

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2773

Short Title: Retirement Technical Corrections. (Public)

Sponsors: Representatives Bell, J. Harrell (Primary Sponsors); and Coleman.

Referred to: Pensions and Retirement.

May 29, 2008

A BILL TO BE ENTITLED

1 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES
2 GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT
3 SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE
4 RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES'
5 RETIREMENT SYSTEM, AND THE FIREMEN'S AND RESCUE SQUAD
6 WORKERS' PENSION FUND.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 135-18.7(d) reads as rewritten:

10 "(d) This subsection applies to distributions made on or after January 1, 1993.
11 Notwithstanding any other provision of the Plan to the contrary that would otherwise
12 limit a distributee's election under this Article, a distributee may elect, at the time and in
13 the manner prescribed by the Plan administrator, to have any portion of an eligible
14 rollover distribution paid directly to an eligible retirement plan specified by the
15 distributee in a direct rollover. Provided, an eligible rollover distribution is any
16 distribution of all or any portion of the balance to the credit of the distributee, except
17 that an eligible rollover distribution does not include: any distribution that is one of a
18 series of substantially equal periodic payments (not less frequently than annually) made
19 for the life (or life expectancy) of the distributee or the joint lives (or joint life
20 expectancies) of the distributee and the distributee's designated beneficiary, or for a
21 specified period of 10 years or more; any distribution to the extent such distribution is
22 required under section 401(a)(9) of the Code; and the portion of any distribution that is
23 not includible in gross income (determined without regard to the exclusion for net
24 realized appreciation with respect to employer securities). Effective as of January 1,
25 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not
26 fail to be an eligible rollover distribution merely because the portion consists of
27 after-tax employee contributions which are not includible in gross income. However,
28 such portion may be transferred only to an individual retirement account or annuity
29 described in Section 408(a) or (b) of the Code, or to a qualified defined contribution

1 plan described in Section 401(a) or 403(a) of the Code that agrees to separately account
2 for amounts so transferred, including separately accounting for the portion of such
3 distribution which is includible in gross income and the portion of such distribution
4 which is not so includible. Provided, an eligible retirement plan is an individual
5 retirement account described in section 408(a) of the Code, an individual retirement
6 annuity described in section 408(b) of the Code, an annuity plan described in section
7 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that
8 accepts the distributee's eligible rollover distribution. Effective on and after January 1,
9 2002, an eligible retirement plan shall also mean an annuity contract described in
10 Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which
11 is maintained by a state, political subdivision of a state, or any agency or instrumentality
12 of a state or political subdivision of a state and which agrees to separately account for
13 amounts transferred into such plan from this Plan. The definition of eligible retirement
14 plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or
15 former spouse who is the alternate payee under a qualified domestic relations order, as
16 defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable
17 distribution of marital property, as provided under G.S. 50-30. Provided, a distributee
18 includes an employee or former employee. Provided further, a direct rollover is a
19 payment by the Plan to the eligible retirement plan specified by the distributee.
20 Effective on and after January 1, 2007, notwithstanding any other provision of this
21 subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in
22 the manner prescribed by the administrator of the Board of Trustees of this Retirement
23 System, to directly roll over any portion of the beneficiary's distribution from the
24 Retirement System; however, such rollover shall conform with the provisions of section
25 402(c)(11) of the Code."

26 **SECTION 2.** G.S. 135-74(d) reads as rewritten:

27 "(d) This subsection applies to distributions made on or after January 1, 1993.
28 Notwithstanding any other provision of the Plan to the contrary that would otherwise
29 limit a distributee's election under this Article, a distributee may elect, at the time and in
30 the manner prescribed by the Plan administrator, to have any portion of an eligible
31 rollover distribution paid directly to an eligible retirement plan specified by the
32 distributee in a direct rollover. Provided, an eligible rollover distribution is any
33 distribution of all or any portion of the balance to the credit of the distributee, except
34 that an eligible rollover distribution does not include: any distribution that is one of a
35 series of substantially equal periodic payments (not less frequently than annually) made
36 for the life (or life expectancy) of the distributee or the joint lives (or joint life
37 expectancies) of the distributee and the distributee's designated beneficiary, or for a
38 specified period of 10 years or more; any distribution to the extent such distribution is
39 required under section 401(a)(9) of the Code; and the portion of any distribution that is
40 not includible in gross income (determined without regard to the exclusion for net
41 realized appreciation with respect to employer securities). Effective as of January 1,
42 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not
43 fail to be an eligible rollover distribution merely because the portion consists of
44 after-tax employee contributions which are not includible in gross income. However,

