

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 117*
Judiciary Committee Substitute Adopted 3/7/17
Appropriations on Pensions, Compensation, and Benefits Committee Substitute Adopted
4/6/17
House Committee Substitute Favorable 6/15/17

Short Title: Forfeit. Retirement Benefits/Anti-Pen. Spiking.

(Public)

Sponsors:

Referred to:

February 22, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE RECEIPT OF BENEFITS FROM THE CONSOLIDATED
3 JUDICIAL RETIREMENT SYSTEM FOR JUDGES WHO HAVE BEEN IMPEACHED
4 AND CONVICTED OR REMOVED FROM OFFICE, TO AMEND FELONY
5 FORFEITURE STATUTES, TO CLARIFY ANTI-PENSION-SPIKING
6 CONTRIBUTION-BASED BENEFIT CAP, AND TO PROVIDE AN EXEMPTION
7 FROM RULE MAKING.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. FORFEITURE OF RETIREMENT BENEFITS/JUDGES**

11 **SECTION 1.** Article 4 of Chapter 135 of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 135-75.1B. Forfeiture of retirement benefits for conviction on impeachment or**
14 **removal from office.**

15 (a) Except as provided in G.S. 135-56(k), the Board of Trustees shall not pay any
16 retirement benefits or allowances, except for a return of member contributions plus interest, to
17 any justice or judge of the General Court of Justice for whom the following apply:

18 (1) The justice or judge of the General Court of Justice is convicted on
19 impeachment under Article IV of the North Carolina Constitution and
20 Chapter 123 of the General Statutes for reasons other than physical and
21 mental incapacity.

22 (2) The justice or judge of the General Court of Justice is removed from office
23 under G.S. 7A-376(b).

24 (b) If a justice or judge of the General Court of Justice or former justice or judge of the
25 General Court of Justice whose benefits under the System were forfeited under this section,
26 except for the return of member contributions plus interest, subsequently has the conviction on
27 impeachment or removal from office vacated or set aside for any reason, then the member or
28 former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence
29 to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is
30 appropriate, then all benefits will be restored upon repayment of all accumulated contributions
31 plus interest. Repayment of all accumulated contributions that have been received by the
32 individual under the forfeiture provisions of this section must be made in a total lump-sum
33 payment with interest compounded annually at a rate of six and one-half percent (6.5%) for



1 each calendar year from the year of forfeiture to the year of repayment. An individual receiving
2 a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

3 **SECTION 2.** G.S. 135-56 is amended by adding a new subsection to read:

4 "(k) If a justice or judge of the General Court of Justice who is in service and has not
5 vested in this System on December 1, 2017, is convicted on impeachment or removed from
6 office for acts committed after December 1, 2017, then that member shall forfeit all benefits
7 under this System, except for a return of member contributions plus interest. If a member who
8 is in service and has vested in this System on December 1, 2017, is convicted on impeachment
9 or removed from office for acts committed after December 1, 2017, then that member is not
10 entitled to any creditable service that accrued after December 1, 2017."

11 **SECTION 3.** G.S. 7A-376(b) reads as rewritten:

12 "(b) Upon recommendation of the Commission, the Supreme Court may issue a public
13 reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and
14 persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime
15 involving moral turpitude, or conduct prejudicial to the administration of justice that brings the
16 judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall
17 receive no compensation during the period of that suspension. A judge who is removed for any
18 of the foregoing reasons shall receive no retirement ~~compensation~~ compensation, except for a
19 return of member contributions plus interest as provided in G.S. 135-56(k), and is disqualified
20 from holding further judicial office."

21 **SECTION 4.** The General Assembly and the Supreme Court shall notify the State
22 Treasurer and the Board of Trustees of the conviction on impeachment or removal from office
23 of a justice or judge of the General Court of Justice.
24

25 **PART II. FELONY FORFEITURE STATUTES**

26 **SECTION 5.(a)** G.S. 135-18.10A(b) is repealed.

