

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 730
Committee Substitute Favorable 6/8/11
Third Edition Engrossed 6/9/11

Short Title: Local Bds of Education/403(b) Option.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF STATE TREASURER TO CREATE A
3 CENTRALIZED 403(B) RETIREMENT ANNUITY PLAN AS AN OPTION FOR
4 EMPLOYEES OF LOCAL BOARDS OF EDUCATION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 115C-341 reads as rewritten:

7 "**§ 115C-341. Annuity ~~contracts.~~ contracts from local boards of education.**

8 Notwithstanding the provisions of this Chapter for the adoption of State and local salary
9 schedules for the pay of teachers, principals, superintendents, and other school employees, local
10 boards of education may enter into annual contracts with any employee of such board which
11 provide for a reduction in salary below the total established compensation or salary schedule
12 for a term of one year. The local board of education shall use the funds derived from the
13 reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the
14 benefit of said employee. An employee who has agreed to a salary reduction for this purpose
15 shall not have the right to receive the amount of the salary reduction in cash or in any other way
16 except the annuity contract. Funds used by the local boards of education for the purchase of an
17 annuity contract shall not be in lieu of any amount earned by the employee before his election
18 for a salary reduction has become effective.

19 The agreement for salary reductions referred to herein shall be effected under any necessary
20 regulations and procedures adopted by the State Board of Education and on forms prepared by
21 the State Board of Education.

22 Notwithstanding any other provisions of this section, the amount by which the salary of any
23 employee is reduced pursuant to this section shall be included in computing and making payroll
24 deductions for social security and retirement system purposes, and in computing and providing
25 matching funds for retirement system purposes.

26 In lieu of the annuity contracts provided for under this section, interests in custodial
27 accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal
28 Revenue Code of 1986 as amended may be purchased by local boards of education for the
29 benefit of qualified employees under this section with the funds derived from the reduction in
30 the salaries of such employees."

31 **SECTION 2.** Article 23 of Chapter 115C of the General Statutes is amended by
32 adding a new section to read:

33 "**§ 115C-341.2. Department of State Treasurer sponsored 403(b) option.**

34 (a) In addition to the opportunities for local boards of education to offer section 403(b)
35 of the Internal Revenue Code of 1986 retirement annuities and/or mutual funds to their



1 employees under G.S. 115C-341, the Department of State Treasurer may establish an approved
2 third-party vendor of retirement offerings as described in section 403(b) of the Internal
3 Revenue Code of 1986, as now and hereafter amended, pursuant to which employees of local
4 school boards may enter into nonforfeitable 403(b) plan options by way of salary reduction
5 through the auspices of the Department of State Treasurer. This statewide plan shall be known
6 as the "North Carolina Public School Teachers' and Professional Educators' Investment Plan."
7 The vendor authorized under this section shall be selected by use of State procurement
8 procedures, with the goal of attaining lower administrative fees and enhanced services for
9 participants and employer compliance with applicable law and regulations. Eligible employees
10 of local school boards shall all be allowed to use this vendor for the tax-deferred 403(b) option
11 of their choice; and employees' rights to make this selection shall not be interfered with by their
12 respective participating local school employers or those employers' vendors.

13 (b) The criteria in this subsection apply to the Department of State Treasurer's 403(b)
14 offerings to employees of local school boards under this section.

15 (1) Annuity contracts, trust accounts, and/or custodial accounts shall be
16 administered by a qualified third-party administrator that shall, under written
17 agreement with the Department of State Treasurer, provide custodial, record-
18 keeping, and administrative services. The third-party administrator may also
19 be the selected vendor for the North Carolina Public School Teachers' and
20 Professional Educators' Investment Plan.

21 For employers choosing to participate in the North Carolina Public
22 School Teachers' and Professional Educators' Investment Plan, the
23 third-party administrator shall, at a minimum, provide the following:

- 24 a. Maintain a written plan document.
- 25 b. Review hardship withdrawal requests, loan requests, and other
26 disbursements permitted under section 403(b) of the Internal
27 Revenue Code of 1986.
- 28 c. Maintain specimen salary reduction agreements for the employer and
29 employees of that employer to initiate payroll deferrals.
- 30 d. Monitor maximum contributions.
- 31 e. Coordinate responses to the Internal Revenue Service in any case of
32 an IRS audit.
- 33 f. Generate educational communication materials to employees
34 concerning the enrollment process, program eligibility, and
35 investment options.
- 36 g. Maintain internal reports to ensure compliance with Section 403(b)
37 of the Internal Revenue Code and Title 26 of the Code of Federal
38 Regulations.
- 39 h. Provide compliance monitoring/oversight for all 403(b) plans
40 established under G.S. 115C-341 within each participating local
41 board of education plan by creating and establishing the necessary
42 connections and processes with existing and future vendors.
- 43 i. Keep an updated schedule of vendor fees and commissions as to the
44 Department's statewide plan.

45 (2) Governance and oversight of the North Carolina Public School Teachers' and
46 Professional Educators' Investment Plan will be performed by the
47 Department of State Treasurer and the Board of Trustees for the North
48 Carolina Supplemental Retirement Plans established pursuant to
49 G.S. 135-96. Because of the administrative and record-keeping duties
50 enumerated in subdivision (1) of this subsection, any existing vendor of a
51 403(b) with a participating employer must either agree to share data with the

1 State's 403(b) vendor under this provision (so as to permit oversight over
2 contribution limits, loans, and hardship withdrawals) or be directed by the
3 participating employer to cease accepting new contributions, loans, and
4 hardship withdrawals.

5 (3) Investment options shall be solely determined by the Department of State
6 Treasurer and Board of Trustees for the North Carolina Supplemental
7 Retirement Plans consistent with section 403(b) of the Internal Revenue
8 Code of 1986, as amended.

9 (4) Investment staff of the Department of State Treasurer may make
10 recommendations to the State Treasurer and Board of Trustees for the North
11 Carolina Supplemental Retirement Plans as to appropriate investment
12 options. The State Treasurer and Board of Trustees shall have sole
13 responsibility for the selection of the service provider for the North Carolina
14 Public School Teachers' and Professional Educators' Investment Plan.

15 (5) All contributions made in accordance with the provisions of section 403(b)
16 of the Internal Revenue Code of 1986, as amended, and this section shall be
17 remitted directly to the administrator and held by the administrator in a
18 custodial account on behalf of each participating employee. Any investment
19 gains or losses shall be credited to those accounts. The forms of payment and
20 disbursement procedures shall be consistent with those generally offered by
21 similar annuity contracts, trust accounts, and custodial accounts and
22 applicable federal and State statutes governing those contracts and accounts.

23 (6) Any local board of education may elect to make contributions to the
24 employee's account on behalf of the employee. The employer shall take
25 whatever action is necessary to implement this section.

26 (7) The design and administration of annuity contracts, trust accounts, and
27 custodial accounts under this provision shall comply with all applicable
28 provisions of the Internal Revenue Code of 1986, as amended."

29 **SECTION 3.** This act becomes effective July 1, 2011.