

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 176

Senate Pensions and Retirement and Aging Committee Substitute Adopted 6/22/17

Short Title: Pensions Integrity Act of 2017.-AB

(Public)

Sponsors:

Referred to:

February 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES THAT WILL ASSIST IN PREVENTING AND
3 DETECTING FRAUD, WASTE, AND ABUSE AND IN ENSURING THE FISCAL
4 INTEGRITY OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT
5 SYSTEM, THE RETIREE HEALTH BENEFIT, AND THE LOCAL GOVERNMENTAL
6 EMPLOYEES' RETIREMENT SYSTEM.

7 The General Assembly of North Carolina enacts:

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

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

11 "(7b) "Compliance investigation" means an independent review or examination by
12 Retirement Systems Division staff or authorized representatives who are
13 assisting the Retirement Systems Division staff of records, activities, actions,
14 or decisions by employers or other affiliated or associated entities having an
15 impact on a Retirement System or benefits administered by the Board of
16 Trustees. The purpose of a compliance investigation is to help detect errors
17 and ensure compliance and full accountability in the use of pension funds."

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

19 "(11b) "Fraud investigation" means an independent review or examination by
20 Retirement Systems Division staff or authorized representatives who are
21 assisting the Retirement Systems Division staff of records, activities, actions,
22 or decisions by employers or other affiliated or associated entities having an
23 impact on the Retirement System. The purpose of a fraud investigation is to
24 help detect and prevent fraud and to ensure full accountability in the use of
25 pension funds."

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

27 **"§ 135-6. Administration.**

28 ...

29 (k) Medical Board. – The Board of Trustees shall designate a medical board to be
30 composed of not less than three nor more than five physicians not eligible to participate in the
31 Retirement System. The Board of Trustees may structure appointment requirements and term
32 durations for those medical board members. If required, other physicians may be employed to
33 report on special cases. The medical board shall arrange for and pass upon all medical
34 examinations required under the provisions of this Chapter, and shall investigate all essential
35 statements and certificates by or on behalf of a member in connection with an application for
36 disability retirement, and shall report in writing to the Board of Trustees its conclusion and



1 recommendations upon all the matters referred to it. A person serving on the medical board
2 shall be immune individually from civil liability for monetary damages, except to the extent
3 covered by insurance, for any act or failure to act arising out of that service, except where any
4 of the following apply:

- 5 (1) The person was not acting within the scope of that person's official duties.
- 6 (2) The person was not acting in good faith.
- 7 (3) The person committed gross negligence or willful or wanton misconduct that
8 resulted in the damages or injury.
- 9 (4) The person derived an improper financial benefit, either directly or
10 indirectly, from the transaction.
- 11 (5) The person incurred the liability from the operation of a motor vehicle.

12 ...
13 (q) Compliance Investigations and Fraud Investigations – Access to Persons and
14 Records. In the course of conducting a compliance investigation or a fraud investigation, the
15 Retirement Systems Division, or authorized representatives who are assisting the Retirement
16 Systems Division staff, shall:

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

36 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of
37 social and medical services to a beneficiary shall make copies of records they maintain for
38 services provided to a beneficiary available to the Retirement Systems Division, or to the
39 authorized representatives who are assisting the Retirement Systems Division staff. Copies of
40 the records of social and medical services provided to a beneficiary will permit verification of
41 the health or other status of a beneficiary as required for the payment of benefits under Article
42 1, Article 4, or Article 6 of this Chapter. The Retirement Systems Division, or authorized
43 representatives who are assisting the Retirement Systems Division staff, shall request records in
44 writing by providing the name of each beneficiary for whom records are sought, the purpose of
45 the request, the statutory authority for the request, and a reasonable period of time for the
46 production of record copies by the provider. A provider may charge, and the Retirement
47 Systems Division, or authorized representatives who are assisting the Retirement Systems
48 Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for
49 copies of the records provided in accordance with this subsection.

50 (r) Compliance or Fraud Investigative Reports and Work Papers. – The Director of the
51 Retirement Systems Division shall maintain for 10 years a complete file of all compliance

1 investigative reports, fraud investigative reports and reports of other examinations,
2 investigations, surveys, and reviews issued under the Director's authority. Fraud or compliance
3 investigation work papers and other evidence or related supportive material directly pertaining
4 to the work of the Retirement Systems Division of the Department of State Treasurer shall be
5 retained according to an agreement between the Director of Retirement and State Archives. To
6 promote intergovernmental cooperation and avoid unnecessary duplication of fraud and
7 compliance investigative ~~effort, efforts,~~ and notwithstanding local unit personnel policies to the
8 contrary, pertinent work papers and other supportive material relating to issued fraud or
9 compliance investigation reports may be, at the discretion of the Director of Retirement and
10 unless otherwise prohibited by law, made available for inspection by duly authorized
11 representatives of the State and federal government who desire access to and inspection of such
12 records in connection with some matter officially before them, including criminal
13 investigations. Except as provided in this section, or upon an order issued in Wake County
14 Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper
15 administration of justice, fraud and compliance investigation work papers and related
16 supportive material shall be kept confidential, including any information developed as a part of
17 the investigation.

