

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 544
Second Edition Engrossed 6/15/89

Short Title: Disability Income/Technical Corrections.

(Public)

Sponsors: Senator Block.

Referred to: Manufacturing and Labor.

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE DISABILITY INCOME
3 PLAN OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 135-5(a) reads as rewritten:

6 "(a) Service Retirement Benefits. –

7 (1) Any member may retire upon written application to the Board of
8 Trustees setting forth at what time, as of the first day of a calendar
9 month, not less than one day nor more than 90 days subsequent to the
10 execution of and filing thereof, he desires to be retired: Provided, that
11 the said member at the time so specified for his retirement shall have
12 attained the age of 60 years and have at least five years of membership
13 service or shall have completed 30 years of creditable service.

14 (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

15 (3) Any member who was in service October 8, 1981, who had attained 60
16 years of age, may retire upon written application to the Board of
17 Trustees setting forth at what time, as of the first day of a calendar
18 month, not less than one day nor more than 90 days subsequent to the
19 execution and filing thereof, he desires to be retired.

20 (4) Any member who is a law-enforcement officer, and who attains age 50
21 and completes 15 or more years of creditable service in this capacity or
22 who attains age 55 and completes five or more years of creditable
23 service in this capacity, may retire upon written application to the

1 Board of Trustees setting forth at what time, as of the first day of a
2 calendar month, not less than one day nor more than 90 days
3 subsequent to the execution and filing thereof, he desires to be retired;
4 Provided, also, any member who has met the conditions herein
5 required but does not retire, and later becomes a teacher or an
6 employee other than as a law-enforcement officer shall continue to
7 have the right to commence retirement.

- 8 (5) Any member who is eligible for and is being paid a benefit under the
9 Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106
10 shall be deemed a member in service and may not retire under the
11 provisions of this section. Any member who has made written
12 application for long-term or extended short-term benefits under the
13 Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106,
14 and who has been rejected by the Plan's Medical Board for a long-term
15 or extended short-term benefit shall have 90 days from the date of
16 notification of the rejection to convert his application to an early or
17 service retirement application, provided that the member meets the
18 eligibility requirements, effective the first day of the month following
19 the month in which short-term disability benefits ended or the first day
20 of the month following the month in which any salary continuation as
21 may be provided in G.S. 135-104 ended, whichever is later."

22 Sec. 2. G.S. 135-5(c) reads as rewritten:

23 "(c) Disability Retirement Benefits of Members ~~Retiring~~ Leaving Service Prior to
24 January 1, 1988. – The provisions of this subsection shall not be applicable to members
25 in service on or after January 1, 1988. Upon the application of a member or of his
26 employer, any member who has had five or more years of creditable service may be
27 retired by the Board of Trustees, on the first day of any calendar month, not less than
28 one day nor more than 90 days next following the date of filing such application, on a
29 disability retirement allowance: Provided, that the medical board, after a medical
30 examination of such member, shall certify that such member is mentally or physically
31 incapacitated for the further performance of duty, that such incapacity was incurred at
32 the time of active employment and has been continuous thereafter, that such incapacity
33 is likely to be permanent, and that such member should be retired; Provided further the
34 medical board shall determine if the member is able to engage in gainful employment
35 and, if so, the member may still be retired and the disability retirement allowance as a
36 result thereof shall be reduced as in subsection (e) below. Provided further, that the
37 medical board shall not certify any member as disabled who:

- 38 (1) Applies for disability retirement based upon a mental or physical
39 incapacity which existed when the member first established
40 membership in the system; or
41 (2) Is in receipt of any payments on account of the same disability which
42 existed when the member first established membership in the system.

1 The Board of Trustees shall require each employee upon enrolling in the retirement
2 system to provide information on the membership application concerning any mental or
3 physical incapacities existing at the time the member enrolls.

4 Supplemental disability benefits heretofore provided are hereby made a permanent
5 part of disability benefits after age 65, and shall not be discontinued at age 65.

6 Notwithstanding the requirement of five or more years of creditable service to the
7 contrary, a member who is a law-enforcement officer and who has had one year or more
8 of creditable service and becomes incapacitated for duty as the natural and proximate
9 result of an accident occurring while in the actual performance of duty, and meets all
10 other requirements for disability retirement benefits, may be retired by the Board of
11 Trustees on a disability retirement allowance.

12 Notwithstanding the foregoing to the contrary, any beneficiary who commenced
13 retirement with an early or service retirement benefit has the right, within three years of
14 his retirement, to convert to an allowance with disability retirement benefits without
15 modification of any election of optional allowance previously made; provided, the
16 beneficiary presents clear and convincing evidence that the beneficiary would have met
17 all applicable requirements for disability retirement benefits while still in service as a
18 member. The allowance on account of disability retirement benefits to the beneficiary
19 shall be retroactive to the effective date of early or service retirement.

