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HOUSE BILL 153
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Senate Pensions & Retirement and Aging Committee Substitute Adopted 6/20/12

Short Title: No Public Retirement for Convicted Felons.

(Public)

Sponsors:

Referred to:

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON WHO HAS BEEN CONVICTED OF A FELONY RELATED TO EMPLOYMENT OR HOLDING OFFICE FROM RECEIVING RETIREMENT BENEFITS FROM THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE OPTIONAL RETIREMENT PROGRAM FOR THE UNIVERSITY OF NORTH CAROLINA, THE OPTIONAL RETIREMENT PROGRAM FOR STATE-FUNDED COMMUNITY COLLEGES, THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR STATE LAW-ENFORCEMENT OFFICERS, AND THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR LOCAL GOVERNMENTAL LAW-ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

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

"§ 135-18.10A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 135-4(ii), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

(1) The offense is committed while the member is in service.

(2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated



1 contributions that have been received by the individual under the forfeiture provisions of this
2 section must be made in a total lump-sum payment with interest compounded annually at a rate
3 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year
4 of repayment. An individual receiving a reversal of benefit forfeiture must receive
5 reinstatement of the service credit forfeited."

6 **SECTION 2.** G.S. 135-4 is amended by adding a new subsection to read:

7 "(ii) If a member who is in service and has not vested in this System on July 1, 2012, is
8 convicted of an offense listed in G.S. 135-18.10A for acts committed after July 1, 2012, then
9 that member shall forfeit all benefits under this System, except for a return of member
10 contributions plus interest. If a member who is in service and has vested in this System on July
11 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after July 1,
12 2012, then that member is not entitled to any creditable service that accrued after July 1, 2012."

13 **SECTION 3.** Article 3 of Chapter 128 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment**
16 **or holding office.**

17 (a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any
18 retirement benefits or allowances, except for a return of member contributions plus interest, to
19 any member who is convicted of any felony under federal law or the laws of this State if all of
20 the following apply:

21 (1) The offense is committed while the member is in service.

22 (2) The conduct resulting in the member's conviction is directly related to the
23 member's office or employment.

24 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions
25 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal
26 procedure that the member's conduct is directly related to the member's office or employment.

27 (c) If a member or former member whose benefits under the System were forfeited
28 under this section, except for the return of member contributions plus interest, subsequently
29 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
30 reason, then the member or former member may seek a reversal of the benefit forfeiture by
31 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
32 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon
33 repayment of all accumulated contributions plus interest. Repayment of all accumulated
34 contributions that have been received by the individual under the forfeiture provisions of this
35 section must be made in a total lump-sum payment with interest compounded annually at a rate
36 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year
37 of repayment. An individual receiving a reversal of benefit forfeiture must receive
38 reinstatement of the service credit forfeited."

39 **SECTION 4.** G.S. 128-26 is amended by adding a new subsection to read:

40 "(x) If a member who is in service and has not vested in this System on July 1, 2012, is
41 convicted of an offense listed in G.S. 126-38.5 for acts committed after July 1, 2012, then that
42 member shall forfeit all benefits under this System, except for a return of member contributions
43 plus interest. If a member who is in service and has vested in this System on July 1, 2012, is
44 convicted of an offense listed in G.S. 126-38.5 for acts committed after July 1, 2012, then that
45 member is not entitled to any creditable service that accrued after July 1, 2012."

46 **SECTION 5.** Article 4 of Chapter 135 of the General Statutes is amended by
47 adding a new section to read:

48 **"§ 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment**
49 **or holding office.**

50 (a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any
51 retirement benefits or allowances, except for a return of member contributions plus interest, to

1 any member who is convicted of any felony under federal law or the laws of this State if all of
2 the following apply:

3 (1) The offense is committed while the member is in service.

4 (2) The conduct resulting in the member's conviction is directly related to the
5 member's office or employment.

6 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions
7 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal
8 procedure that the member's conduct is directly related to the member's office or employment.

9 (c) If a member or former member whose benefits under the System were forfeited
10 under this section, except for the return of member contributions plus interest, subsequently
11 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
12 reason, then the member or former member may seek a reversal of the benefit forfeiture by
13 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
14 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon
15 repayment of all accumulated contributions plus interest. Repayment of all accumulated
16 contributions that have been received by the individual under the forfeiture provisions of this
17 section must be made in a total lump-sum payment with interest compounded annually at a rate
18 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year
19 of repayment. An individual receiving a reversal of benefit forfeiture must receive
20 reinstatement of the service credit forfeited."

21 **SECTION 6.** G.S. 135-56 is amended by adding a new subsection to read:

22 "(j) If a member who is in service and has not vested in this System on July 1, 2012, is
23 convicted of an offense listed in G.S. 135-75.1A for acts committed after July 1, 2012, then that
24 member shall forfeit all benefits under this System, except for a return of member contributions
25 plus interest. If a member who is in service and has vested in this System on July 1, 2012, is
26 convicted of an offense listed in G.S. 135-75.1A for acts committed after July 1, 2012, then that
27 member is not entitled to any creditable service that accrued after July 1, 2012."

