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Short Title: Agency Participation Procedures Act of 2015.

(Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE AGENCY PARTICIPATION PROCEDURES ACT OF 2015.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5.3 reads as rewritten:

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

(a) ~~The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after this section becomes law, and shall be filed with the Retirement System and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election to participate, membership in the System is effective as of the date the board makes the election to participate. For each charter school employee who is employed after the date the board makes the election, membership in the System is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under [former] G.S. 115C-238.29D in 1997 or 1998.~~

(b) ~~No later than 30 days after both parties have signed the written charter under G.S. 115C-218.15, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under [former] G.S. 115C-238.29D [or G.S. 115C-218.5] after 1998.~~

(b1) The board of directors of a charter school operated by a private nonprofit corporation and that has received State Board of Education approval under G.S. 115C-218.5 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



1 the Board of Trustees. The charter school shall also agree to make the employer's contributions
2 for the participation in the Retirement System of all employees entering the service of the
3 employer, after the charter school's participation begins, who shall become members.

4 (b3) A charter school seeking to become a participating employer in the Retirement
5 System prior to the end of the initial year of operation shall be granted provisional entry into
6 the Retirement System for one year. In the event the employee or employer contributions
7 required under G.S. 135-8(f) are not received by the date set by the Board of Trustees, the
8 Board of Trustees may revoke the charter school's provisional entry into the Retirement
9 System. The Board must notify a charter school in writing not less than 90 days prior to
10 revoking a charter school's provisional entry into the Retirement System. One year after the
11 charter school was granted provisional entry into the Retirement System, the charter school
12 shall undergo an actuarial and financial review as required by the Board of Trustees.

13 (b4) A charter school seeking to become a participating employer in the Retirement
14 System after the end of the initial year of operation shall undergo an actuarial and financial
15 review as required by the Board of Trustees prior to entry into the Retirement System.

16 (b5) The actuarial review will result in an estimate of the amount of the withdrawal
17 liability that would be required under G.S. 135-8(i) to cease participation in the Retirement
18 System after five years and the amount that would be required to cease participation after 10
19 years. The cost of this actuarial review shall be paid by the charter school and shall not exceed
20 two thousand five hundred dollars (\$2,500). A charter school that was granted provisional entry
21 into the Retirement System shall not be required to pay the cost of this actuarial review, and
22 this cost may be classified as costs of administering investment programs under G.S. 147-69.3.

23 (b6) The financial review will be based on financial statements and independent audit
24 reports held by the Local Government Commission or functionally equivalent financial
25 statements and independent audit reports submitted to the Board of Trustees by the charter
26 school.

27 (b7) The Board of Trustees may grant final approval of the application if it finds the
28 following:

29 (1) The application meets the requirements set out in this Article.

30 (2) All members of the board of directors of the charter school have signed a
31 written statement acknowledging and accepting the estimate provided under
32 subsection (b5) of this section and the provisions of G.S. 135-8(i).

33 (3) The charter school has not been identified as inadequate by the State Board
34 of Education as provided in G.S. 115C-218.95(b).

35 (4) The charter school's most recent audited financial statements and
36 independent audit report demonstrate that it is financially sound and can
37 meet the financial obligations of participation in the Retirement System.

38 (b8) Upon acceptance by the Board of Trustees of the application to become a
39 participating employer, the charter school shall be a fully participating employer in the
40 Retirement System. The Board may make the final decision for acceptance of the application
41 contingent upon the receipt of a financially sound independent audit report for the fiscal year
42 ending prior to acceptance of the application.

43 (b9) For each charter school employee who is employed on or before the date the charter
44 school is granted entry into the Retirement System, membership in the Retirement System is
45 effective as of the date of entry. For each charter school employee who is employed after the
46 date the charter school is granted entry into the Retirement System, membership in the
47 Retirement System is effective as of the date of that employee's entry into eligible service.
48 Provisional entry is considered entry into the Retirement System for the purpose of this
49 subsection.

1 (c) A charter school board's election to become a participating employer in the
2 Retirement System under this section ~~is irrevocable and~~ shall require all eligible employees of
3 the charter school to participate.

4 (d) No retirement benefit, death benefit, or other benefit payable under the Retirement
5 System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers'
6 and State Employees' Retirement System on account of employment with a charter school with
7 respect to any employee, or with respect to any beneficiary of an employee, of a charter school
8 ~~whose board of directors does not elect to become~~that is not a participating employer in the
9 Retirement System ~~under this section.~~System.

