



HOUSE BILL 1134: Admin. Changes Retirement System/Treasurer.

2016-2017 General Assembly

Committee:		Date:	June 28, 2016
Introduced by:	Reps. McNeill, Ross	Prepared by:	Theresa Matula
Analysis of:	Second Edition		Committee Staff

SUMMARY: *House Bill 1134 does the following: adds language pertaining to a member killed in the line of duty for the NC Firefighters' and Rescue Squad Workers' Pension Fund; amends and clarifies the recoupment of overpaid benefits; adds a "normal retirement age" to the Teachers' and State Employees' Retirement System (TSERS), Local Governmental Employees' Retirement System (LGERS), and the Consolidated Judicial Retirement System (CJRS), and requires Program Evaluation to conduct a study; provides for compliance investigations for TSERS and LGERS; amends the anti-pension spiking contribution-based benefit installment payment options; adds the Director of the Office of State Human Resources as an ex officio member of the TSERS Board of Trustees and provides for the TSERS and LGERS that the State Treasurer is the ex officio chair of the Board and appoints the director; increases the number of Department of State Treasurer employees for which the State Treasurer may set classification and compensation levels; creates the Legislative Enactment Implementation Arrangement (LEIA) to facilitate administration of TSERS and LGERS; clarifies the retirement information that is subject to the Public Records Law; allows certain forms to be transmitted electronically to TSERS and LGERS members; amends the membership threshold and requires proof of authorization for employee and retiree associations that may have deductions from retirement benefits for TSERS, CJRS, LGERS, Legislative Retirement System (LRS), and National Guard pension members; repeals changes that were made by a section of SL 2015-69 as it relates to unclaimed property; prevents counterfeit State checks; clarifies that the 403(b) Program uses the same procurement procedures as the 401(k) and 457 plans; adds language pertaining to pension spiking reports; prohibits conversion of benefits for retirement purposes; amends Disability Income Plan reporting of earnings requirements; and makes other largely technical changes.*

BILL ANALYSIS:

Section 1 adds language pertaining to a member killed in the line of duty for the NC Firefighters' and Rescue Squad Workers' Pension Fund and provides the monthly benefit to the named beneficiary. Section 1(a) provides that, "killed in the line of duty" has the same meaning as in the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act. Section 1(b) adds GS 58-86-55 to outline the manner in which benefits are paid when a member is killed in the line of duty. Section 1(c) amends the law pertaining to lump sum payments when a firefighter or rescue squad worker dies, but is not killed in the line of duty. Section 1(d) provides that Section 1 becomes effective July 1, 2018, and applies to benefits paid when a member is killed in the line of duty on or after that date.

Section 2 amends and clarifies the recoupment of overpaid benefits. Section 2(a) amends the NC Firefighters' and Rescue Squad Workers' Pension Fund to provide that any overpayment of benefits to a

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member in a State-administered retirement system, the Disability Salary Continuation Plan, the Disability Income Plan, or State Health Plan premiums paid on behalf of a member, who is later determined ineligible, may be offset against a retirement allowance, return of contributions, or other right accruing to the person, the person's estate, or designated beneficiary. Section 2(b) amends the Teachers' and State Employees' Retirement System (TSERS) and Section 2(c) amends the Local Governmental Employees' Retirement System (LGERS) to clarify the right to recoup overpaid benefits. Section 2(d) provides that Section 2 becomes effective January 1, 2017.

Section 3 adds a "normal retirement age" to the Teachers' and State Employees' Retirement System (TSERS), Local Governmental Employees' Retirement System (LGERS), and the Consolidated Judicial Retirement System (CJRS), and requires Program Evaluation to conduct a study. The Retirement Systems Division reports that this provision is in response to regulations proposed by the IRS for a "normal retirement age" for qualified governmental retirement plans.