20 Notwithstanding the foregoing, the surviving designated beneficiary of a deceased
21 member who met all other requirements for disability retirement benefits, except whose
22 death occurred before the first day of the calendar month in which the member's
23 disability retirement allowance was to be due and payable, may elect to receive the
24 reduced retirement allowance provided by a fifty percent (50%) joint and survivor
25 payment option in lieu of a return of accumulated contributions, provided the following
26 conditions apply:

- 27 (1) The member had designated as the principal beneficiary, to receive a
28 return of accumulated contributions at the time of his death, one and
29 only one person, and
- 30 (2) The member had not instructed the Board of Trustees in writing that he
31 did not wish the provision of this subsection to apply."

32 Sec. 3. G.S. 135-5(d4) reads as rewritten:

33 "(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1,
34 1982, ~~but Who Left Service~~ prior to January 1, 1988. – Upon retirement for disability, in
35 accordance with subsection (c) of this section on or after July 1, 1982 ~~but prior to January~~
36 ~~1, 1988, 1982,~~ a member who left service prior to January 1, 1988 shall receive a service
37 retirement allowance if he has qualified for an unreduced service retirement allowance;
38 otherwise the allowance shall be equal to a service retirement allowance calculated on
39 the member's average final compensation prior to his disability retirement and the
40 creditable service he would have had had he continued in service until the earliest date
41 on which he would have qualified for an unreduced service retirement allowance."

42 Sec. 4. G.S. 135-5(e) reads as rewritten:

43 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
44 this subsection shall be applicable to members retired on a disability retirement

1 allowance ~~prior to January 1, 1988~~ and shall not be applicable to members in service on or
2 after January 1, 1988. Once each year during the first five years following retirement of
3 a member on a disability retirement allowance, and once in every three-year period
4 thereafter, the Board of Trustees may, and upon his application shall, require any
5 disability beneficiary who has not yet attained the age of 60 years to undergo a medical
6 examination, such examination to be made at the place of residence of said beneficiary
7 or other place mutually agreed upon, by a physician or physicians designated by the
8 Board of Trustees. Should any disability beneficiary who has not yet attained the age of
9 60 years refuse to submit to at least one medical examination in any such year by a
10 physician or physicians designated by the Board of Trustees, his allowance may be
11 discontinued until his withdrawal of such refusal, and should his refusal continue for
12 one year all his rights in and to his pension may be revoked by the Board of Trustees.

13 (1) The Board of Trustees shall determine whether a disability beneficiary
14 is engaged in or is able to engage in a gainful occupation paying more
15 than the difference, as hereinafter indexed, between his disability
16 retirement allowance and the gross compensation earned as an
17 employee during the 12 consecutive months of service in the final 48
18 months prior to retirement producing the highest gross compensation
19 excluding any compensation received on account of termination. If the
20 disability beneficiary is earning or is able to earn more than the
21 difference, the portion of his disability retirement allowance not
22 provided by his contributions shall be reduced to an amount which,
23 together with the portion of the disability retirement allowance
24 provided by his contributions and the amount earnable by him shall
25 equal the amount of his gross compensation prior to retirement. This
26 difference shall be increased on January 1 each year by the ratio of the
27 Consumer Price Index to the Index one year earlier, calculated to the
28 nearest tenth of one percent (1/10th of 1%). Should the earning
29 capacity of the disability beneficiary later change, the portion of his
30 disability retirement allowance not provided by his contributions may
31 be further modified. In lieu of the reductions on account of a disability
32 beneficiary earning more than the aforesaid difference, he may elect to
33 convert his disability retirement allowance to a service retirement
34 allowance calculated on the basis of his average final compensation
35 and creditable service at the time of disability and his age at the time
36 of conversion to service retirement. This election is irrevocable.
37 Provided, the provisions of this subdivision shall not apply to
38 beneficiaries of the Law-Enforcement Officers' Retirement System
39 transferred to this Retirement System who commenced retirement on
40 and before July 1, 1981.

