

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-128
HOUSE BILL 176**

AN ACT TO MAKE CHANGES THAT WILL ASSIST IN PREVENTING AND DETECTING FRAUD, WASTE, AND ABUSE AND IN ENSURING THE FISCAL INTEGRITY OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE RETIREE HEALTH BENEFIT, AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-1(7b) is recodified as G.S. 135-1(7c).

SECTION 1.(b) G.S. 135-1, as amended by Section 1(a) of this act, is amended by adding a new subdivision to read:

"(7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds."

SECTION 1.(c) G.S. 135-1(11b) reads as rewritten:

"(11b) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds."

SECTION 1.(d) G.S. 135-6 reads as rewritten:

"§ 135-6. Administration.

...
(k) Medical Board. – The Board of Trustees shall designate a medical board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board members. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A person serving on the medical board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

(1) The person was not acting within the scope of that person's official duties.



- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper financial benefit, either directly or indirectly, from the transaction.
- (5) The person incurred the liability from the operation of a motor vehicle.

...

(q) Compliance Investigations and Fraud Investigations – Access to Persons and Records. In the course of conducting a compliance investigation or a fraud investigation, the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall:

- (1) Have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employer. The review of State tax returns shall be limited to matters of official business, and the Division's report shall not violate the confidentiality provisions of tax laws.
- (2) Have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization that pertain to the following:
 - a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State.
- (3) Have the authority, and shall be provided with ready access, to examine and inspect all property, equipment, and facilities in the possession of any employer agency or any individual, private corporation, institution, association, board, or other organization that were furnished or otherwise provided through grant, contract, or any other type of funding by the employer agency.

With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to a beneficiary available to the Retirement Systems Division, or to the authorized representatives who are assisting the Retirement Systems Division staff. Copies of the records of social and medical services provided to a beneficiary will permit verification of the health or other status of a beneficiary as required for the payment of benefits under Article 1, Article 4, or Article 6 of this Chapter. The Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall request records in writing by providing the name of each beneficiary for whom records are sought, the purpose of the request, the statutory authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge, and the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided in accordance with this subsection.

(r) Compliance or Fraud Investigative Reports and Work Papers. – The Director of the Retirement Systems Division shall maintain for 10 years a complete file of all compliance investigative reports, fraud investigative reports and reports of other examinations, investigations, surveys, and reviews issued under the Director's authority. Fraud or compliance investigation work papers and other evidence or related supportive material directly pertaining to the work of the Retirement Systems Division of the Department of State Treasurer shall be retained according to an agreement between the Director of Retirement and State Archives. To

promote intergovernmental cooperation and avoid unnecessary duplication of fraud and compliance investigative ~~effort, efforts,~~ and notwithstanding local unit personnel policies to the contrary, pertinent work papers and other supportive material relating to issued fraud or compliance investigation reports may be, at the discretion of the Director of Retirement and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud and compliance investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

...."

SECTION 1.(e) G.S. 128-21(7b) is recodified as G.S. 128-21(7c).

SECTION 1.(f) G.S. 128-21, as amended by Section 1(e) of this act, is amended by adding a new subdivision to read:

"(7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds."

SECTION 1.(g) G.S. 128-21(11c) reads as rewritten:

"(11c) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to help detect and prevent fraud and to ensure full accountability in the use of pension funds."

SECTION 1.(h) G.S. 128-28 reads as rewritten:

"§ 128-28. Administration and responsibility for operation of System.

...

(l) Medical Board. – The Board of Trustees shall designate a Medical Board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. The Board of Trustees may structure appointment requirements and term durations for those medical board members. If required, other physicians may be employed to report on special cases. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it. A person serving on the medical board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.

- (4) The person derived an improper financial benefit, either directly or indirectly, from the transaction.
- (5) The person incurred the liability from the operation of a motor vehicle.

...