Sections 3(a)-(e) pertain to the TSERS. Section 3(a) establishes a definition for a "normal retirement age" only for persons who became members on or after January 1, 2017. "Normal retirement age" for members who are not law enforcement officers (LEO) or eligible former LEO is as follows: (i) 50 years of age or older with 30 years of creditable service, (ii) 60 years of age or older with 25 years, or (iii) 65 years of age or older with 5 years of membership service. For LEO or eligible former LEO the "normal retirement age" is as follows: 50 years of age or older with 30 years of creditable service, or 55 years of age with five years. Sections 3(b), 3(c) and 3(d) outline the service retirement allowance for individuals who became members prior to January 1, 2017, and those who became members on or after January 1, 2017. Section 3(e) provides the survivor's alternate benefit for an individual who became a member on or after January 1, 2017.

Sections 3(f)-(j) pertain to the LGERS and establish similar "normal retirement age" provisions for LGERS as outlined above for TSERS. Section 3(f) provides the same age and years of service combinations as provided above for LEO and non-LEO members. Sections 3(g)-(j) provide the service retirement benefits, service retirement allowance, and survivor's alternate benefit to correspond to the retirement age provision in the LGERS.

Sections 3(k)-(m) establish the "normal retirement age" provisions for the CJRS to provide that the normal retirement age for those who became members on or after January 1, 2017 is 50 years of age or older with 30 years of creditable service, or 65 years of age or older with 5 years of membership service. Sections 3(l)-(m) outline service retirement benefits for those who became members prior to January 1, 2017, and those who became members on or after that date.

Section 3(n) requires the Joint Legislative Program Evaluation Oversight Committee to include in the 2016 Work Plan an examination of other states that have implemented a normal retirement age for a pension system that was already in place and to compare various elements of the total compensation and benefit package.

Section 3(o) provides that Section 3(n), pertaining to the Program Evaluation study becomes effective when it becomes law; the remainder of Section 3 is effective January 1, 2017.

Section 4 provides for compliance investigations in addition to the current fraud investigations in the TSERS and LGERS. Sections 4(a)-(d) pertain to TSERS. Section 4(a) simply moves a definition to keep the statutory section in alphabetical order. Section 4(b) adds a definition for "compliance investigation" which means an independent review or examination, by Retirement Systems Division staff or representatives, of records, activities, actions, or decisions by employers or other entities in order to detect errors and ensure compliance and full accountability in the use of pension funds. Section 4(c) specifically adds "records" to the list of items that can be examined during a fraud investigation. Section 4(d) makes a conforming change to add compliance investigations to the provision for fraud

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investigations. Sections 4(e)-(h) make changes similar to the ones above for the LGERS. This section becomes effective when it becomes law.

Section 5 amends the anti-pension spiking contribution–based benefit cap purchase provision for TSERS and LGERS to offer two installment payment plan options and extends the repayment period. The agency may choose: 1) an installment payment plan beginning 90 days (3 months) after the retirement and ending no more than 15 months after retirement of the member, or 2) an installment payment plan, with interest assessed, beginning no less than 90 days (3 months) after the retirement and ending no more than 27 months after the retirement of the member. The section becomes effective when it becomes law.

Section 6 includes the Administrative Procedures Act in the other provisions that are covered retroactively by the notwithstanding language for the anti-pension spiking benefit cap for the TSERS and LGERS so that the rule making process does not apply, and moves the Consumer Price Index month used from December to June when calculating increase in the minimum average final compensation subject to the contribution–based benefit cap. This section is effective when it becomes law and applies retroactively to January 1, 2015.

Section 7 makes a number of gender neutral amendments and removes the years of service provision from the death benefit beneficiary designation by electronic submission, rather than paper submission, for TSERS, CJRS, LGERS, and Legislative Retirement System. Section 7 becomes effective January 1, 2017.

Section 8 adds the Director of the Office of State Human Resources as an ex officio member of the TSERS Board of Trustees, replacing a representative of higher education, and provides for the TSERS and LGERS that the State Treasurer is the ex officio chair of the Board and has authority to appoint the director of the Retirement System. Section 8(a) amends the Board of Trustees Teachers' and State Employees' Retirement System to add the Director of the Office of State Human Resources as an ex officio member. Section 8(b) amends G.S. 135-6(g) to provide that the State Treasurer appoints the director. Section 8(c) amends G.S. 128-28(h) pertaining to the LGERS Board of Trustees to provide that the State Treasurer is an ex officio chair and appoints a director. This section becomes effective when it becomes law.

