1) Employees initially appointed on or after the implementation of the Optional Retirement Program and on or before June 30, 2018, 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 as of the date of entry into eligible service.

(2) 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.

(3) 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.

(4) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of the System 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 employing institution shall be forfeited and shall either (i) be refunded to the employing institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(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 that 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 employing institution. 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. 115D-25. 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 System 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 System in recruiting and retaining faculty in a national and market;

(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.

In lieu of such designation and in order to provide a more efficient, cost-effective, and flexible Program, the System may designate the company or companies designated for the Optional Retirement Program for State institutions of higher education as prescribed in G.S. 135-5.1(d).

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 System or employing institution 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 System, 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 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 North Carolina Community College System shall ensure that the Optional Retirement Program for State-funded community colleges contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for community college personnel 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). (2001-424, s. 32.24(a); 2001-513, s. 24; 2012-193, s. 12; 2018-84, s. 1.)