

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 357  
Committee Substitute Favorable 5/2/13  
Senate Pensions & Retirement and Aging Committee Substitute Adopted 6/26/13  
Fourth Edition Engrossed 7/2/13

Short Title: Retirement Governance Changes Act of 2013.-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE CITIZEN OVERSIGHT AND TO MAKE OTHER  
3 CONSOLIDATIONS AND IMPROVEMENTS IN THE GOVERNANCE OF THE  
4 STATE RETIREMENT SYSTEMS, AND TO IMPROVE TRANSPARENCY BY  
5 ENSURING THAT ALL RETIREMENT PLANS ADMINISTERED BY THE  
6 DEPARTMENT OF STATE TREASURER ARE OVERSEEN BY A BOARD OF  
7 TRUSTEES.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 135-96 reads as rewritten:

10 "**§ 135-96. Supplemental Retirement Board of Trustees.**

11 (a) The Supplemental Retirement Board of Trustees is established to administer the  
12 Supplemental Retirement Income Plan established under the provisions of this Article and the  
13 North Carolina Public Employee Deferred Compensation Plan established under  
14 G.S. 143B-426.24, G.S. 143B-426.24, and the North Carolina Public School Teachers' and  
15 Professional Educators' Investment Plan established under G.S. 115C-341.2.

16 ...

17 (e) The Board may retain the services of independent appraisers, auditors, actuaries,  
18 attorneys, investment counseling firms, statisticians, custodians, or other persons or firms  
19 possessing specialized skills or knowledge necessary for the proper administration of  
20 investment programs that the Board administers pursuant to this section."

21 **SECTION 2.** G.S. 161-50.1(b) reads as rewritten:

22 "(b) The North Carolina Department of State Treasurer Board of Trustees of the Local  
23 Governmental Employees' Retirement System shall administer the provisions of this Article."

24 **SECTION 3.** G.S. 127A-40 reads as rewritten:

25 "(f) The Board of Trustees of the Teachers' and State Employees' Retirement System  
26 shall administer the provisions of this section. The Secretary of Public Safety shall determine  
27 the eligibility of North Carolina National Guard members for the benefits provided in this  
28 section and shall certify those eligible to the State Treasurer Board of Trustees. In addition, the  
29 Department of Public Safety shall, on and after July 1, 1983, provide the Department of State  
30 Treasurer Board of Trustees with an annual census population, by age and the number of years  
31 of creditable service, for all former members of the North Carolina National Guard in receipt of  
32 a pension as well as for all active members of the North Carolina National Guard who are not  
33 in receipt of a pension and who have seven and more years of creditable service. The  
34 Department of Public Safety shall also provide the State Treasurer a Board of Trustees an



1 annual census population of all former members of the North Carolina National Guard who are  
2 not in receipt of a pension and who have 15 and more years of creditable service. The  
3 Department of State Treasurer shall make pension payments to those persons certified from the  
4 North Carolina National Guard Pension Fund, which shall include general fund appropriations  
5 made to the Department of State Treasurer. The ~~Department of State Treasurer~~Board of  
6 Trustees shall have performed an annual actuarial valuation of the fund and shall have the  
7 financial responsibility for maintaining the fund on a generally accepted actuarial basis. The  
8 Department of Public Safety shall provide the Department of State Treasurer with whatever  
9 assistance is required by the State Treasurer in carrying out the State Treasurer's and the Board  
10 of Trustees' financial responsibilities."

11 **SECTION 4.(a)** G.S. 135-6(b) reads as rewritten:

12 "(b) Membership of Board; Terms. – The Board shall consist of ~~14~~13 members, as  
13 follows:

- 14 (1) The State Treasurer, ex officio;
- 15 (2) The Superintendent of Public Instruction, ex officio;
- 16 (3) ~~Ten~~Nine members to be appointed by the Governor and confirmed by the  
17 Senate of North Carolina. One of the appointive members shall be a member  
18 of the teaching profession of the State; ~~one of the appointive members shall~~  
19 ~~be an employee of the Board of Transportation, who shall be appointed by~~  
20 ~~the Governor for a term of four years commencing April 1, 1947, and~~  
21 ~~quadrennially thereafter;~~ one of the appointive members shall be a  
22 representative of higher education appointed by the Governor for a term of  
23 four years commencing July 1, 1969, and quadrennially thereafter; one of  
24 the appointive members shall be a retired teacher who is drawing a  
25 retirement allowance, appointed by the Governor for a term of four years  
26 commencing July 1, 1969, and quadrennially thereafter; one shall be a  
27 retired State employee who is drawing a retirement allowance, appointed by  
28 the Governor for a term of four years commencing July 1, 1977, and  
29 quadrennially thereafter; one to be a general State employee, and ~~three~~two  
30 who are not members of the teaching profession or State employees; two to  
31 be appointed for a term of two years, two for a term of three years and one  
32 for a term of four years; one appointive member shall be a law-enforcement  
33 officer employed by the State, appointed by the Governor, for a term of four  
34 years commencing April 1, 1985. One member shall be an active or retired  
35 member of the North Carolina National Guard appointed by the Governor  
36 for a term of four years commencing July 1, 2013. At the expiration of these  
37 terms of office the appointment shall be for a term of four years;
- 38 (4) Two members appointed by the General Assembly, one appointed upon the  
39 recommendation of the Speaker of the House of Representatives, and one  
40 appointed upon the recommendation of the President Pro Tempore of the  
41 Senate in accordance with G.S. 120-121. Neither of these members may be  
42 an active or retired teacher or State employee or an employee of a unit of  
43 local government. The initial members appointed by the General Assembly  
44 shall serve for terms expiring June 30, 1983. Thereafter, their successors  
45 shall serve for two-year terms beginning July 1 of odd-numbered years.  
46 Vacancies in appointments made by the General Assembly shall be filled in  
47 accordance with G.S. 120-122."