10 (e) The board of directors of each charter school shall notify each of its employees as to
11 whether the board elected to become a participating employer in the Retirement System under
12 this section. This notification shall be in writing and shall be provided within 30 days of the
13 board's election or at the time an initial offer for employment is made, whichever occurs last. If
14 the board did not elect to join the Retirement System, the notice shall include a statement that
15 the employee shall have no legal recourse against the board or the State for any possible credit
16 or reimbursement under the Retirement System. The employee shall provide written
17 acknowledgment of the employee's receipt of the notification under this subsection.

18 (f) The board of directors of a charter school may elect to cease participation in the
19 Retirement System for all of its employees by following the procedure in G.S. 135-8(i)."

20 **SECTION 2.(a)** The catch line of G.S. 120-114 reads as rewritten:

21 "**§ 120-114. Actuarial ~~notes~~notes; Retirement System cost estimates.**"

22 **SECTION 2.(b)** G.S. 120-114 is amended by adding a new subsection to read:

23 "(f) In addition to the other requirements of this section, if a bill or resolution
24 contemplates removing a public agency as a participating employer from the Teachers' and
25 State Employees' Retirement System or the Local Governmental Employees' Retirement
26 System, the Fiscal Research Division shall obtain an estimate of cost of the withdrawal liability
27 the agency would owe under procedures established by the Boards of Trustees of the
28 Retirement Systems."

29 **SECTION 3.(a)** G.S. 135-8 is amended by adding a new subsection to read:

30 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is
31 allowed to cease participation in the Retirement System by the General Assembly or as
32 otherwise provided in this Chapter, through its governing body, may declare its intent to
33 withdraw completely from the Retirement System as follows:

34 (1) The employer shall notify its employees and the Board of Trustees, in
35 writing, of its action. An employer shall automatically be considered to have
36 requested a complete withdrawal from the Retirement System the date the
37 employer permanently ceases to employ active members. A withdrawing
38 employer shall be required to make a lump-sum withdrawal liability
39 payment to the Board of Trustees as provided by this section.

40 (2) Complete withdrawal by an employer shall be the first day of the month
41 following the date the employer ceases to employ active members or the first
42 day of the month following 60 days from the date the Board of Trustees
43 receives the employer's written request to withdraw. However, the complete
44 withdrawal date shall not occur before the withdrawal liability is determined,
45 as provided in subdivision (5) of this subsection.

46 (3) After complete withdrawal, all employees of the withdrawing employer shall
47 be ineligible to accrue future benefits with the Retirement System due to
48 employment with the withdrawing employer. The withdrawing employer
49 shall be ineligible to elect to become a participating employer in the
50 Retirement System, as provided in G.S. 135-5.3, for five years after its
51 complete withdrawal date.

- 1 (4) All active or inactive members of the employer shall be eligible for benefits
2 accrued with the Retirement System up to the complete withdrawal date.
3 However, no retirement allowance or return of accumulated contributions
4 shall be paid until the member actually terminates employment and
5 completely separates from active service with the withdrawing employer,
6 and there is no intent or agreement, express or implied, to return to service
7 with the withdrawing employer.
- 8 (5) On the date of complete withdrawal, the withdrawal liability of an employer
9 is the greater of one thousand dollars (\$1,000) or the amount determined by
10 a. multiplied by the ratio of b. to c., as follows:
- 11 a. The excess of the actuarial present value of the vested accrued
12 benefits of the Retirement System's members over the market value
13 of its assets, both as of the date of the last actuarial valuation adopted
14 by the Board of Trustees prior to the complete withdrawal date based
15 on the plan provisions and actuarial assumptions used in the last
16 actuarial valuation adopted by the Board of Trustees prior to the
17 complete withdrawal date, except the interest rate assumption shall
18 be reduced by an amount determined by the consulting actuary to
19 reflect the increased investment, mortality, and other actuarial risk
20 for the exiting agency's participants.
- 21 b. The total present value of accrued benefits of all active members of
22 the withdrawing employer as of the last actuarial valuation adopted
23 by the Board of Trustees prior to the complete withdrawal date.
- 24 c. The total present value of accrued benefits of all active members of
25 the Retirement System as of the last actuarial valuation adopted by
26 the Board of Trustees prior to the complete withdrawal date.
- 27 (6) The actuarial costs to determine the amount described in subdivision (5) of
28 this subsection shall be paid by the withdrawing employer. An employer that
29 does not pay the lump-sum withdrawal liability payment described in
30 subdivision (5) of this subsection and the actuarial costs to determine this
31 withdrawal liability within 90 days of the complete withdrawal date will
32 continue to be a participating employer. No withdrawal liability payment
33 shall be required if an employer exits before the end of the first year
34 following the date of participation or if the Board of Trustees revokes entry
35 as provided in G.S. 135-5.3(b8).
- 36 (7) Upon the complete withdrawal of the employer, the Retirement System shall
37 have no further legal obligation to the employer or its employees, nor shall
38 the Retirement System be held accountable for the continued future accrual
39 of any retirement benefit rights to which the employees may be entitled
40 beyond the complete withdrawal date. Any litigation regarding the forfeiture
41 of any benefits because of the employer's complete withdrawal from the
42 Retirement System shall be the sole legal responsibility of the withdrawing
43 employer, and the withdrawing employer shall indemnify and hold harmless
44 the Retirement System, its Board of Trustees, its employees, and the State of
45 North Carolina from any claims, losses, costs, damages, expenses, and
46 liabilities, including, without limitation, court costs, and reasonable
47 attorneys' fees asserted by any person or entity as a result of the employer's
48 withdrawal from the Retirement System."