28 **SECTION 7.** Article 1A of Chapter 120 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment**
31 **or holding office.**

32 (a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any
33 retirement benefits or allowances, except for a return of member contributions plus interest, to
34 any member who is convicted of any felony under federal law or the laws of this State if all of
35 the following apply:

36 (1) The offense is committed while the member is serving as a member of the
37 General Assembly.

38 (2) The conduct resulting in the member's conviction is directly related to the
39 member's office.

40 (b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions
41 where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal
42 procedure that the member's conduct is directly related to the member's office.

43 (c) If a member or former member whose benefits under the System were forfeited
44 under this section, except for the return of member contributions plus interest, subsequently
45 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
46 reason, then the member or former member may seek a reversal of the benefit forfeiture by
47 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
48 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon
49 repayment of all accumulated contributions plus interest. Repayment of all accumulated
50 contributions that have been received by the individual under the forfeiture provisions of this
51 section must be made in a total lump-sum payment with interest compounded annually at a rate

1 of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year
2 of repayment. An individual receiving a reversal of benefit forfeiture must receive
3 reinstatement of the service credit forfeited."

4 **SECTION 8.** G.S. 120-4.12 is amended by adding a new subsection to read:

5 "(g) If a member who is a present member of the General Assembly and who has not
6 vested in this System on July 1, 2012, is convicted of an offense listed in G.S. 120-4.33A for
7 acts committed after July 1, 2012, then that member shall forfeit all benefits under this System,
8 except for a return of member contributions plus interest. If a member who is a present member
9 of the General Assembly and has vested in this System on July 1, 2012, is convicted of an
10 offense listed in G.S. 120-4.33A for acts committed after July 1, 2012, then that member is not
11 entitled to any creditable service that accrued after July 1, 2012."

12 **SECTION 9.** G.S. 15A-1340.16(d)(9) reads as rewritten:

13 "(d) Aggravating Factors. – The following are aggravating factors:

14 ...

15 (9) The defendant held public elected or appointed office or public employment
16 at the time of the offense and the offense directly related to the conduct of
17 the ~~office-office~~ or employment.

18"

19 **SECTION 10.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

20 "(f) If the court determines that an aggravating factor under subdivision (9) of
21 subsection (d) of this section has been proven, the court shall notify the State Treasurer of the
22 fact of the conviction as well as the finding of the aggravating factor. The indictment charging
23 the defendant with the underlying offense must include notice that the State seeks to prove the
24 defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the
25 State will seek to prove that as an aggravating factor."

26 **SECTION 11.** G.S. 135-5.1 is amended by adding a new subsection to read:

27 "(h) The Board of Governors of The University of North Carolina shall ensure that the
28 Optional Retirement Program contains benefit forfeiture provisions equivalent to those
29 contained in G.S. 135-18.10A for University personnel who are eligible for membership in the
30 Teachers' and State Employees' Retirement System and have elected participation in the
31 Optional Retirement Program. Any funds forfeited shall be deposited in the Optional
32 Retirement Program trust fund(s)."

33 **SECTION 12.** G.S. 135-5.4 is amended by adding a new subsection to read:

34 "(h) The North Carolina Community College System shall ensure that the Optional
35 Retirement Program for State-funded community colleges contains benefit forfeiture provisions
36 equivalent to those contained in G.S. 135-18.10A for community college personnel eligible for
37 membership in the Teachers' and State Employees' Retirement System and have elected
38 participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the
39 Optional Retirement Program trust fund(s)."

40 **SECTION 13.** G.S. 143-166.30 reads as rewritten:

41 "**§ 143-166.30. Retirement benefits for State law-enforcement officers.**

42 ...

43 (d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of
44 January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter
45 called the "Plan," established for the benefit of all law-enforcement officers employed by the
46 State, who shall be participants. The Board of Trustees of the State Retirement System shall
47 administer the Plan and shall, under the terms and conditions otherwise appearing herein,
48 provide Plan benefits either (i) by establishing a separate trust fund in conformance with
49 Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as
50 amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same
51 benefits for participants. The Plan shall be separate and apart from any retirement systems.

1 In addition to the contributions transferred from the Law-Enforcement Officers' Retirement
2 System and the contributions otherwise provided for in this Article, participants may make
3 voluntary contributions to the Plan to be credited to the designated individual accounts of
4 participants; provided, in no instance shall the total contributions by a participant exceed ten
5 percent (10%) of a participant's compensation within any calendar year.

