

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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HOUSE BILL 487
Committee Substitute Favorable 4/9/25

Short Title: Shorter Separation for Retired ADAs and APDs.

(Public)

Sponsors:

Referred to:

March 25, 2025

A BILL TO BE ENTITLED
AN ACT TO ALLOW CERTAIN RETIRED ASSISTANT DISTRICT ATTORNEYS AND
RETIRED ASSISTANT PUBLIC DEFENDERS TO RETURN TO WORK FOR THE
STATE AFTER A TWO-MONTH SEPARATION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-1(20) reads as rewritten:

(20) "Retirement" under this Chapter, except as otherwise provided, means the commencement of monthly retirement benefits along with termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for an employer, including part-time, temporary, substitute, or contractor work, at any time during the six months immediately following the effective date of ~~retirement~~retirement, except that in the case of a member who earned at least five years of membership service as an assistant district attorney or assistant public defender, as certified by the Administrative Office of the Courts, the Conference of District Attorneys, or the Director of Indigent Services, the period of separation required is two months if the beneficiary becomes employed by the Judicial Branch. A member who is a full-time faculty member of The University of North Carolina may effect a retirement allowance under this Chapter, notwithstanding the six-month requirement above, provided the member immediately enters the University's Phased Retirement Program for Tenured Faculty as that program existed on May 25, 2011. For purposes of this subdivision, all of the following shall not be considered service or work:

...."

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

"(d) If a beneficiary who retired on an early or service retirement allowance under this Chapter is reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee for service basis, whether contractual or otherwise at any time during (i) the six months immediately following the effective date of retirement, or, (ii) if the beneficiary earned at least five years of membership service as an assistant district attorney or assistant public defender, as certified by the Administrative Office of the Courts, the Conference of District Attorneys, or the



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Director of Indigent Services, the two months immediately following the effective date of retirement if the beneficiary becomes employed by the Judicial Branch, then the option of the following subdivisions that has the lesser financial impact on the member, as determined by the Retirement System, shall be applied:

...."

SECTION 1.(c) G.S. 135-106(b) reads as rewritten:

"(b) After the commencement of benefits under this section, the benefits payable under the terms of this section during the first 36 months of the long-term disability period shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced by any primary Social Security disability benefits to which the beneficiary may be entitled, effective as of the first of the month following the month of initial entitlement, and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. When primary Social Security disability benefits are increased by cost-of-living adjustments, the increased reduction shall be applied in the first month following the month in which the member becomes entitled to the increased Social Security benefit. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Department of Veterans Affairs, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced during the first 36 months of the long-term disability period by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled, effective as of the first of the month following the month of initial entitlement.

...

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not in receipt of a primary Social Security disability benefit, the long-term disability benefit shall cease after the first 36 months of the long-term disability period. When such a long-term disability recipient begins receiving this unreduced service retirement allowance from the System, that recipient shall not be subject to the ~~six-month-applicable~~ waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term disability benefit in the event the Social Security Administration grants a retroactive approval for primary Social Security disability benefits with a benefit effective date within the first 36 months of the long-term disability period. In such event, the long-term disability benefit shall be restored retroactively to the date of cessation."

1 **SECTION 2.(a)** The State Treasurer shall seek a favorable private letter ruling from
2 the Internal Revenue Service to determine that this act does not jeopardize the status of the
3 Teachers' and State Employees' Retirement System. The State Treasurer shall submit a request
4 for the private letter ruling required under this section by January 1, 2026, or within 120 days of
5 this section becoming law, whichever is later.

6 **SECTION 2.(b)** If the State Treasurer has met the obligation under Section 2(a) of
7 this act, and the Internal Revenue Service declines to make a private letter ruling or does not
8 issue a response by December 17, 2026, then this act is repealed. The State Treasurer shall notify
9 the Revisor of Statutes that the Internal Revenue Service declined to make a private letter ruling
10 or did not issue a response. Within three business days of notifying the Revisor of Statutes, the
11 State Treasurer shall notify all employers of the repeal of this act and shall publicly notice the
12 receipt of this information on the Department of State Treasurer's website. Within three business
13 days of receipt of the notice from the State Treasurer, an employer shall notify all former assistant
14 district attorneys and former assistant public defenders reemployed by that employer of the repeal
15 of this act.

16 **SECTION 2.(c)** If the Internal Revenue Service issues any determination other than
17 a favorable determination that this act does not jeopardize the status of the Teachers' and State
18 Employees' Retirement System of North Carolina under the Internal Revenue Code, then this act
19 is repealed on the last day of the month following the month of receipt of that determination by
20 the State Treasurer. Upon receipt of that determination, the State Treasurer shall notify the
21 Revisor of Statutes of the determination and the date of receipt. Within three business days of
22 receiving a determination other than a favorable determination, the State Treasurer shall notify
23 all employers of the repeal of this act and shall publicly notice the receipt of this information on
24 the Department of State Treasurer's website. Within three business days of receipt of the notice
25 from the State Treasurer, an employer shall notify all former assistant district attorneys and
26 former assistant public defenders reemployed by that employer of the repeal of this act.

27 **SECTION 2.(d)** Notwithstanding any other provision of law to the contrary, in order
28 to pay costs associated with the administration of the provisions of this act, the Retirement
29 Systems Division of the Department of State Treasurer may increase receipts from the retirement
30 assets of the Teachers' and State Employees' Retirement System or pay costs associated with the
31 administration directly from the retirement assets.

32 **SECTION 2.(e)** This section is effective when it becomes law.

33 **SECTION 3.(a)** The Administrative Office of the Courts and the Director of Indigent
34 Services shall certify monthly to the Retirement System that a member is employed as an
35 assistant district attorney or assistant public defender and the total amount of membership service
36 they have earned as an assistant district attorney or assistant public defender.

37 **SECTION 3.(b)** Any beneficiary who earned at least five years of membership
38 service as an assistant district attorney or assistant public defender, that is subsequently employed
39 by the Administrative Office of the Courts, the Conference of District Attorneys, or the Director
40 of Indigent Services, shall not be eligible to elect into a position that would lead the beneficiary
41 to be eligible to accrue any benefits under G.S. 135-3. Notwithstanding G.S. 135-6(a) and
42 G.S. 135-2, any failure of the Administrative Office of the Courts, the Conference of District
43 Attorneys, or the Director of Indigent Services to comply with the foregoing shall be corrected
44 by the Executive Director of the Retirement System as may be appropriate under State and federal
45 law. Any costs of the correction, as determined by the Executive Director of the Retirement
46 System, shall be the sole responsibility of the Administrative Office of the Courts, the Conference
47 of District Attorneys, or the Director of Indigent Services, as appropriate, and shall be transferred
48 to the Pension Accumulation Fund under G.S. 135-8 under rules adopted by the Board of
49 Trustees.

50 **SECTION 4.** Effective July 1, 2025, there is appropriated from the General Fund to
51 the Department of State Treasurer the sum of one hundred thousand dollars (\$100,000) in

1 nonrecurring funds for the 2025-2026 fiscal year to be used to obtain the private letter ruling
2 required under Section 2 of this act.

3 **SECTION 5.** Except as otherwise provided, this act is effective January 1, 2027.