27 **SECTION 5.(b)** G.S. 128-38.4A(b) is repealed.

28 **SECTION 5.(c)** G.S. 135-75.1A(b) is repealed.

29 **SECTION 5.(d)** G.S. 120-4.33A is repealed.
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31 **PART III. ANTI-PENSION-SPIKING CONTRIBUTION-BASED BENEFIT CAP**

32 **SECTION 6.(a)** G.S. 135-5(a3) reads as rewritten:

33 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other
34 provision of this section, every service retirement allowance provided under this section for
35 members who retire on or after January 1, 2015, is subject to adjustment pursuant to a
36 contribution-based benefit cap under this subsection. ~~The Board of Trustees shall adopt~~
37 Notwithstanding Article 2A of Chapter 150B of the General Statutes, the Board of Trustees
38 shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon
39 actual experience, such that no more than three-quarters of one percent (0.75%) of retirement
40 allowances are expected to be capped. The Board of Trustees shall modify such factors every
41 five years, as shall be deemed necessary, based upon the five-year experience study as required
42 by G.S. 135-6(n). Prior to establishing a service retirement allowance under this section, the
43 Board shall:

44 (1) Determine an amount equal to the member's accumulated contributions as
45 required under G.S. 135-8(b)(1) for all years during which the member
46 earned membership service used in the calculation of the retirement
47 allowance that the member would receive under this section.

48 (2) Determine the amount of a single life annuity that is the actuarial equivalent
49 of the amount determined under subdivision (1) of this subsection, adjusted
50 for the age of the member at the time of retirement or, when appropriate, the
51 age at the time of the member's death.

- 1 (3) Multiply the annuity amount determined under subdivision (2) of this
2 subsection by the contribution-based benefit cap factor.
- 3 (4) Determine the amount of the retirement allowance that results from the
4 member's membership service.

5 The product of the multiplication in subdivision (3) of this subsection is the member's
6 contribution-based benefit cap. If the amount determined under subdivision (4) of this
7 subsection exceeds the member's contribution-based benefit cap, the member's retirement
8 allowance shall be reduced by an amount equal to the difference between the
9 contribution-based benefit cap and the amount determined under subdivision (4) of this
10 subsection.

11 Notwithstanding the foregoing, the retirement allowance of a member with an average final
12 compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed,
13 shall not be subject to the contribution-based benefit cap. The minimum average final
14 compensation necessary for a retirement allowance to be subject to the contribution-based
15 benefit cap shall be increased on January 1 each year by the percent change between the
16 ~~December-June~~ Consumer Price Index in the year prior to retirement and the ~~December-June~~
17 Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a
18 percent (0.1%), provided that this percent change is positive.

19 Notwithstanding the foregoing, the retirement allowance of a member who became a
20 member before January 1, 2015, or who has not earned at least five years of membership
21 service in the Retirement System after January 1, 2015, shall not be reduced; however, the
22 member's last employer shall be required to make an additional contribution as specified in
23 G.S. 135-8(f)(2)f., if applicable."

24 **SECTION 6.(b)** G.S. 128-27(a3) reads as rewritten:

25 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other
26 provision of this section, every service retirement allowance provided under this section for
27 members who retire on or after January 1, 2015, is subject to adjustment pursuant to a
28 contribution-based benefit cap under this subsection. ~~The Board of Trustees shall adopt~~
29 Notwithstanding Article 2A of Chapter 150B of the General Statutes, the Board of Trustees
30 shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon
31 actual experience, such that no more than three-quarters of one percent (0.75%) of retirement
32 allowances are expected to be capped. The Board of Trustees shall modify such factors every
33 five years, as shall be deemed necessary, based upon the five-year experience study as required
34 by G.S. 128-28(o).