(r) Fraud Investigations and Compliance Investigations. – Access to Persons and Records. – In the course of conducting a fraud investigation or compliance investigation, the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall:

- (1) Have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any employer. The review of State tax returns shall be limited to matters of official business, and the Division's report shall not violate the confidentiality provisions of tax laws.
- (2) Have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation that is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to the following:
 - a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State.
- (3) Have the authority, and shall be provided with ready access, to examine and inspect all property, equipment, and facilities in the possession of any employer agency or any individual, private corporation, institution, association, board, or other organization that were furnished or otherwise provided through grant, contract, or any other type of funding by the employer agency.

With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of social and medical services to a beneficiary shall make copies of records they maintain for services provided to a beneficiary available to the Retirement Systems Division, or to the authorized representatives who are assisting the Retirement Systems Division staff. Copies of the records of social and medical services provided to a beneficiary will permit verification of the health or other status of a beneficiary as required for the payment of benefits under Article 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall request records in writing by providing the name of each beneficiary for whom records are sought, the purpose of the request, the statutory authority for the request, and a reasonable period of time for the production of record copies by the provider. A provider may charge, and the Retirement Systems Division, or authorized representatives who are assisting the Retirement Systems Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records provided in accordance with this subsection.

(s) Fraud Investigative Reports and Work Papers or Compliance Investigative Reports and Work Papers. – The Director of the Retirement Systems Division shall maintain for 10 years a complete file of all fraud ~~investigative reports~~investigative reports, compliance investigative reports, and reports of other examinations, investigations, surveys, and reviews issued under the Director's authority. Fraud investigation work ~~papers~~papers, compliance investigation work papers, and other evidence or related supportive material directly pertaining to the work of the Retirement Systems Division of the Department of State Treasurer shall be retained according to an agreement between the Director of Retirement and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of fraud or compliance investigative effort, and notwithstanding local unit personnel policies to the contrary, pertinent

work papers and other supportive material relating to issued fraud investigation reports or compliance investigative reports may be, at the discretion of the Director of Retirement and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, fraud or compliance investigation work papers and related supportive material shall be kept confidential, including any information developed as a part of the investigation.

...."

SECTION 2.(a) G.S. 135-4(jj) reads as rewritten:

"(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan ~~beginning no less than 90 days after the retirement of the member and~~ under one of the following two options:

- (1) Option one. – An installment payment plan ending no less more than one year 15 months after the retirement of the member.
- (2) Option two. – An installment payment plan ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.

Payment under ~~such an both~~ installment plan plans must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period."

SECTION 2.(b) G.S. 128-26(y) reads as rewritten:

"(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based

benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the lump-sum amount required in this subsection on an installment payment plan ~~beginning no less than 90 days after the retirement of the member and~~ under one of the following two options:

- (1) Option one. – An installment payment plan ending no lessmore than one year15 months after the retirement of the member.
- (2) Option two. – An installment payment plan beginning no less than 90 days after the retirement of the member and ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.

Payment under ~~such an~~ both installment ~~plan~~ plans must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the installment period."

SECTION 3. G.S. 128-38.3 is amended by adding a new subsection to read:

"(c) For local employers who made arrangements with the Retirement System prior to January 1, 2017, any beneficiary who is a retiree from an employer in the Retirement System under this Article may authorize the periodic deduction from the beneficiary's retirement benefits as designated lump sum to be paid to the beneficiary's former employer for the purpose of providing health benefits. The authorization shall remain in effect until revoked by the beneficiary, and proof of the authorization must be available on request of the Department of the State Treasurer. The Department of State Treasurer is prohibited from making any arrangements to deduct from a beneficiary's retirement benefits an amount to be paid to the beneficiary's former employer for the purpose of providing health benefits."

SECTION 4.(a) G.S. 115C-436 is amended by adding a new subsection to read:

"(c) Upon receipt of a report from the North Carolina Teachers' and State Employees' Retirement System, generated pursuant to G.S. 135-8(f)(2)f., containing a list of employees for whom the local board of education made a contribution to the North Carolina Teachers' and State Employees' Retirement System that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the school financial officer shall transmit a copy of the report to the local board of education. The school financial officer shall also notify the board of county commissioners of the county in which the local administrative unit is located that the report was received and the number of employees listed in the report."