41 (2) Should a disability beneficiary under the age of 60 years be restored to
42 active service at a compensation not less than his average final
43 compensation, his retirement allowance shall cease, he shall again
44 become a member of the Retirement System, and he shall contribute

1 thereafter at the same rate he paid prior to disability; provided that, on
2 and after July 1, 1971, if a disability beneficiary under the age of 62
3 years is restored to active service at a compensation not less than his
4 average final compensation, his retirement allowance shall cease, he
5 shall again become a member of the Retirement System, and he shall
6 contribute thereafter at the uniform contribution rate payable by all
7 members. Any such prior service certificate on the basis of which his
8 service was computed at the time of his retirement shall be restored to
9 full force and effect, and, in addition, upon his subsequent retirement
10 he shall be credited with all his service as a member, but should he be
11 restored to active service on or after the attainment of the age of 50
12 years his pension upon subsequent retirement shall not exceed the sum
13 of the pension which he was receiving immediately prior to his last
14 restoration and the pension that he would have received on account of
15 his service since his last restoration had he entered service at the time
16 as a new entrant.

17 (3) Notwithstanding the foregoing, a member retired on a disability
18 retirement allowance who is restored to service and subsequently
19 retires on or after July 1, 1971, shall be entitled to an allowance not
20 less than the allowance described in a below reduced by the amount in
21 b below:

22 a. The allowance to which he would have been entitled if he were
23 retiring for the first time, calculated on the basis of his total
24 creditable service represented by the sum of his creditable
25 service at the time of his first retirement and his creditable
26 service after he was restored to service.

27 b. The actuarial equivalent of the retirement benefits he previously
28 received.

29 (3a) Notwithstanding the foregoing, a member retired on a disability
30 retirement allowance who is restored to service and subsequently
31 retires on or after July 1, 1985, shall be entitled to an allowance to
32 which he would have been entitled if he were retiring for the first time,
33 calculated on the basis of his total creditable service represented by the
34 sum of his creditable service at the time of his first retirement and his
35 creditable service after he was restored to service. Provided, however,
36 any election of an optional allowance cannot be changed unless the
37 member subsequently completes three years of membership service
38 after being restored to service.

39 (4) As a condition to the receipt of the disability retirement allowance
40 provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired
41 on a disability retirement allowance shall, on or before April 15 of
42 each calendar year, provide the Board of Trustees with a statement of
43 his or her income received as compensation for services, including
44 fees, commissions or similar items, and income received from

1 business, for the previous calendar year. Such statement shall be filed
2 on a form as required by the Board of Trustees.

3 The Director of the State Retirement System shall contact any State
4 or federal agency which can provide information to substantiate the
5 statement required to be submitted by this subdivision and may enter
6 into agreements for the exchange of information.

7 (5) Notwithstanding any other provisions of this Article to the contrary, a
8 beneficiary who was a beneficiary retired on a disability retirement
9 with the Law-Enforcement Officers' Retirement System at the time of
10 the transfer of law-enforcement officers employed by a participating
11 employer and beneficiaries last employed by a participating employer
12 to this Retirement System and who also was a contributing member of
13 this Retirement System at that time, shall continue to be paid his
14 retirement allowance without restriction and may continue as a
15 member of this Retirement System with all the rights and privileges
16 appendant to membership. Any beneficiary who retired on a disability
17 retirement allowance as an employee of any participating employer
18 under the Law-Enforcement Officers' Retirement System and becomes
19 employed as an employee other than as a law-enforcement officer by
20 an employer participating in the Retirement System after the
21 aforementioned transfer shall continue to be paid his retirement
22 allowance without restriction and may continue as a member of this
23 Retirement System with all the rights and privileges appendant to
24 membership until January 1, 1989, at which time his retirement
25 allowance shall cease and his subsequent retirement shall be
26 determined in accordance with the preceding subdivision (3a) of this
27 section. Any beneficiary as hereinbefore described who becomes
28 employed as a law-enforcement officer by an employer participating in
29 the Retirement System shall cease to be a beneficiary and shall
30 immediately commence membership and his subsequent retirement
31 shall be determined in accordance with subdivision (3a) of this section.

32 (6) Notwithstanding any other provision to the contrary, a beneficiary in
33 receipt of a disability retirement allowance until the earliest date on
34 which he would have qualified for an unreduced service retirement
35 allowance shall thereafter (i) not be subject to further reexaminations
36 as to disability, (ii) not be subject to any reduction in allowance on
37 account of being engaged in a gainful occupation other than with an
38 employer participating in the Retirement System, and (iii) be
39 considered a beneficiary in receipt of a service retirement allowance.
40 Provided, however, a beneficiary in receipt of a disability retirement
41 allowance whose allowance is reduced on account of reexamination as
42 to disability or to ability to engage in a gainful occupation prior to the
43 date on which he would have qualified for an unreduced service
44 retirement allowance shall have only the right to elect to convert to an

1 early or service retirement allowance as permitted under subdivision
2 (1) above."