35 Prior to establishing a service retirement allowance under this section, the Board shall:

- 36 (1) Determine an amount equal to the member's accumulated contributions as
37 required under G.S. 128-30(b)(1) for all years during which the member
38 earned membership service used in the calculation of the retirement
39 allowance that the member would receive under this section.
- 40 (2) Determine the amount of a single life annuity that is the actuarial equivalent
41 of the amount determined under subdivision (1) of this subsection, adjusted
42 for the age of the member at the time of retirement or, when appropriate, the
43 age at the time of the member's death.
- 44 (3) Multiply the annuity amount determined under subdivision (2) of this
45 subsection by the contribution-based benefit cap factor.
- 46 (4) Determine the amount of the retirement allowance that results from the
47 member's membership service.

48 The product of the multiplication in subdivision (3) of this subsection is the member's
49 contribution-based benefit cap. If the amount determined under subdivision (4) of this
50 subsection exceeds the member's contribution-based benefit cap, the member's retirement
51 allowance shall be reduced by an amount equal to the difference between the

1 contribution-based benefit cap and the amount determined under subdivision (4) of this
2 subsection.

3 Notwithstanding the foregoing, the retirement allowance of a member with an average final
4 compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed,
5 shall not be subject to the contribution-based benefit cap. The minimum average final
6 compensation necessary for a retirement allowance to be subject to the contribution-based
7 benefit cap shall be increased on January 1 each year by the percent change between the
8 ~~December-June~~ Consumer Price Index in the year prior to retirement and the ~~December-June~~
9 Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth of a
10 percent (0.1%), provided that this percent change is positive.

11 Notwithstanding the foregoing, the retirement allowance of a member who became a
12 member before January 1, 2015, or who has not earned at least five years of membership
13 service in the Retirement System after January 1, 2015, shall not be reduced; however, the
14 member's last employer shall be required to make an additional contribution as specified in
15 G.S. 128-30(g)(2)b., if applicable."

16 **SECTION 6.(c)** G.S. 135-6(l) reads as rewritten:

17 "(l) Duties of Actuary. – The Board of Trustees shall designate an actuary who shall be
18 the technical adviser of the Board of Trustees on matters regarding the operation of the funds
19 created by the provisions of this Chapter and shall perform such other duties as are required in
20 connection therewith. ~~For purposes of the annual valuation of System assets, the~~ The
21 experience studies, and all other actuarial calculations required by this Chapter, all the
22 assumptions used by the System's actuary, including mortality tables, interest rates, annuity
23 factors, ~~contribution-based benefit cap factor,~~ and employer contribution rates, shall be set out
24 in the actuary's periodic ~~reports-reports,~~ annual valuations of System assets, or other materials
25 provided to the Board of Trustees. ~~These~~ Notwithstanding Article 2A of Chapter 150B of the
26 General Statutes, these materials, once accepted by the Board, shall be considered part of the
27 Plan documentation governing this Retirement System; ~~System and shall be effective the first~~
28 day of the month following adoption, unless a different date is included in the adopting
29 resolution; similarly, the Board's minutes relative to all actuarial assumptions used by the
30 System shall also be considered part of the Plan documentation governing this Retirement
31 System, with the result of precluding any employer discretion in the determination of benefits
32 payable hereunder, consistent with Section 401(a)(25) of the Internal Revenue Code."

33 **SECTION 6.(d)** G.S. 128-28(m) reads as rewritten:

34 "(m) Duties of Actuary. – The Board of Trustees shall designate an actuary who shall be
35 the technical adviser of the Board of Trustees on matters regarding the operation of the funds
36 created by the provisions of this Chapter and shall perform such other duties as are required in
37 connection therewith. ~~For purposes of the annual valuation of System assets, the~~ The
38 experience studies, and all other actuarial calculations required by this Chapter, all the
39 assumptions used by the System's actuary, including mortality tables, interest rates, annuity
40 factors, ~~contribution-based benefit cap factor,~~ and employer contribution rates, shall be set out
41 in the actuary's periodic ~~reports-reports,~~ annual valuations of System assets, or other materials
42 provided to the Board of Trustees. ~~These~~ Notwithstanding Article 2A of Chapter 150B of the
43 General Statutes, these materials, once accepted by the Board, shall be considered part of the
44 Plan documentation governing this Retirement System; ~~System and shall be effective on the~~
45 first day of the month following adoption, unless a different date is included in the adopting
46 resolution; similarly, the Board's minutes relative to all actuarial assumptions used by the
47 System shall also be considered part of the Plan documentation governing this Retirement
48 System, with the result of precluding any employer discretion in the determination of benefits
49 payable hereunder, consistent with Section 401(a)(25) of the Internal Revenue Code."

