**§ 135-74. Internal Revenue Code compliance.**

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

All the provisions in this subsection have been enacted to make clear that the Plan shall not base contributions or Plan benefits on annual compensation in excess of the limits prescribed by Section 401(a)(17) of the Internal Revenue Code, as adjusted from time to time, subject to certain federal grandfathering rules.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after September 8, 2009, and for all Plan years to which the minimum distribution rules of the Internal Revenue Code are applicable, with respect to any member who has terminated employment, the Plan shall comply with federal income tax minimum distribution rules by applying a reasonable and good faith interpretation to Section 401(a)(9) of the Internal Revenue Code.

(c1) A member who has contributions in this System and is not eligible for a retirement benefit as set forth in G.S. 135-57 shall be paid his or her contributions in a lump sum as provided in G.S. 135-62 by April 1 of the calendar year following the later of the calendar year in which the member (i) attains the applicable age under section 401(a)(9)(C)(v) of the Internal Revenue Code or (ii) has ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53, except by death. If the member

fails, following reasonable notification, to complete a refund application by the required date, then the requirement that a refund application be completed shall be waived and the refund shall be paid without a refund application as a single lump-sum payment with applicable required North Carolina and federal income taxes withheld.

A member who has contributions in this System and is eligible for a retirement benefit as set forth in G.S. 135-57 shall begin to receive a monthly benefit no later than April 1 of the calendar year following the later of the calendar year in which the member (i) attains the applicable age under section 401(a)(9)(C)(v) of the Internal Revenue Code or (ii) has ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53, except by death. If the member fails, following reasonable notification, to complete the retirement process under this Chapter by the required beginning date, then the requirement that a retirement application and an election of payment plan form be completed shall be waived and the retirement allowance shall be paid as a single life annuity. The single life annuity shall be calculated and processed in accordance with G.S. 135-58.

For purposes of this subsection, a member shall not be considered to have ceased to be a judge, district attorney, public defender, the Director of Indigent Defense Services, or clerk of superior court as provided in G.S. 135-53 if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Consolidated Judicial Retirement System. A retirement benefit or lump-sum refund shall not be paid under this subsection if the member is actively contributing to the Teachers' and State Employees' Retirement System, Local Governmental Employees' Retirement System, or Legislative Retirement System.

(d) This subsection applies to distributions and rollovers from the Plan. The Plan does not have mandatory distributions within the meaning of Section 401(a)(31) of the Internal Revenue Code. With respect to distributions from the Plan and notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee (including, after December 31, 2006, a non-spouse beneficiary if that non-spouse beneficiary elects a direct rollover only to an inherited traditional or Roth IRA as permitted under applicable federal law) may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. As used in this subsection, an "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, on and after January 1, 2009, a Roth IRA, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into that plan from this Plan. As used in this subsection, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the

exclusion of any after-tax portion from such a rollover distribution in the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. That portion may be transferred, pursuant to applicable federal law, to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined benefit plan, or to a qualified defined contribution plan described in Section 401(a), 403(a), or 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-20.1. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code. (1989, c. 276, s. 4; 1993, c. 531, s. 8; 1995, c. 361, s. 2; 2002-71, s. 8; 2009-66, s. 1(b); 2012-130, s. 4(d); 2015-164, s. 10(c); 2020-48, s. 1.2(c); 2024-9, s. 3(c).)