1 such portion may be transferred only to an individual retirement account or annuity
2 described in Section 408(a) or (b) of the Code, or to a qualified defined contribution
3 plan described in Section 401(a) or 403(a) of the Code that agrees to separately account
4 for amounts so transferred, including separately accounting for the portion of such
5 distribution which is includible in gross income and the portion of such distribution
6 which is not so includible. Provided, an eligible retirement plan is an individual
7 retirement account described in section 408(a) of the Code, an individual retirement
8 annuity described in section 408(b) of the Code, an annuity plan described in section
9 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that
10 accepts the distributee's eligible rollover distribution. Effective on and after January 1,
11 2002, an eligible retirement plan shall also mean an annuity contract described in
12 Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which
13 is maintained by a state, political subdivision of a state, or any agency or instrumentality
14 of a state or political subdivision of a state and which agrees to separately account for
15 amounts transferred into such plan from this Plan. The definition of eligible retirement
16 plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or
17 former spouse who is the alternate payee under a qualified domestic relations order, as
18 defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable
19 distribution of marital property, as provided under G.S. 50-30. Provided, a distributee
20 includes an employee or former employee. Provided further, a direct rollover is a
21 payment by the Plan to the eligible retirement plan specified by the distributee.
22 Effective on and after January 1, 2007, notwithstanding any other provision of this
23 subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in
24 the manner prescribed by the administrator of the Board of Trustees of this Retirement
25 System, to directly roll over any portion of the beneficiary's distribution from the
26 Retirement System; however, such rollover shall conform with the provisions of section
27 402(c)(11) of the Code."

28 **SECTION 3.** G.S. 120-4.31(d) reads as rewritten:

29 "(d) This subsection applies to distributions made on or after January 1, 1993.
30 Notwithstanding any other provision of the Plan to the contrary that would otherwise
31 limit a distributee's election under this Article, a distributee may elect, at the time and in
32 the manner prescribed by the Plan administrator, to have any portion of an eligible
33 rollover distribution paid directly to an eligible retirement plan specified by the
34 distributee in a direct rollover. Provided, an eligible rollover distribution is any
35 distribution of all or any portion of the balance to the credit of the distributee, except
36 that an eligible rollover distribution does not include: any distribution that is one of a
37 series of substantially equal periodic payments (not less frequently than annually) made
38 for the life (or life expectancy) of the distributee or the joint lives (or joint life
39 expectancies) of the distributee and the distributee's designated beneficiary, or for a
40 specified period of 10 years or more; any distribution to the extent such distribution is
41 required under section 401(a)(9) of the Code; and the portion of any distribution that is
42 not includible in gross income (determined without regard to the exclusion for net
43 realized appreciation with respect to employer securities). Effective as of January 1,
44 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not

1 fail to be an eligible rollover distribution merely because the portion consists of
2 after-tax employee contributions that are not includible in gross income. However, such
3 portion may be transferred only to an individual retirement account or annuity described
4 in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan
5 described in Section 401(a) or 403(a) of the Code that agrees to separately account for
6 amounts so transferred, including separately accounting for the portion of such
7 distribution which is includible in gross income and the portion of such distribution
8 which is not so includible. Provided, an eligible retirement plan is an individual
9 retirement account described in section 408(a) of the Code, an individual retirement
10 annuity described in section 408(b) of the Code, an annuity plan described in section
11 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that
12 accepts the distributee's eligible rollover distribution. Effective on and after January 1,
13 2002, an eligible retirement plan shall also mean an annuity contract described in
14 Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which
15 is maintained by a state, political subdivision of a state, or any agency or instrumentality
16 of a state or political subdivision of a state and which agrees to separately account for
17 amounts transferred into such plan from this Plan. The definition of eligible retirement
18 plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or
19 former spouse who is the alternate payee under a qualified domestic relations order, as
20 defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable
21 distribution of marital property, as provided under G.S. 50-30. Provided, a distributee
22 includes an employee or former employee. Provided further, a direct rollover is a
23 payment by the Plan to the eligible retirement plan specified by the distributee.
24 Effective on and after January 1, 2007, notwithstanding any other provision of this
25 subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in
26 the manner prescribed by the administrator of the Board of Trustees of this Retirement
27 System, to directly roll over any portion of the beneficiary's distribution from the
28 Retirement System; however, such rollover shall conform with the provisions of section
29 402(c)(11) of the Code."