50 **SECTION 6.(e)** This section is intended to clarify and not change existing law by
51 making clear that the rule-making provisions of Article 2A of Chapter 150B of the General

1 Statutes never required the benefit cap factor under G.S. 135-5(a3) to be adopted as a rule by
2 the Board of Trustees.

3 **SECTION 6.(f)** This section is effective when it becomes law and applies
4 retroactively to January 1, 2015.

5
6 **PART IV. EXEMPTION FROM RULE MAKING**

7 **SECTION 7.(a)** G.S. 150B-1(d) is amended by adding a new subdivision to read:

8 "**§ 150B-1. Policy and scope.**

9 ...
10 (d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the
11 following:

12 ...
13 (29) The Retirement System Boards of Trustees established under G.S. 128-28
14 and G.S. 135-6 when adopting actuarial tables, assumptions, and
15 contribution-based benefit cap factors after presentation of recommendations
16 from the actuary. This exemption includes, but is not limited to, the
17 following actuarial tables and assumptions:

- 18 a. Interest rate assumptions.
19 b. Salary increase assumptions.
20 c. Required contribution rates.
21 d. Mortality assumptions.
22 e. Separation and retirement assumptions.
23 f. Joint and survivor tables.
24 g. Reserve transfer tables.
25 h. Contribution-based benefit cap factors."

26 **SECTION 7.(b)** G.S. 135-6(n) reads as rewritten:

27 "(n) In 1943, and at least once in each five-year period thereafter, the actuary shall make
28 an actuarial investigation into the mortality, service and compensation experience of the
29 members and beneficiaries of the Retirement System, and shall make a valuation of the assets
30 and liabilities of the funds of the System, and taking into account the result of such
31 investigation and valuation, the Board of Trustees shall:

- 32 (1) Adopt for the Retirement System such mortality, ~~service—service,~~
33 contribution-based benefit cap factors, and other tables as shall be deemed
34 necessary; and
35 (2) Certify the rates of contributions payable by the State of North Carolina on
36 account of new entrants at various ages."

37 **SECTION 7.(c)** G.S. 128-28(o) reads as written:

38 "(o) In the year 1945, and at least once in each five-year period thereafter, the actuary
39 shall make an actuarial investigation into the mortality, service and compensation experience of
40 the members and beneficiaries of the Retirement System, and shall make a valuation of the
41 assets and liabilities of the funds of the System, and taking into account the result of such
42 investigation and valuation, the Board of Trustees shall:

- 43 (1) Adopt for the Retirement System such mortality, ~~service—service,~~
44 contribution-based benefit cap factors, and other tables as shall be deemed
45 necessary; and
46 (2) Certify the rates of contributions payable by the participating units on
47 account of new entrants at various ages."

48 **SECTION 7.(d)** This section is intended to clarify and not change existing law by
49 making clear that the rule-making provisions of Article 2A of Chapter 150B of the General
50 Statutes never required the benefit cap factor under G.S. 135-5(a3) to be adopted as a rule by
51 the Board of Trustees.

1 **SECTION 7.(e)** This section is effective when it becomes law and applies
2 retroactively to January 1, 2015.

3 **SECTION 8.** Except as otherwise provided, this act becomes effective December
4 1, 2017, and applies to offenses committed on or after that date.