SECTION 4.(b) G.S. 135-8 is amended by adding a new subsection to read:

"(j) Pension Spiking Report. – Upon receipt of a report from the Retirement System generated pursuant to G.S. 135-8(f)(2)f., containing a list of employees for whom the employer made a contribution to the North Carolina Teachers' and State Employees' Retirement System

that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the employer's chief financial officer shall transmit a copy of the report to the chief executive of the employer, as well as to the governing body of the employer, including any board which exercises financial oversight of the employer, if applicable."

SECTION 4.(c) G.S. 128-30 is amended by adding a new subsection to read:

"(j) Pension Spiking Report. – Upon receipt of a report from the Retirement System generated pursuant to G.S. 135-8(f)(2)f., containing a list of employees for whom the employer made a contribution to the North Carolina Local Governmental Employees' Retirement System that is likely to require an additional employer contribution should the employee elect to retire in the following 12 months, the employer's chief financial officer shall transmit a copy of the report to the governing body of the employer, if applicable."

SECTION 5.(a) G.S. 143-166.84 is amended by adding a new subsection to read:

"(c) For the purposes of this Article, the term "eligible service as sheriff" means membership service rendered since the person became sheriff and, if the person has sick leave standing to his or her credit accrued as a member of the Local Governmental Employees' Retirement System and, after notification to the Retirement Systems Division by the Department of Justice, elects to have all of that sick leave applied to service under this Article instead of service in the Local Governmental Employees' Retirement System, one month of credit for each 20 days or portion thereof, but not less than one hour, and subject to all the requirements and restrictions of G.S. 128-26(e)."

SECTION 5.(b) This section becomes effective July 1, 2017, and expires July 1, 2022.

SECTION 6.(a) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(39a) To furnish the Department of State Treasurer periodically upon request, the State tax return of a beneficiary, or the wage and income statement of beneficiary, or the NC-3 information of an employer, for the purpose of substantiating the beneficiary's statement required to be submitted under G.S. 135-5(e)(4), 135-109, or 128-27(e)(4); or for the purpose of assisting a fraud or compliance investigation in accordance with G.S. 135-1(7b), 135-1(11b), 135-6(q), 128-21(7b), 128-21(11c), and 128-28(r); provided that no federal tax information may be disclosed under this subdivision unless such a disclosure is permitted by section 6103 of the Code."

SECTION 6.(b) No later than June 30, 2018, the Department of Revenue and the Department of the State Treasurer shall develop and implement an information exchange system as contemplated by subsection (a) of this section. The two departments shall enter into a confidential information sharing agreement settling transfer protocols, required security measures, audit mechanisms, and other measures designed to protect confidential information.

SECTION 7. The Executive Administrator and the Board of Trustees of the State Health Plan (Plan) shall not approve resolutions electing to cover retirees under the Plan for local government entities that were authorized under S.L. 2004-124, S.L. 2006-7, S.L. 2005-276, and S.L. 2006-249 to participate in the Plan but that did not opt to cover retirees before January 1, 2017.

SECTION 8.(a) G.S. 135-8(d) is amended by adding new subdivision to read:

"(1a) For fiscal years beginning subsequent to January 1, 2017, the sum of the "normal contribution" and the "accrued liability contribution" shall not be less than the employee contribution required under subdivision (1) of subsection (b) of this section."

SECTION 8.(b) G.S. 128-30(d) is amended by adding a new subdivision to read:

"(10) For fiscal years beginning subsequent to January 1, 2017, the sum of the "normal contribution" and the "accrued liability contribution" shall not be

less than the employee contribution required under subsection (b) of this section."

SECTION 9. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and, to this end, the provisions of this act are severable.

SECTION 10. Except where otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 4:04 p.m. this 20th day of July, 2017