3 Sec. 5. G.S. 135-5(f) reads as rewritten:

4 "(f) Return of Accumulated Contributions. – Should a member cease to be a
5 teacher or State employee except by death or retirement under the provisions of this
6 Chapter, he shall upon submission of an application be paid, not earlier than 60 days
7 from the date of termination of service, his contributions, and if he has attained at least
8 five years of membership service or if termination of his membership service is
9 involuntary as certified by the employer, the accumulated regular interest thereon,
10 provided that he has not in the meantime returned to service. Upon payment of such
11 sum his membership in the System shall cease and, if he thereafter again becomes a
12 member, no credit shall be allowed for any service previously rendered except as
13 provided in G.S. 135-4, and such payment shall be in full and complete discharge of any
14 rights in or to any benefits otherwise payable hereunder. Upon receipt of proof
15 satisfactory to the Board of Trustees of the death, prior to retirement, of a member or
16 former member there shall be paid to such person or persons as he shall have nominated
17 by written designation duly acknowledged and filed with the Board of Trustees, if such
18 person or persons are living at the time of the member's death, otherwise to the
19 member's legal representatives, the amount of his accumulated contributions at the time
20 of his death, unless the beneficiary elects to receive the alternate benefit under the
21 provisions of (m) below. Notwithstanding any other provision of Chapter 135, there
22 shall be deducted from any amount otherwise payable hereunder any amount due any
23 agency or subdivision of the State by the member by reason of any outstanding
24 overpayment of salary or by reason of the embezzlement of fees collected by the
25 member for any agency or subdivision of the State; Provided that, notwithstanding any
26 other provisions of this Chapter, even if the member fails to demand the return of his
27 accumulated contributions within 90 days from the day he ceases to be a teacher or
28 State employee, any amount due such agency or subdivision by reason of any
29 outstanding overpayment of salary or embezzlement of fees shall be paid to such agency
30 or subdivision by the Retirement System upon demand; Provided, further, that such
31 agency or subdivision shall have notified the executive director of any amount so due
32 and that the Retirement System shall have no liability for amounts so deducted and
33 transmitted to such agency or subdivision nor for any failure by the Retirement System
34 for any reason to make such deductions. An extension service employee who made
35 contributions to the Local Governmental Employees' Retirement System and the
36 Teachers' and State Employees' Retirement System as a result of dual employment may
37 not be paid his accumulated contributions unless he is eligible to be paid his
38 accumulated contributions in both systems for the same period of service.

39 Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the
40 Consolidated Judicial Retirement System may irrevocably elect to transfer any
41 accumulated contributions to the Consolidated Judicial Retirement System or to the
42 Supplemental Retirement Income Plan and forfeit any rights in or to any benefits
43 otherwise payable hereunder.

1 A member who is a participant or beneficiary of the Disability Income Plan of North
2 Carolina as is provided in Article 6 of this Chapter shall not be paid a return of
3 accumulated contributions, notwithstanding the member's status as an employee or
4 teacher. Notwithstanding any other provision of law to the contrary, a member who is a
5 beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of
6 this Chapter and who is receiving disability benefits under the transition provisions as
7 provided in G.S. 135-112, shall not be prohibited from receiving a return of
8 accumulated contributions as provided in this subsection."

9 Sec. 6. G.S. 135-5(l) reads as rewritten:

10 ♦ " (l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan
11 (hereinafter called the 'Plan') which is established as an employee welfare benefit plan
12 that is separate and apart from the Retirement System and under which the members of
13 the Retirement System shall participate and be eligible for group life insurance benefits.
14 Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees
15 under the Group Life Insurance Plan, of the death, in service, of a member who had
16 completed at least one full calendar year of membership in the Retirement System, there
17 shall be paid to such person as he shall have nominated by written designation duly
18 acknowledged and filed with the Board of Trustees, if such person is living at the time
19 of the member's death, otherwise to the member's legal representatives, a death benefit.
20 Such death benefit shall be equal to the greater of:

21 (1) The compensation on which contributions were made by the member
22 during the calendar year preceding the year in which his death occurs,
23 or

24 (2) The greatest compensation on which contributions were made by the
25 member during a 12-month period of service within the 24-month
26 period of service ending on the last day of the month preceding the
27 month in which his last day of actual service occurs;

28 subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of
29 fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate
30 from the payment of the member's accumulated contributions under the System on his
31 death pursuant to the provisions of subsection (f) of this section. For the purpose of the
32 Plan, a member shall be deemed to be in service at the date of his death if his death
33 occurs within 180 days from the last day of his actual service.