18"

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

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

22 "(7b) "Compliance investigation" means an independent review or examination by
23 Retirement Systems Division staff or authorized representatives who are
24 assisting the Retirement Systems Division staff of records, activities, actions,
25 or decisions by employers or other affiliated or associated entities having an
26 impact on a Retirement System or benefits administered by the Board of
27 Trustees. The purpose of a compliance investigation is to help detect errors
28 and ensure compliance and full accountability in the use of pension funds."

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

30 "(11c) "Fraud investigation" means an independent review or examination by
31 Retirement Systems Division staff or authorized representatives who are
32 assisting the Retirement Systems Division staff of records, activities, actions,
33 or decisions by employers or other affiliated or associated entities having an
34 impact on the Retirement System. The purpose of a fraud investigation is to
35 help detect and prevent fraud and to ensure full accountability in the use of
36 pension funds."

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

38 **"§ 128-28. Administration and responsibility for operation of System.**

39 ...

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

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

8 ...
9 (r) Fraud Investigations and Compliance Investigations. – Access to Persons and
10 Records. – In the course of conducting a fraud investigation or compliance investigation, the
11 Retirement Systems Division, or authorized representatives who are assisting the Retirement
12 Systems Division staff, shall:

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

32 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of
33 social and medical services to a beneficiary shall make copies of records they maintain for
34 services provided to a beneficiary available to the Retirement Systems Division, or to the
35 authorized representatives who are assisting the Retirement Systems Division staff. Copies of
36 the records of social and medical services provided to a beneficiary will permit verification of
37 the health or other status of a beneficiary as required for the payment of benefits under Article
38 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are
39 assisting the Retirement Systems Division staff, shall request records in writing by providing
40 the name of each beneficiary for whom records are sought, the purpose of the request, the
41 statutory authority for the request, and a reasonable period of time for the production of record
42 copies by the provider. A provider may charge, and the Retirement Systems Division, or
43 authorized representatives who are assisting the Retirement Systems Division staff, shall, in
44 accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records
45 provided in accordance with this subsection.

46 (s) Fraud Investigative Reports and Work Papers or Compliance Investigative Reports
47 and Work Papers. – The Director of the Retirement Systems Division shall maintain for 10
48 years a complete file of all fraud investigative reports~~reports~~, compliance investigative reports,
49 and reports of other examinations, investigations, surveys, and reviews issued under the
50 Director's authority. Fraud investigation work papers~~papers~~, compliance investigation work
51 papers, and other evidence or related supportive material directly pertaining to the work of the

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

15"

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

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

38 (1) Option one. – An installment payment plan ending no lessmore than one
 39 year15 months after the retirement of the member.

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

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

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

50 "(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement
 51 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established

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

20 (1) Option one. – An installment payment plan ending no less more than one
21 year 15 months after the retirement of the member.

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

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

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

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

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

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

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

2 "(j) Pension Spiking Report. – Upon receipt of a report from the Retirement System
3 generated pursuant to G.S. 135-8(f)(2)f., containing a list of employees for whom the employer
4 made a contribution to the North Carolina Teachers' and State Employees' Retirement System
5 that is likely to require an additional employer contribution should the employee elect to retire
6 in the following 12 months, the employer's chief financial officer shall transmit a copy of the
7 report to the chief executive of the employer, as well as to the governing body of the employer,
8 including any board which exercises financial oversight of the employer, if applicable."

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

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

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

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

25 **SECTION 5.(b)** This section becomes effective July 1, 2017, and expires July 1,
26 2022.

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

28 "(39a) To furnish the Department of State Treasurer periodically upon request, the
29 State tax return of a beneficiary, or the wage and income statement of
30 beneficiary, or the NC-3 information of an employer, for the purpose of
31 substantiating the beneficiary's statement required to be submitted under
32 G.S. 135-5(e)(4), 135-109, or 128-27(e)(4); or for the purpose of assisting a
33 fraud or compliance investigation in accordance with G.S. 135-1(7b),
34 135-1(11b), 135-6(q), 128-21(7b), 128-21(11c), and 128-28(r); provided that
35 no federal tax information may be disclosed under this subdivision unless
36 such a disclosure is permitted by section 6103 of the Code."

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

42 **SECTION 7.** The Executive Administrator and the Board of Trustees of the State
43 Health Plan (Plan) shall not approve resolutions electing to cover retirees under the Plan for
44 local government entities that were authorized under S.L. 2004-124, S.L. 2006-7, S.L.
45 2005-276, and S.L. 2006-249 to participate in the Plan but that did not opt to cover retirees
46 before January 1, 2017.

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

48 "(1a) For fiscal years beginning subsequent to January 1, 2017, the sum of the
49 "normal contribution" and the "accrued liability contribution" shall not be
50 less than the employee contribution required under subdivision (1) of
51 subsection (b) of this section."

1 **SECTION 8.(b)** G.S. 128-30(d) is amended by adding a new subdivision to read:
2 "(10) For fiscal years beginning subsequent to January 1, 2017, the sum of the
3 "normal contribution" and the "accrued liability contribution" shall not be
4 less than the employee contribution required under subsection (b) of this
5 section."

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

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