6 All contributions to the Plan shall be credited to the individual accounts of participants, and
7 except as provided in subsection (g1) of this section, shall be fully and immediately vested in
8 the name of the participant, and shall be invested according to each participant's election, as
9 provided by the Board of Trustees, including but not limited to time deposits, and both fixed
10 and variable investments. The Plan may provide for loans to participants, at reasonable rates of
11 interest to be charged, from participants' individual accounts, and may provide for withdrawal
12 of contributions on account of hardship.

13 The benefit to a participant in the Plan shall be either a lump-sum distribution or a
14 distribution in periodic installments of the participant's account payable under retirement,
15 disability, or termination of employment. Upon the death of a participant there shall be paid the
16 same lump-sum distribution or periodic installments to the surviving spouse of the participant
17 or otherwise to the participant's estate; provided, should a participant instruct the Board of
18 Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then
19 the benefits shall be paid to the person or persons as the participant may name for this purpose.

20 Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible
21 accumulated contributions, not including any Roth after-tax contributions and the earnings
22 thereon, to the Teachers' and State Employees' Retirement System and receive, in addition to
23 his basic service, early or disability retirement allowance a special retirement allowance which
24 shall be based on his eligible accumulated account balance at the date of the transfer of the
25 assets.

26 ...
27 (g) Exemption from Garnishment and Attachment. – Except as provided in subsection
28 (g1) of this section, ~~The~~ the right of a participant in the Supplemental Retirement Income Plan
29 to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and
30 garnishment.

31 (g1) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental
32 Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under
33 G.S. 135-18.10A shall also forfeit contributions paid on or after July 1, 2012, on behalf of the
34 participant by the State to the Supplemental Retirement Income Plan. Any funds forfeited shall
35 be deposited in the Supplemental Retirement Income Plan.

36 (h) Notwithstanding any other provisions of law, any pending or inchoate rights of a
37 member of the Law-Enforcement Officers' Retirement System as of their transfer to the State
38 Retirement System on January 1, 1985, including the rights to a vested deferred retirement
39 allowance and to commence retirement at certain ages with required years of service as a
40 law-enforcement officer, shall in no way be diminished; provided, however, in no event may a
41 member commence retirement and continue membership service with the same Retirement
42 System.

43 No eligible officer shall be precluded from exercising that officer's pending or inchoate
44 rights under this section, should the officer elect to make Roth after-tax contributions to the
45 Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the
46 earnings thereon shall not be subsequently transferred to the Teachers' and State Employees'
47 Retirement System."

48 **SECTION 14.** G.S.143-166.50 reads as rewritten:

49 **"§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.**

50 ...

1 (e2) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental
2 Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are
3 forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after July 1, 2012, on
4 behalf of the participant by local government employers of law enforcement officers to the
5 Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers.
6 Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan."

7 **SECTION 15.** G.S. 135-94 reads as rewritten:

8 **"§ 135-94. Benefits.**

9 (a) The Department of State Treasurer and the Board of Trustees shall establish a
10 schedule of supplemental retirement income benefits for all members of the Supplemental
11 Retirement Income Plan, subject to the following limitations:

12 (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), The
13 the balance in each member's account shall be fully vested at all times and
14 shall not be subject to forfeiture for any reason.

15 (2) All amounts maintained in a member's account shall be invested according
16 to the member's election, as approved by the Department of State Treasurer
17 and Board of Trustees, including but not limited to, a time deposit account, a
18 fixed investment account, or a variable investment account. Transfers of
19 accumulated funds shall be permitted among the various approved forms of
20 investment.

21 (3) The Department of State Treasurer and Board of Trustees shall provide
22 members with alternative payment options, including survivors' options, for
23 the distribution of benefits from the Plan upon retirement, disability,
24 termination, hardship, and death.

25 (4) With the consent of the Department of State Treasurer and the Board of
26 Trustees, amounts may be transferred from other qualified plans to the
27 Supplemental Retirement Income Plan, provided that the trust from which
28 such funds are transferred permits the transfer to be made and, the transfer
29 will not jeopardize the tax status of the Supplemental Retirement Income
30 Plan.

31 (5) At the discretion of the Department of State Treasurer and Board of
32 Trustees, a loan program may be implemented for members which complies
33 with applicable State and federal laws and regulations.

34 (b) All provisions of the Plan shall be interpreted and applied by the Department of
35 State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

36 (c) All benefits under the Plan shall become payable on and after January 1, 1985.

37 (d) Contributions under the Plan may be made on and after January 1, 1985."

38 **SECTION 16.** G.S. 135-95 reads as rewritten:

39 **"§ 135-95. Exemption from garnishment, attachment.**

40 Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2),
41 G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable
42 distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income
43 Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale,
44 and garnishment."

45 **SECTION 17.** The State Treasurer shall negotiate a memorandum of agreement
46 with the United States Attorneys for the Eastern, Middle, and Western Districts of North
47 Carolina whereby the prosecutors will notify the State Treasurer of convictions under
48 G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5(h), and 135-5.4(h).

49 **SECTION 18.** This act becomes effective July 1, 2012, and applies to offenses
50 committed on or after that date.