34 The death benefit provided in this subsection (l) shall not be payable,
35 notwithstanding the member's compliance with all the conditions set forth in the
36 preceding paragraph, if his death occurs

37 (1) After December 31, 1968 and after he has attained age 70; or

38 (2) After December 31, 1969 and after he has attained age 69; or

39 (3) After December 31, 1970 and after he has attained age 68; or

40 (4) After December 31, 1971 and after he has attained age 67; or

41 (5) After December 31, 1972 and after he has attained age 66; or

42 (6) After December 31, 1973 and after he has attained age 65; or

43 (7) After December 31, 1978, but before January 1, 1987, and after he has
44 attained age 70.

1 Notwithstanding the above provisions, the death benefit shall be payable on account
2 of the death of any member who died or dies on or after January 1, 1974, but before
3 January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or
4 she had not yet attained age 66, was at the time of death completing the work year for
5 those individuals under specific contract, or during the fiscal year for those individuals
6 not under specific contract, in which he or she attained 65, and otherwise met all
7 conditions for payment of the death benefit.

8 Notwithstanding the above provisions, the Board of Trustees may and is specifically
9 authorized to provide the death benefit according to the terms and conditions otherwise
10 appearing in this Plan in the form of group life insurance, either (i) by purchasing a
11 contract or contracts of group life insurance with any life insurance company or
12 companies licensed and authorized to transact business in this State for the purpose of
13 insuring the lives of members in service, or (ii) by establishing a separate trust fund
14 qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended,
15 for such purpose. To that end the Board of Trustees is authorized, empowered and
16 directed to investigate the desirability of utilizing group life insurance by either of the
17 foregoing methods for the purpose of providing the death benefit. If a separate trust
18 fund is established, it shall be operated in accordance with rules and regulations adopted
19 by the Board of Trustees and all investment earnings on the trust fund shall be credited
20 to such fund.

21 In administration of the death benefit the following shall apply:

- 22 (1) For the purpose of determining eligibility only, in this subsection
23 'calendar year' shall mean any period of 12 consecutive months or, if
24 less, the period covered by an annual contract of employment. For all
25 other purposes in this subsection 'calendar year' shall mean the 12
26 months beginning January 1 and ending December 31.
- 27 (2) Last day of actual service shall be:
 - 28 a. When employment has been terminated, the last day the
29 member actually worked.
 - 30 b. When employment has not been terminated, the date on which
31 an absent member's sick and annual leave expire, unless he is
32 on approved leave of absence and is in service under the
33 provisions of G.S. 135-4(h).
- 34 (3) For a period when a member is on leave of absence, his status with
35 respect to the death benefit will be determined by the provisions of
36 G.S. 135-4(h).
- 37 (4) A member on leave of absence from his position as a teacher or State
38 employee for the purpose of serving as a member or officer of the
39 General Assembly shall be deemed to be in service during sessions of
40 the General Assembly and thereby covered by the provisions of the
41 death benefit. The amount of the death benefit for such member shall
42 be the equivalent of the salary to which the member would have been
43 entitled as a teacher or State employee during the 12-month period
44 immediately prior to the month in which death occurred, not to be less

1 than twenty-five thousand dollars (\$25,000) nor to exceed fifty
2 thousand dollars (\$50,000).

3 The provisions of the Retirement System pertaining to Administration, G.S. 135-6,
4 and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

5 A member who is a beneficiary of the Disability Income Plan provided for in Article
6 of this Chapter shall be eligible for group life insurance benefits as provided in this
7 subsection, notwithstanding that the member is no longer an employee or teacher or that
8 the member's death occurs after the eligibility period after active service. The basis of
9 the death benefit payable hereunder shall be the higher of the death benefit computed as
10 above or a death benefit based on compensation used in computing the benefit payable
11 under ~~G.S. 135-106~~ G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage
12 post-disability increases, all subject to the maximum dollar limitation as provided
13 above. A member in receipt of benefits from the Disability Income Plan under the
14 provisions of ~~G.S. 135-112(b)~~ and (e) G.S. 135-112 whose right to a benefit accrued
15 under the former Disability Salary Continuation Plan shall not be covered under the
16 provisions of this paragraph.

17 Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this
18 subsection, of the death of a retired member of the Retirement System on or after July 1,
19 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired
20 member or to the deceased retired member's legal representative if not survived by a
21 spouse; provided the retired member has elected, when first eligible, to make, and has
22 continuously made, in advance of his death required contributions as determined by the
23 Board of Trustees on a fully contributory basis, through retirement allowance
24 deductions or other methods adopted by the Board of Trustees, to a group death benefit
25 trust fund administered by the Board of Trustees separate and apart from the Retirement
26 System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit
27 shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the
28 completion of twenty-four months of contributions required under this subsection.
29 Should death occur before the completion of twenty-four months of contributions
30 required under this subsection, the deceased retired member's surviving spouse or legal
31 representative if not survived by a spouse shall be paid the sum of the retired member's
32 contributions required by this subsection plus interest to be determined by the Board of
33 Trustees."