48 **SECTION 4.(b)** G.S. 128-28(c) reads as rewritten:

49 "(c) Members of Board. – The Board shall consist of (i) ~~seven~~five members of the Board  
50 of Trustees of the Teachers' and State Employees' Retirement System appointed under  
51 G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members

1 appointed by the General Assembly; and one of the ~~three~~two members appointed by the  
 2 Governor who are not members of the teaching profession or State employees; and (ii)  
 3 ~~seven~~eight members designated by the Governor:

- 4 (1) One member shall be a mayor or a member of the governing body of a city  
 5 or town participating in the Retirement System;
- 6 (2) One member shall be a county commissioner of a county participating in the  
 7 Retirement System;
- 8 (3) One member shall be a law-enforcement officer employed by an employer  
 9 participating in the Retirement System;
- 10 (4) One member shall be a county manager of a county participating in the  
 11 Retirement System;
- 12 (5) One member shall be a city or town manager of a city or town participating  
 13 in the Retirement System;
- 14 (6) One member shall be an active, Fair Labor Standards Act nonexempt, local  
 15 governmental employee of an employer; ~~and~~
- 16 (7) One member shall be a retired, Fair Labor Standards Act nonexempt, local  
 17 governmental employee of an ~~employer~~ employer; and
- 18 (8) One member shall be an active or retired member of the Firemen's and  
 19 Rescue Squad Workers' Pension Fund.

20 The Governor shall designate ~~seven~~eight members on April 1 of years in which an election  
 21 is held for the office of Governor, or as soon thereafter as possible, and the ~~seven~~ eight  
 22 members designated by the Governor shall serve on the Board in addition to the regular duties  
 23 of their city, town, or county office: Provided, that if for any reason any member appointed  
 24 pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county  
 25 office or employment which the member held at the time of this designation, the Governor shall  
 26 designate another member to serve until the next regular date for the designation of members  
 27 to serve on the Board."

28 **SECTION 5.** Article 5 of Chapter 135 of the General Statutes is amended by  
 29 adding a new section to read:

30 **"§ 135-97. Immunity.**

31 A person serving on the Supplemental Retirement Board of Trustees shall be immune  
 32 individually from civil liability for monetary damages, except to the extent covered by  
 33 insurance, for any act or failure to act arising out of that service, except where any of the  
 34 following apply:

- 35 (1) The person was not acting within the scope of that person's official duties.
- 36 (2) The person was not acting in good faith.
- 37 (3) The person committed gross negligence or willful or wanton misconduct that  
 38 resulted in the damages or injury.
- 39 (4) The person derived an improper personal financial benefit, either directly or  
 40 indirectly, from the transaction.
- 41 (5) The person incurred the liability from the operation of a motor vehicle."

42 **SECTION 6.** G.S. 120-4.9 reads as rewritten:

43 **"§ 120-4.9. Retirement system established.**

44 A Retirement System is established and placed under the Board of Trustees of the Teachers'  
 45 and State Employees' Retirement System for administrative purposes. This Retirement System  
 46 is a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code.  
 47 Therefore, the nondiscrimination rules of Sections 401(a)(5) and 401(a)(26) of the Code do not  
 48 apply.

49 The Retirement System shall have all the power and privileges of a corporation and shall be  
 50 known as the "Legislative Retirement System of North Carolina." By this name all of its  
 51 business shall be transacted, all of its funds invested and all of its cash and securities and other

1 property held. All direction and policies concerning the Legislative Retirement System shall be  
2 vested in the ~~Legislative Services Commission.~~Board of Trustees.

3 Consistent with Section 401(a)(1) of the Internal Revenue Code, all member employee and  
4 employer contributions to this Retirement System shall be made to funds held in trust through  
5 trust instruments that have the purposes of distributing trust principal and income to retired  
6 members and their beneficiaries and of paying other definitely determinable benefits under this  
7 Chapter, after meeting the necessary expenses of administering this Retirement System. Neither  
8 the trust corpus nor income from this trust can be used for purposes other than the exclusive  
9 benefit of members or their beneficiaries, except that employer contributions made to the trust  
10 under a good faith mistake of fact may be returned to an employer, where the refund can occur  
11 within less than one year after the mistaken contribution was made, consistent with the rule  
12 adopted by the Board of Trustees. The Retirement System shall have a consolidated Plan  
13 document, consisting of relevant statutory provisions in this Chapter, associated regulations in  
14 the North Carolina Administrative Code, substantive and procedural information on the official  
15 forms used by the Retirement System, and policies and minutes of the Board of Trustees."

16 **SECTION 7.** G.S. 120-4.10 reads as rewritten:

17 "**§ 120-4.10. Administration of retirement system.**

18 The Board of Trustees of the Teachers' and State Employees' Retirement System shall be  
19 the trustee of the Retirement System, ~~under the direction of the Legislative Services~~  
20 ~~Commission.~~System. The provisions of this Article shall be administered by the Board of  
21 Trustees, ~~under the direction of the Legislative Services Commission.~~Trustees."

22 **SECTION 8.** This act is effective when it becomes law.