

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-110
SENATE BILL 399

AN ACT TO ALLOW FOR RETIRED TEACHERS TO RETURN TO WORK IN HIGH-NEED SCHOOLS WITHOUT ADVERSELY IMPACTING THE RETIRED TEACHERS' BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-302.4. High-need retired teachers.

- (a) Definitions. – The following definitions apply in this section:
- (1) High-need retired teacher. – A beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who meets both of the following requirements:
- a. Retired on or before February 1, 2019, after attaining (i) the age of at least 65 with five years of creditable service, (ii) the age of at least 60 with 25 years of creditable service, or (iii) 30 years of creditable service.
- b. Is reemployed by a local board of education to teach at a high-need school.
- (2) High-need school. – A school that, at any point on or after July 1, 2017, meets one of the following criteria:
- a. Is a Title I school. As used in this sub-subdivision, a Title I school is a school identified under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended.
- b. Receives an overall school performance grade of D or F, as calculated by the State Board of Education pursuant to G.S. 115C-83.15(d).
- (3) STEM. – Science, technology, engineering, and mathematics.
- (b) Salary Level. – A high-need retired teacher shall be compensated as follows:
- (1) Except as provided in subdivision (2) of this subsection, a high-need retired teacher shall be paid on the first step of the teacher salary schedule.
- (2) If a high-need retired teacher serves as a teacher in any of the following licensure areas, he or she shall be paid on the sixth step of the teacher salary schedule:
- a. STEM.
- b. Special education.
- (c) No State Salary Supplements or Increase in Salary. – A high-need retired teacher shall not receive any State salary supplement or State bonus. A high-need retired teacher shall not move beyond the salary steps prescribed by subsection (b) of this section, regardless of the length of time spent as a high-need retired teacher.
- (d) Local Salary Supplement. – A high-need retired teacher shall receive any local salary supplements that are given to employees of the local board of education.



(e) Term of Contract. – A contract between the local board of education and a high-need retired teacher shall be for a term of no more than one school year.

(f) Identification of STEM and Special Education Licensure Areas. – The Superintendent of Public Instruction shall identify and provide to each local school administrative unit a list of STEM and special education licensure areas that qualify for reemployment pursuant to subdivision (b)(2) of this section. Local school administrative units shall make the list of STEM and special education licensure areas available to high-need retired teachers."

SECTION 2.(a) G.S. 135-3(8) is amended by adding a new sub-subdivision to read:

"g. Notwithstanding sub-subdivisions c. and d. of this subdivision, the computation of postretirement earnings of a beneficiary under this subdivision, who retired on or before February 1, 2019, and who has been retired at least six months, shall not include earnings while the beneficiary is employed to teach as a high-need retired teacher, as defined under G.S. 115C-302.4(a)(1). The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local board of education as a high-need retired teacher, as defined under G.S. 115C-302.4(a)(1).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 2.(b) G.S. 135-3(8)c1. reads as rewritten:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of ~~sub-subdivision~~ ~~sub-subdivisions~~ c. and g. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board may assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars (\$25.00). Upon receipt by the employer of notice that a penalty has been assessed under this sub-subdivision, the employer shall remit the payment of the penalty to the Retirement System, in one lump sum, no later than 90 days from the date of the notice."

SECTION 3. G.S. 135-1(10) reads as rewritten:

"(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the ~~General Assembly or Assembly,~~ any part-time or temporary ~~employee-~~employee, or any high-need retired teacher as defined under

G.S. 115C-302.4(a)(1). Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the North Carolina National Guard who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the North Carolina National Guard: Provided, further, that the Adjutant General, in the Adjutant General's discretion, may terminate the Retirement System coverage of the above-described North Carolina National Guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the North Carolina National Guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a North Carolina National Guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if the employee had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis must work at least 30 hours per week for nine or more months per calendar year in order to be covered by the provisions of this ~~subdivision~~-~~subdivision~~, except that no high-need retired teacher as defined under G.S. 115C-302.4(a)(1) shall be considered an employee. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa."

SECTION 4. G.S. 135-48.40(b)(1a) reads as rewritten:

"(1a) All retirees who (i) are employed by an employing unit that elects to be covered by this subdivision, (ii) do not qualify for coverage under subdivision (1) of this subsection, and (iii) are determined to be "full-time" by their employing unit in accordance with section 4980H of the Internal Revenue Code and the applicable regulations, as ~~amended.~~ amended, or are high-need retired teachers, as defined under G.S. 115C-302.4(a)(1). The employing unit shall pay the employer premiums for retirees who enroll under this subdivision."

SECTION 5.(a) The State Treasurer shall seek a private letter ruling from the Internal Revenue Service to determine if the provisions of this section relating to the computation of postretirement earnings of retired teachers jeopardize the status of the Teachers' and State Employees' Retirement System.

SECTION 5.(b) If the Internal Revenue Service determines that the provisions of G.S. 135-3(8)g., as enacted by this section, relating to the computation of postretirement earnings of retired teachers jeopardize the status of the Teachers' and State Employees' Retirement System of North Carolina under the Internal Revenue Code, then this section is repealed 30 days from receipt of that determination by the State Treasurer. Upon receipt of that determination, the State Treasurer shall notify the Revisor of Statutes of the determination and the date of receipt. Within three business days of receipt of the determination, the State Treasurer shall notify all local school administrative units of the repeal of this section and shall publicly notice the receipt of this information on the Department of State Treasurer's Web site. Within three business days of receipt of the notice from the State Treasurer, a local school administrative unit shall notify all high-need retired teachers employed by its local board of education of the repeal of this section.

SECTION 5.(c) Notwithstanding any other provision of law to the contrary, in order to pay costs associated with the administration of the provisions of this section, the Retirement Systems Division of the Department of State Treasurer may increase receipts from the retirement assets of the Teachers' and State Employees' Retirement System or pay costs associated with the administration directly from the retirement assets. Costs associated with the administration of the provisions of this section shall not exceed fifty thousand dollars (\$50,000) to obtain the private letter ruling from the Internal Revenue Service required under subsection (a) of this section.

SECTION 5.(d) Any beneficiary that is employed to teach by a local board of education as a high-need retired teacher, as defined in G.S. 115C-302.4(a)(1), shall not be eligible to elect into a position that would lead him or her to be eligible to accrue any additional benefits under G.S. 135-3(8). Any failure of a local board of education or a beneficiary to comply with the foregoing shall be corrected by the Retirement System as it determines may be appropriate under State and federal law. Any costs of the correction, as determined by the Retirement System, shall be the sole responsibility of the local board of education and shall be transferred to the Pension Accumulation Fund under G.S. 135-8, under rules adopted by the Board of Trustees.

SECTION 6. This act becomes effective July 1, 2019, and expires June 30, 2021.
In the General Assembly read three times and ratified this the 28th day of June, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 1:40 p.m. this 11th day of July, 2019