34 Sec. 7. G.S. 135-101(3) reads as rewritten:

35 "(3) 'Benefits' shall mean the monthly disability income payments made
36 pursuant to the provisions of this Article. In the event of death ~~or~~
37 ~~termination of benefits~~ on or after the first day of a month, the monthly
38 benefit shall not be prorated and shall equal the benefits paid in the
39 previous month."

40 Sec. 8. G.S. 135-101 is amended by adding two new subdivisions to read:

41 "(20) 'Trial Rehabilitation' shall mean a return to service in any capacity,
42 if the return occurs within the waiting period as provided in G.S.
43 135-104 and shall mean a return to service in the same capacity

1 that existed prior to the disability if the return occurs within the
2 short-term disability period as provided in G.S. 135-105.

3 (21) 'Workers' Compensation' shall mean any disability income
4 benefits provided under the North Carolina Workers'
5 Compensation Act, excluding any payments for a permanent partial
6 disability rating."

7 Sec. 9. G.S. 135-104(a) reads as rewritten:

8 "(a) A participant shall receive no benefits from the Plan for a period of 60
9 continuous calendar days from the onset of disability determined as the last actual day
10 of ~~service~~ service, the day of the disabling event if the disabling event occurred on a day
11 other than a normal workday, or the day succeeding at least 365 calendar days after
12 service as a teacher or employee, whichever is later. These 60 continuous calendar days
13 may be considered the waiting period before benefits are payable from the Plan. During
14 this waiting period, a participant may be paid such continuation of salary as provided by
15 an employer through the use of sick leave, vacation leave or any other salary
16 continuation."

17 Sec. 10. G.S. 135-105 reads as rewritten:

18 "**§ 135-105. Short-term disability benefits.**

19 (a) Any participant who becomes disabled and is no longer able to perform his
20 usual occupation may, after at least 365 calendar days succeeding his date of initial
21 employment as a teacher or employee and at least one year of contributing membership
22 service, receive a benefit commencing on the first day succeeding the waiting period;
23 provided that the participant's employer and attending physician shall certify that such
24 participant is mentally or physically incapacitated for the further performance of duty,
25 that such incapacity was incurred ~~while the participant was a teacher or employee at the~~
26 time of active employment and has been continuous thereafter; provided further that the
27 requirement for one year of contributing membership service must have been earned
28 within 36 calendar months immediately preceding the date of disability and further,
29 salary continuation used during the period as provided in G.S. 135-104 shall count
30 toward the aforementioned one year requirement.

31 (b) The benefits as provided for in subsection (a) of this section shall commence
32 on the first day following the waiting period and shall be payable for a period of 365
33 days as long as the participant continues to meet the definition of disability. However, a
34 disabled participant may elect to receive any salary continuation as provided in G.S.
35 135-104 in lieu of short-term disability benefits; provided further, such election shall
36 not extend the 365 days duration of short-term payments. An election to receive any
37 salary continuation for any part of a given day shall be in lieu of any short-term benefit
38 otherwise payable for that day, provided further, any lump-sum payout for vacation
39 leave shall be treated as if the beneficiary or participant had exhausted the leave and
40 shall be in lieu of any short-term benefit otherwise payable."

41 (c) The monthly benefit as provided in subsection (a) of this section shall be
42 equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last
43 payable to the participant prior to the beginning of the short-term benefit period as may
44 be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent

1 (50%) of 1/12th of the annual longevity payment to which the participant would be
2 eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by
3 monthly payments for Workers' Compensation to which the participant may be entitled.
4 Provided, that should a participant have earnings in an amount greater than the short-
5 term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar
6 basis by the amount that exceeds the short-term benefit.

7 (d) The provisions of this section shall be administered by the employer and
8 further, the benefits during the first six months of the short-term disability period shall
9 be the full responsibility of and paid by the employer; Provided, further, that upon the
10 completion of the initial six months of the short-term disability period, the employer
11 will continue to be responsible for the short-term benefits to the participant, however,
12 such employer shall notify the Plan on a quarterly basis of the amount of short-term
13 benefits paid and the Plan shall reimburse the employer the amounts so paid.