30 **SECTION 4.** G.S. 128-38.2(d) reads as rewritten:

31 "(d) This subsection applies to distributions made on or after January 1, 1993.
32 Notwithstanding any other provision of the Plan to the contrary that would otherwise
33 limit a distributee's election under this Article, a distributee may elect, at the time and in
34 the manner prescribed by the Plan administrator, to have any portion of an eligible
35 rollover distribution paid directly to an eligible retirement plan specified by the
36 distributee in a direct rollover. Provided, an eligible rollover distribution is any
37 distribution of all or any portion of the balance to the credit of the distributee, except
38 that an eligible rollover distribution does not include: any distribution that is one of a
39 series of substantially equal periodic payments (not less frequently than annually) made
40 for the life (or life expectancy) of the distributee or the joint lives (or joint life
41 expectancies) of the distributee and the distributee's designated beneficiary, or for a
42 specified period of 10 years or more; any distribution to the extent such distribution is
43 required under section 401(a)(9) of the Code; and the portion of any distribution that is
44 not includible in gross income (determined without regard to the exclusion for net

1 realized appreciation with respect to employer securities). Effective as of January 1,
2 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not
3 fail to be an eligible rollover distribution merely because the portion consists of
4 after-tax employee contributions which are not includible in gross income. However,
5 such portion may be transferred only to an individual retirement account or annuity
6 described in Section 408(a) or (b) of the Code, or to a qualified defined contribution
7 plan described in Section 401(a) or 403(a) of the Code that agrees to separately account
8 for amounts so transferred, including separately accounting for the portion of such
9 distribution which is includible in gross income and the portion of such distribution
10 which is not so includible. Provided, an eligible retirement plan is an individual
11 retirement account described in section 408(a) of the Code, an individual retirement
12 annuity described in section 408(b) of the Code, an annuity plan described in section
13 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that
14 accepts the distributee's eligible rollover distribution. Effective on and after January 1,
15 2002, an eligible retirement plan shall also mean an annuity contract described in
16 Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which
17 is maintained by a state, political subdivision of a state, or any agency or instrumentality
18 of a state or political subdivision of a state and which agrees to separately account for
19 amounts transferred into such plan from this Plan. The definition of eligible retirement
20 plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or
21 former spouse who is the alternate payee under a qualified domestic relations order, as
22 defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable
23 distribution of marital property, as provided under G.S. 50-30. Provided, a distributee
24 includes an employee or former employee. Provided further, a direct rollover is a
25 payment by the Plan to the eligible retirement plan specified by the distributee.
26 Effective on and after January 1, 2007, notwithstanding any other provision of this
27 subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in
28 the manner prescribed by the administrator of the Board of Trustees of this Retirement
29 System, to directly roll over any portion of the beneficiary's distribution from the
30 Retirement System; however, such rollover shall conform with the provisions of section
31 402(c)(11) of the Code."

32 **SECTION 5.** G.S. 128-21(11) reads as rewritten:

33 "(11) "Employer" shall mean any county, incorporated city or town, the
34 board of alcoholic control of any county or incorporated city or town,
35 the North Carolina League of Municipalities, and the State Association
36 of County Commissioners. "Employer" shall also mean any separate,
37 juristic political subdivision of the State as may be approved by the
38 Board of Trustees upon the advice of the Attorney General.
39 ~~"Employer" also means any fire department that serves a city or county~~
40 ~~or any part of a city or county and that is supported in whole or in part~~
41 ~~by municipal or county funds."~~

42 **SECTION 6.** G.S. 58-86-25 reads as rewritten:

43 **"§ 58-86-25. "Eligible firemen" defined; determination and certification of**
44 **volunteers meeting qualifications.**