49 **SECTION 3.(b)** G.S. 128-30 is amended by adding a new subsection to read:

1 "(i) Procedure and Payment to Cease Participation. – Any employing unit that is
2 allowed to cease participation in the Retirement System by the General Assembly shall do the
3 following:

- 4 (1) The employer shall notify its employees and the Board of Trustees, in
5 writing, of its action. A withdrawing employer shall be required to make a
6 lump-sum withdrawal liability payment to the Board of Trustees as provided
7 by this section.
- 8 (2) Complete withdrawal by an employer shall be the first day of the month
9 following the date the Board of Trustees receives the employer's written
10 notification. However, the complete withdrawal date shall not occur before
11 the withdrawal liability is determined, as provided in subdivision (5) of this
12 subsection.
- 13 (3) After complete withdrawal, all employees of the withdrawing employer shall
14 be ineligible to accrue future benefits with the Retirement System due to
15 employment with the withdrawing employer.
- 16 (4) All active or inactive members of the employer shall be eligible for benefits
17 accrued with the Retirement System up to the complete withdrawal date.
18 However, no retirement allowance or return of accumulated contributions
19 shall be paid until the member actually terminates employment and
20 completely separates from active service with the withdrawing employer,
21 and there is no intent or agreement, express or implied, to return to service
22 with the withdrawing employer.
- 23 (5) On the date of complete withdrawal, the withdrawal liability of an employer
24 is the greater of one thousand dollars (\$1,000) or the amount determined by
25 a. multiplied by the ratio of b. to c., as follows:
- 26 a. The excess of the actuarial present value of the vested accrued
27 benefits of the Retirement System's members over the market value
28 of its assets, both as of the date of the last actuarial valuation adopted
29 by the Board of Trustees prior to the complete withdrawal date based
30 on the plan provisions and actuarial assumptions used in the last
31 actuarial valuation adopted by the Board of Trustees prior to the
32 complete withdrawal date, except the interest rate assumption shall
33 be reduced by an amount determined by the consulting actuary to
34 reflect the increased investment, mortality, and other actuarial risk
35 for the exiting agency's participants.
- 36 b. The total present value of accrued benefits of all active members of
37 the withdrawing employer as of the last actuarial valuation adopted
38 by the Board of Trustees prior to the complete withdrawal date.
- 39 c. The total present value of accrued benefits of all active members of
40 the Retirement System as of the last actuarial valuation adopted by
41 the Board of Trustees prior to the complete withdrawal date.
- 42 (6) The actuarial costs to determine the amount described in subdivision (5) of
43 this subsection shall be paid by the withdrawing employer. An employer that
44 does not pay the lump-sum withdrawal liability payment described in
45 subdivision (5) of this subsection and the actuarial costs to determine this
46 withdrawal liability within 90 days of the complete withdrawal date will
47 continue to be a participating employer.
- 48 (7) Upon the complete withdrawal of the employer, the Retirement System shall
49 have no further legal obligation to the employer or its employees, nor shall
50 the Retirement System be held accountable for the continued future accrual
51 of any retirement benefit rights to which the employees may be entitled

1 beyond the complete withdrawal date. Any litigation regarding the forfeiture
2 of any benefits because of the employer's complete withdrawal from the
3 Retirement System shall be the sole legal responsibility of the withdrawing
4 employer, and the withdrawing employer shall indemnify and hold harmless
5 the Retirement System, its Board of Trustees, its employees, and the State of
6 North Carolina from any claims, losses, costs, damages, expenses, and
7 liabilities, including, without limitation, court costs, and reasonable
8 attorneys' fees asserted by any person or entity as a result of the employer's
9 withdrawal from the Retirement System."