14 (e) During the short-term disability period, a beneficiary may return to service
15 for trial rehabilitation for periods of not greater than 40 continuous days of service.
16 Such return will not cause the beneficiary to become a participant and will not require a
17 new waiting period or short-term disability period to commence unless a different
18 incapacity occurs. The period of rehabilitative employment shall not extend the period
19 of the short-term disability benefits.

20 (f) A participant or beneficiary of short-term disability benefits or his legal
21 representative or any person deemed by the Board of Trustees to represent the
22 participant or beneficiary, or the employer of the participant or beneficiary, may request
23 the Board of Trustees to have the Medical Board make a determination of eligibility for
24 the short-term disability benefits as provided in this section or to make a preliminary
25 determination of eligibility for the long-term disability benefits as provided in G.S. 135-
26 106. A preliminary determination of eligibility for long-term disability benefits shall
27 not preclude the requirement that the Medical Board make a determination of eligibility
28 for long-term disability benefits.

29 (g) The Board of Trustees may extend the short-term disability benefits of a
30 beneficiary beyond the benefit period of 365 days for an additional period of not more
31 than 365 days; provided the Medical Board determines that the beneficiary's disability is
32 temporary and likely to end within the extended period of short-term disability benefits.
33 During the extended period of short-term disability benefits, payment of benefits shall
34 be made by the Plan directly to the beneficiary."

35 Sec. 11. G.S. 135-106 reads as rewritten:

36 "**§ 135-106. Long-term disability benefits.**

37 (a) Upon the application of a beneficiary or participant or of his legal
38 representative or any person deemed by the Board of Trustees to represent the
39 participant or beneficiary, any beneficiary or participant who has had five or more years
40 of membership service may receive long-term disability benefits from the Plan upon
41 approval by the Board of Trustees, commencing on the first day succeeding the
42 conclusion of the short-term disability period provided for in G.S. 135-105, provided
43 the beneficiary or participant makes application for such benefit within 180 days after
44 the short-term disability period ceases or after salary continuation payments cease,

1 whichever is later; Provided, that the Medical Board shall certify that such beneficiary
2 or participant is mentally or physically incapacitated for the further performance of
3 duty, that such incapacity was incurred ~~while a teacher or employee~~ at the time of active
4 employment and has been continuous thereafter, that such incapacity is likely to be
5 permanent; Provided further that the Medical Board shall not certify any beneficiary or
6 participant as disabled who is in receipt of any payments on account of the same
7 incapacity which existed when the beneficiary first established membership in the
8 Retirement System.

9 The Board of Trustees may require each beneficiary who becomes eligible to receive
10 a long-term disability benefit to have an annual medical review or examination for the
11 first five years and thereafter once every three years after the commencement of benefits
12 under this section. However, the Board of Trustees may require more frequent
13 examinations and upon the advice of the Medical Board shall determine which cases
14 require such examination. Should any beneficiary refuse to submit to any examination
15 required by this subsection or by the Medical Board, his long-term disability benefit
16 shall be suspended until he submits to an examination, and should his refusal last for
17 one year, his benefit may be terminated by the Board of Trustees. If the Medical Board
18 finds that a beneficiary is no longer mentally or physically incapacitated for the further
19 performance of duty, the Medical Board shall so certify this finding to the Board of
20 Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability
21 benefits effective on the last day of the month in which the Medical Board certifies that
22 the beneficiary is no longer disabled.

23 As to the requirement of five years of membership service, any participant or
24 beneficiary who does not have five years of membership service within the 96 calendar
25 months prior to conclusion of the short-term disability period or cessation of salary
26 continuation payments, whichever is later, shall not be eligible for long-term disability
27 benefits.

28 (b) After the commencement of benefits under this section, the benefits payable
29 under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the
30 annual base rate of compensation last payable to the participant or beneficiary prior to
31 the beginning of the ~~long-term benefit~~ short-term disability period as may be adjusted for
32 percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of
33 1/12th of the annual longevity payment to which the participant or beneficiary would be
34 eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month
35 reduced by any primary Social Security disability benefits and by monthly payments for
36 Workers' Compensation, if any Compensation to which the participant or beneficiary may
37 be entitled, but the benefits payable shall be no less than ten dollars (\$10.00) a month.
38 However, a disabled participant may elect to receive any salary continuation as
39 provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election
40 shall not extend the first 36 consecutive calendar months of the long-term disability
41 period. An election to receive any salary continuation for any part of any given day
42 shall be in lieu of any long-term benefit payable for that day, provided further, any
43 lump-sum payout for vacation leave shall be treated as if the beneficiary or participant
44 had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable.