Section 9 increases the number of Department of State Treasurer employees for which the State Treasurer may set classification and compensation levels by expanding the number employees that are exempt from certain provisions of the State Human Resources Act. Section 9(a) amends G.S. 135-6 pertaining to the administration of the TSERS to authorize the State Treasurer to establish market-oriented compensation plans for employees in positions designated as key management roles who possess specialized skills or knowledge necessary for the effective administration of retirement benefits and who are exempt from the classification and compensation rule established by the Office of State Human Resources. The design and administration of compensation plans must be based on compensation studies conducted by a nationally recognized firm and the costs of compensation and other employee benefits must be apportioned from administrative receipts of the TSERS. On or before December 1 each year, the Treasurer must report salaries paid under this provision to the Joint Legislative Oversight Committee on General Government. Section 9(b) amends G.S. 128-28 to make a similar change for Department employees pertaining to the administration of the LGERS. Section 9(c) amends G.S. 126-5 to provide that the State Human Resources Act does not generally apply to employees covered by the above provisions, only specified sections and Articles of the Chapter apply. This section becomes effective January 1, 2017.

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Section 10 creates a Legislative Enactment Implementation Arrangement (LEIA) for TSERS and LGERS to provide timely administrative implementation of legislative provisions. Section 10(a) adds a new subsection to G.S. 135-7 creating the LEIA under the TSERS Board of Trustees. The purpose of the LEIA is to provide timely administrative implementation of legislative provisions relating to TSERS. The following elements are outlined for the LEIA: administration, funding, and allocation funds to LEIA. The Department of the State Treasurer is required to report not later than August 1 of each year to the Board of Trustees, the Joint Legislative Commission on Government Operations, and the Fiscal Research Division on the amounts and sources of the funds collected, the amounts expended, and the identity and status of the projects on which those funds were expended. This information must also be posted on its website. Section 10(b) creates the LEIA as outlined above for the LGERS. Section 10(c) provides that this section becomes effective October 1, 2016.

Section 11 clarifies the retirement information is subject to the Public Records Law. Section 11(a) provides information on an Attorney General's Advisory Opinion of February 5, 2008, that concluded information about retirement benefits was intended to be a record maintained for public inspection and that Department of the State Treasurer should make the information available for public inspection. The remainder of Section 11 creates and consolidates the laws pertaining to public records for the TSERS and LGERS. Section 11(b) adds a new section, G.S. 135-6.1, to Article 1 of Chapter 135 for the TSERS pertaining to confidentiality of member information. Various elements of the newly created G.S. 135-6.1 are as follows: Subsection (a) defines employment-related information, personal information, retirement file and retirement-related information. Subsection (b) provides that member retirement files are not subject to public inspection and examination, except to notify members and beneficiaries of their rights and accruals of benefits and as stated in subsections (c), (d), and (e) below. Subsection (c) provides that following member information is public: name; age; the dates of membership in the retirement system, the dates of first service, enrollment and employment, and the date of retirement; the terms of any contract by which a member was employed; job title; compensation; changes in employment; current assignment; record of benefits paid; and purchases of educational leave. Subsection (d) requires custodians of retirement file information to permit inspection and examination of that information by the public during regular business hours. Any person denied access to retirement file information may seek appropriate relief in a court of competent jurisdiction. Subsection (e) allows the Retirement Systems Division to disclose the names and mailing addresses of former State employees, former public school employees, or former community college employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees. Subsection (f) states any retirement file information not specified in subsection (c) is confidential and not open for inspection except by the member, the member's authorized agent, a member of the General Assembly under authority of G.S. 120-19, and an individual with a proper court order authorizing inspection. Subsection (g) makes it a Class 3 misdemeanor, punishable by a fine no greater than \$500, for a public official or employee to knowingly and willfully permit an unauthorized person to have access, custody, or possession of confidential information in a retirement file. Subsection (h) makes it a Class 3 misdemeanor, punishable by a fine no greater than \$500, for any person not authorized to have access to confidential retirement file information to knowingly and willfully examine, remove, or copy any portion of a confidential retirement file.