10 **SECTION 4.** G.S. 115C-218.100 is amended by adding a new subsection to read:

11 "(a1) In the event of a voluntary or involuntary dissolution of the charter school, the funds
12 reserved for closure proceedings in subsection (a) of this section shall be used to pay wages
13 owed to charter school employees, funds owed to the North Carolina Retirement System
14 pursuant to G.S. 135-8, and funds owed to the State Health Plan, in that order. Other expenses
15 shall be paid from the remaining balance in the funds reserved for closure proceedings in
16 subsection (a) of this section."

17 **SECTION 5.** G.S. 128-21 reads as rewritten:

18 **"§ 128-21. Definitions.**

19 The following words and phrases as used in this Article, unless a different meaning is
20 plainly required by the context, shall have the following meanings:

21 ...

22 (17) "Prior service" shall mean the service of a member rendered before the date
23 he becomes a member of the System, certified on his prior service certificate
24 and allowable as provided by G.S. 128-26. No prior service shall be allowed
25 at any employer for which participation is adopted and approved by the
26 Board of Trustees in this Retirement System on or after August 1, 2015.

27"

28 **SECTION 6.** G.S. 128-26(a) reads as rewritten:

29 "(a) Each person who becomes a member during the first year of his or her employer's
30 participation, if and only if that participation begins prior to November 1, 2015, and who was
31 an employee of the same employer at any time during the year immediately preceding the date
32 of participation, shall file a detailed statement of all service rendered by him or her to that
33 employer prior to the date of participation for which he or she claims credit."

34 **SECTION 7.(a)** G.S. 135-4(jj) reads as rewritten:

35 "(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement
36 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established
37 in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer
38 that the member's retirement allowance has been capped. The retirement system shall compute
39 and notify the member and the member's employer of the total additional amount the member
40 would need to contribute in order to make the member not subject to the contribution-based
41 benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity
42 adjusted for the age of the member at the time of retirement, or when appropriate, the age at the
43 time of the member's death that would have had to have been purchased to increase the
44 member's benefit to the pre-cap level. The-Except as otherwise provided in this subsection, the
45 member shall have until 90 days after notification regarding this additional amount or until 90
46 days after the effective date of retirement, whichever is later, to submit a lump sum payment to
47 the annuity savings fund in order for the retirement system to restore the retirement allowance
48 to the uncapped amount. Nothing contained in this subsection shall prevent an employer from
49 paying all or part of the cost of the amount necessary to restore the member's retirement
50 allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as
51 a lump sum, the retirement system may allow an employer of a member who became a member

1 before January 1, 2015, or who has not earned at least five years of membership service in the
2 retirement system after January 1, 2015, to pay the lump-sum amount required in this
3 subsection on an installment payment plan beginning no less than 90 days after the retirement
4 of the member and ending no less than one year after the retirement of the member. Payment
5 under such an installment plan must be completed regardless of whether the member continues
6 to receive a recurring monthly retirement benefit through the end of the installment period."

7 **SECTION 7.(b)** G.S. 128-26(y) reads as rewritten:

8 "(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement
9 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established
10 in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer
11 that the member's retirement allowance has been capped. The retirement system shall compute
12 and notify the member and the member's employer of the total additional amount the member
13 would need to contribute in order to make the member not subject to the contribution-based
14 benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity
15 adjusted for the age of the member at the time of retirement, or when appropriate, the age at the
16 time of the member's death that would have had to have been purchased to increase the
17 member's benefit to the pre-cap level. ~~The-Except as otherwise provided in this subsection, the~~
18 member shall have until 90 days after notification regarding this additional amount or until 90
19 days after the effective date of retirement, whichever is later, to submit a lump sum payment to
20 the annuity savings fund in order for the retirement system to restore the retirement allowance
21 to the uncapped amount. Nothing contained in this subsection shall prevent an employer from
22 paying all or part of the cost of the amount necessary to restore the member's retirement
23 allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as
24 a lump sum, the retirement system may allow an employer of a member who became a member
25 before January 1, 2015, or who has not earned at least five years of membership service in the
26 retirement system after January 1, 2015, to pay the lump-sum amount required in this
27 subsection on an installment payment plan beginning no less than 90 days after the retirement
28 of the member and ending no less than one year after the retirement of the member. Payment
29 under such an installment plan must be completed regardless of whether the member continues
30 to receive a recurring monthly retirement benefit through the end of the installment period."

31 **SECTION 8.** Sections 5, 6, and 7 of this act become effective when this act
32 becomes law. The remainder of the act becomes effective January 1, 2016.