1 Notwithstanding the foregoing, upon the completion of four years from the conclusion
2 of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be
3 reduced by an amount, as determined by the Board of Trustees, equal to a primary
4 Social Security disability benefit to which the beneficiary might be entitled had the
5 beneficiary been awarded Social Security disability benefits. Provided that, in any
6 event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board
7 of Trustees, equal to a primary Social Security retirement benefit to which the
8 beneficiary might be entitled.

9 Notwithstanding the foregoing, the long-term disability benefit is payable so long as
10 the beneficiary is disabled until the earliest date at which the beneficiary is eligible for
11 an unreduced service retirement allowance from the Retirement System, at which time
12 the beneficiary would receive a retirement allowance calculated on the basis of the
13 beneficiary's average final compensation at the time of disability as adjusted to reflect
14 compensation increases subsequent to the time of disability and the creditable service
15 accumulated by the beneficiary, including creditable service while in receipt of benefits
16 under the Plan.

17 (c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability
18 benefits who has earnings during the first 36 consecutive calendar months of the long-
19 term disability period shall have his long-term disability benefit reduced when the sum
20 of the net long-term disability benefit and the earnings equals one hundred percent
21 (100%) of monthly compensation adjusted as provided under G.S. 135-108. The long-
22 term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in
23 excess of the one hundred percent (100%) monthly limit. Provided further, after the
24 first 36 months of the long-term disability period, a beneficiary's earnings will not result
25 in any reduction of the monthly long-term disability benefit until the monthly earnings
26 equal the net monthly long-term disability benefit. The monthly long-term disability
27 benefit will be reduced by one dollar (\$1.00) for each three dollars (\$3.00) of monthly
28 earnings in excess of the net long-term disability benefit until the sum of the monthly
29 net long-term benefit and monthly earnings reach one hundred percent (100%) of
30 monthly compensation adjusted as provided under G.S. 135-108, at which point the
31 monthly long-term disability benefit shall be reduced dollar-for-dollar for the amount of
32 earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary
33 exceeding the earnings limitations shall notify the Plan by the fifth of the month
34 succeeding the month in which the earnings were received of the amount of earnings in
35 excess of the limitations herein provided. Failure to report excess earnings may result
36 in a suspension or termination of benefits as determined by the Board of Trustees."

37 Sec. 12. G.S. 135-112(b) reads as rewritten:

38 "(b) All benefit recipients under the former Disability Salary Continuation Plan
39 provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries
40 under this Plan under the same provisions and conditions including the benefit amounts
41 payable as were provided under the former Disability Salary Continuation Plan. Any
42 benefit recipient under the former Disability Salary Continuation Plan who returns to
43 service on or after January 1, 1988, who subsequently becomes disabled due to the same
44 disabling condition within 90 days after restoration to service shall not become a

1 participant of the Disability Income Plan but shall be entitled to a restoration of the
2 disability benefit under the same provisions and conditions, including the benefit
3 amounts payable, as were provided under the former Disability Salary Continuation
4 Plan, and shall be entitled to make application for disability retirement benefits under
5 the Retirement System under the same provisions and conditions as were provided
6 members whose service terminated prior to January 1, 1988."

7 Sec. 13. Section 29(g) of Chapter 738 of the 1987 Session Laws reads as
8 rewritten:

9 "(g) G.S. 135-5(e) and ~~G.S. 128-7(e)~~128-27(e) are amended by adding a new
10 subdivision to the end of each designated as (6) to read:

11 '(6) Notwithstanding any other provision to the contrary, a beneficiary in
12 receipt of a disability retirement allowance until the earliest date on
13 which he would have qualified for an unreduced service retirement
14 allowance shall thereafter (i) not be subject to further reexaminations
15 as to disability, (ii) not be subject to any reduction in allowance on
16 account of being engaged in a gainful occupation other than with an
17 employer participating in the Retirement System, and (iii) be
18 considered a beneficiary in receipt of a service retirement allowance.
19 Provided, however, a beneficiary in receipt of a disability retirement
20 allowance whose allowance is reduced on account of reexamination as
21 to disability or to ability to engage in a gainful occupation prior to the
22 date on which he would have qualified for an unreduced service
23 retirement allowance shall have only the right to elect to convert to an
24 early or service retirement allowance as permitted under subdivision
25 (1) above."

26 Sec. 13.1. G.S. 128-27(1)(7) is rewritten to read:

27 "(7) After December 31, 1978, but before ~~July 1, 1988~~January 1, 1987, and
28 after he has attained age 70."

29 Sec. 14. This act shall become effective July 1, 1989, except that section 13
30 is effective upon ratification. ♦