Section 11(c) adds a new section to Article 3 of Chapter 128 of the General Statutes (LGERS) containing provisions similar to those in Section 11(b).

Section 11(d) makes a conforming change to G.S. 126-22 which pertains to personnel files not subject to inspection under the public records law (G.S. 132-6).

Sections 11(e)-(h) repeal statutes authorizing disclosure of the names and mailing addresses of former public school employees, former community college employees, and former state and local government

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employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees because similar provisions are found in Sections 11(b) and 11(c) of the bill. Section 11 is effective when it becomes law.

Section 12 allows certain forms to be transmitted electronically to TSERS and LGERS members.

This section amends G.S. 135-10.1 and 128-32.1 to require members in TSERS and LGERS, respectively, to respond within 120 days of transmission of Form 6-E or Form 7-E to them. Under current law, the Forms must be mailed to members. Section 12 is effective when it becomes law.

Section 13 amends the membership threshold for employee and retiree associations that may have deductions from retirement benefits for TSERS, CJRS, LGERS, LRS, and National Guard pension members and requires proof of the authorization to be made available to the Department of the State Treasurer upon request.

Sections 13(a)-(e) amend G.S. 135-18.8(a) and (b), G.S. 135-75(a) and (b), 128-38.3(a) and (b), 120-4.32(a) and (b), and 127A-40(h1) respectively. The bill increases from 2,000 to 10,000, the number of members that an employee or retiree association must have before members in TSERS, CJRS, LGERS, LRS, and the National Guard Pension can authorize a periodic deduction from their retirement benefits to be paid to the employee or retiree association. The bill also requires proof of the authorization to be made available to the Department of the State Treasurer upon request. Finally, the bill adds subsection (c) to G.S. 128-38.3, allowing any retiree of an employer who made arrangements with the Retirement System to authorize a periodic deduction from the retiree's benefits to be paid to the employer for the purpose of providing health benefits. Section 13 is effective when it becomes law.

Section 14 repeals Session Law 2015-68, Section 2, which amended G.S. 116B-70 pertaining to unclaimed property to restore the statute back to the prior form. The section is effective when it becomes law.

Section 15 amends G.S. 143B-426.40G(b) to provide that the \$15 fee for overdrawn checks is imposed on agencies with non-State funds. This section becomes effective October 1, 2016.

Section 16 amends Article 6 of Chapter 147 of the General Statutes pertaining to unpaid warrants (state checks). This section provides that outstanding, unpaid warrants issued by the State are confidential and not available for public inspection if the Treasurer believes making the information available for inspection would be sufficient to counterfeit a warrant. This section is effective when it becomes law.

Section 17 amends G.S. 147-79 to allow letters of credit issued by a Federal Home Loan Bank to be used to collateralize deposits. According to the Retirement Systems Division, banking staff have discovered that this change is necessary to avoid re-collateralizing \$1.8 billion in funds in the state banking system. This section becomes effective when it becomes law.

Section 18 makes references to the Supplemental Retirement Board of Trustees consistent across statutes and provides that the 403(b) uses the same procurement procedures as the 401(k) and 457 plans. This section becomes effective when it becomes law.

Section 19 requires pension spiking reports to be transmitted to governing boards. This section becomes effective when it becomes law.

Section 20 outlines what compensation includes and does not include for those who became TSERS and LGERS members on or after January 1, 2017, and prohibits the conversion of certain benefits to salary for retirement purposes. The section becomes effective January 1, 2017.

Section 21 amends G.S. 135-109 pertaining to the reporting of earnings requirements under the Disability Income Plan. This section is effective when it becomes law.

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Section 22 contains a severability clause.

EFFECTIVE DATE: The effective dates are specified in each section of the bill analysis above.