1 "Eligible firemen" shall mean all firemen of the State of North Carolina or any
2 political subdivision thereof, including those performing such functions in the
3 protection of life and property through fire fighting within a county or city
4 governmental unit and so certified to the Commissioner of Insurance by the governing
5 body thereof, and who belong to a bona fide fire department which, as determined by
6 the Commissioner, is classified as not less than class "9" or class "A" and "AA"
7 departments in accordance with rating methods, schedules, classifications, underwriting
8 rules, bylaws or regulations effective or applied with respect to the establishment of
9 rates or premiums used or charged pursuant to Article 36 or 40 of this Chapter or by
10 such other reasonable methods as the Commissioner may determine, and which operates
11 fire apparatus and equipment of the value of five thousand dollars (\$5,000) or more, and
12 said fire department holds drills and meetings not less than four hours monthly and said
13 firemen attend at least 36 hours of all drills and meetings in each calendar year.
14 "Eligible firemen" shall also mean an employee of a county whose sole duty is to act as
15 fire marshal, deputy fire marshal, assistant fire marshal, or firefighter of the county,
16 provided the board of county commissioners of that county certifies the employee's
17 attendance at no less than 36 hours of all drills and meetings in each calendar year.
18 "Eligible firemen" shall also mean those persons meeting the other qualifications of this
19 section, not exceeding 25 volunteer firemen plus one additional volunteer fireman per
20 100 population in the area served by their respective departments. Each department
21 shall annually determine and report the names of those firemen meeting the eligibility
22 qualifications of this section to its respective governing body, which upon determination
23 of the validity and accuracy of the qualification shall promptly certify the list to the
24 North Carolina State Firemen's Association. The Firemen's Association shall provide a
25 list of those persons meeting the eligibility requirements of this section to the State
26 Treasurer by ~~July 1~~ January 31 of each year. For the purposes of the preceding sentence,
27 the governing body of a fire department operated: by a county is the county board of
28 commissioners; by a city is the city council; by a sanitary district is the sanitary district
29 board; by a corporation, whether profit or nonprofit, is the corporation's board of
30 directors; and by any other entity is that group designated by the board."

31 **SECTION 7.** G.S. 58-86-30 reads as rewritten:

32 "**§ 58-86-30. "Eligible rescue squad worker" defined; determination and**
33 **certification of eligibility.**

34 "Eligible rescue squad worker" means a person who is a member of a rescue or
35 emergency medical services squad that is eligible for membership in the North Carolina
36 Association of Rescue and Emergency Medical Services, Inc., and who has attended a
37 minimum of 36 hours of training and meetings in the last calendar year. Each rescue or
38 emergency medical services squad eligible for membership in the North Carolina
39 Association of Rescue and Emergency Medical Services, Inc., must file a roster
40 certified by the secretary of the association of those rescue or emergency medical
41 services squad workers meeting the requirements of this section with the State Treasurer
42 by ~~January 1~~ January 31 of each calendar year.

1 "Eligible rescue squad worker" does not mean "eligible fireman" as defined by
2 G.S. 58-86-25, nor may an "eligible rescue squad worker" qualify also as an "eligible
3 fireman" in order to receive double benefits available under this Article."

4 **SECTION 8.** G.S. 58-86-35 reads as rewritten:

5 **"§ 58-86-35. Firemen's application for membership in fund; monthly payments by**
6 **members; payments credited to separate accounts of members;**
7 **termination of membership.**

8 Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for
9 membership to the board. Each fireman upon becoming a member of the fund shall pay
10 the director of the fund the sum of ten dollars (\$10.00) per ~~month~~. month; each payment
11 shall be made no later than 90 days after the end of the calendar year in which the
12 month occurred. The monthly payments shall be credited to the separate account of the
13 member and shall be kept by the custodian so it is available for payment on withdrawal
14 from membership or retirement.

15 A member may elect to terminate membership in the fund at anytime and request the
16 refund of payments previously made to the fund. However, a member's delinquency in
17 making the monthly payments required by this section does not result in the termination
18 of membership without such an election by the member."

19 **SECTION 9.** G.S. 58-86-40 reads as rewritten:

20 **"§ 58-86-40. Rescue squad worker's application for membership in funds; monthly**
21 **payments by members; payments credited to separate accounts of**
22 **members; termination of membership.**

23 Those rescue squad workers eligible pursuant to G.S. 58-86-30 may apply to the
24 board for membership. Each eligible rescue squad worker upon becoming a member
25 shall pay the director of the fund the sum of ten dollars (\$10.00) per ~~month~~. month; each
26 payment shall be made no later than 90 days after the end of the calendar year in which
27 the month occurred. The monthly payments shall be credited to the separate account of
28 the member and shall be kept by the custodian so it is available for payment on
29 withdrawal from membership or retirement.

30 A member may elect to terminate membership in the fund at anytime and request the
31 refund of payments previously made to the fund. However, a member's delinquency in
32 making the monthly payments required by this section does not result in the termination
33 of membership without such an election by the member."

34 **SECTION 10.** G.S. 58-86-45(b) reads as rewritten:

35 "(b) An eligible fireman or rescue squad worker who is not yet 35 years old ~~and~~
36 ~~has not previously elected to become a member~~ may apply to the board of trustees for
37 membership in the fund at any time. Upon becoming a member, the worker ~~must~~ may
38 make a lump sum payment of ten dollars (\$10.00) per month retroactively to the time
39 the worker first became eligible to become a member, plus interest at an annual rate to
40 be set by the board for each year of retroactive payments. Upon making this lump sum
41 payment, the worker shall be given credit for all prior service in the same manner as if
42 the worker had applied for membership upon first becoming eligible.

43 A member who is not yet 35 years old, ~~who applied for membership after first~~
44 ~~becoming eligible, and who did not receive credit for prior service~~ old may receive

1 credit for the prior service upon making a lump sum payment of ten dollars (\$10.00) for
2 each month since the worker first became eligible, plus interest at an annual rate to be
3 set by the board for each year of retroactive payments. Upon making this lump sum
4 payment, the date of membership shall be the same as if the worker had applied for
5 membership upon first becoming eligible."

6 **SECTION 11.** G.S. 58-86-50 is repealed.

7 **SECTION 12.** G.S. 58-86-60 reads as rewritten:

8 "**§ 58-86-60. Payments in lump sums.**

9 The board shall direct payment in lump sums from the fund in the following cases:

- 10 (1) To any fireman or rescue squad worker upon the attaining of the age of
11 55 years, who, for any reason, is not qualified to receive the monthly
12 retirement pension and who was enrolled as a member of the fund, an
13 amount equal to the amount paid into the fund by him. This provision
14 shall not be construed to preclude any active fireman or rescue squad
15 worker from completing the requisite number of years of active service
16 after attaining the age of 55 years necessary to entitle him to the
17 pension.
- 18 (2) If any fireman or rescue squad worker dies before attaining the age at
19 which a pension is payable to him under the provisions of this Article,
20 there shall be paid to his widow, or if there be no widow, to the person
21 responsible for his child or children, or if there be no widow or
22 children, then to his heirs at law as may be determined by the board or
23 to his estate, if it is administered and there are no heirs, an amount
24 equal to the amount paid into the ~~fund~~ member's separate account by
25 or on behalf of the said fireman or rescue squad worker.
- 26 (3) If any fireman or rescue squad worker dies after beginning to receive
27 the pension payable to him by this Article, and before receiving an
28 amount equal to the amount paid into the fund by him, there shall be
29 paid to his widow, or if there be no widow, then to the person
30 responsible for his child or children, or if there be no widow or
31 children, then to his heirs at law as may be determined by the board or
32 to his estate, if it is administered and there are no heirs, an amount
33 equal to the difference between the amount paid into the ~~fund~~
34 member's separate account by or on behalf of the said fireman or
35 rescue squad worker and the amount received by him as a pensioner.
- 36 (4) Any member withdrawing from the fund shall, upon proper
37 application, be paid all moneys the individual contributed to the fund
38 without accumulated earnings on the payments after the time they
39 were ~~made less an administrative fee equal to the lesser of the amount~~
40 ~~the individual contributed to the fund or twenty five dollars (\$25.00).~~
41 ~~The administrative fees collected by the fund shall be retained by the~~
42 ~~Board to defray administrative expenses, including salaries. made.~~
43 Notwithstanding the foregoing, if any person, firm, corporation, or
44 other entity has made contributions on behalf of a member and that

1 member withdraws from the fund, the person, firm, corporation, or
2 other entity shall be entitled to a refund equal to the amount of
3 contributions made by them after the Board has been notified of the
4 contributor's desire to be refunded its contributions upon the member's
5 withdrawal. ~~Any refunds to a contributor other than a member shall~~
6 ~~also be subject to the twenty five dollar (\$25.00) administrative fee. If~~
7 ~~a refund is to be shared by a member and another party the~~
8 ~~administrative fee shall be applied to each portion on a pro-rata basis."~~

9 **SECTION 13.** This act becomes effective July 1, 2008.