



# HOUSE BILL 1056: FAIR 2018.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	July 13, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Theresa Matula Legislative Analyst
<b>Analysis of:</b>	S.L. 2018-52		

**OVERVIEW:** *S.L. 2018-52, the Financial Accountability, Integrity, and Recovery (FAIR) Act of 2018, amends statutes pertaining to the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, the Firefighters' and Rescue Squad Workers' Pension Fund, the Disability Income Plan, and the State Health Plan. These amendments broadly include the following areas: recovery of overpayment and erroneous payment; State Health Plan recovery; garnishment; liens; prohibiting the repurchase of forfeited benefits; reciprocity of creditable service; settlement agreements; average final compensation and the contribution-based benefit cap; and short term disability.*

*The act became effective June 25, 2018.*

## **BILL ANALYSIS:**

**SECTION 1: FAIR Act.** This section provides that the act will be known as the Financial Accountability, Integrity, and Recovery (FAIR) Act of 2018.

**SECTION 2: Recovery of Overpayment/Erroneous Payment.** **Section 2(a)** amends the State Health Plan (SHP), to add a new section pertaining to employing units cooperating in the collection of amounts owed to the Plan. It requires any overpayment or erroneous payment of benefits or other amount to, or premiums or claims paid on behalf of, any Plan member to be repaid by the Plan member to the Plan. If the Plan member is an employee of an employing unit, amounts to be recouped must be offset against the net wages of the Plan member. If a Plan member has been notified of the amount owed and has not entered into a payment plan within 30 days after the written notice, the Plan will notify the Plan member's employer of the amount owed and the employing unit is required to offset the amount owed against not less than ten percent (10%) of the net wages of the Plan member until the amount owed has been paid in full. If an employing unit fails to adhere to these requirements, after notice to the employing unit of its failure to cooperate, the Plan is entitled to seek recovery of any amounts due directly from the employing unit. The section further provides that no amount due may be forgiven and the Plan and the employing unit have a duty to pursue the repayment in full of these funds by all lawful means available, including the filing of a civil action in the General Court of Justice. **Section 2(b) and (c)** amend the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Retirement System (LGRS) in a manner similar to Section 2(a) to require that if a member or beneficiary receives an overpayment or an erroneous payment, the amount owed shall be offset and paid. **Section 2(d)** provides that this section is effective when it becomes law. Section 2(a) applies to all amounts owed by a Plan member for which notice is sent on and after that date, regardless of the date the benefit, claim, or premium amount which the Plan member was ineligible, the overpayment or the erroneous payment was made. Sections 2(b) and (c) apply to all amounts owed by a member or beneficiary to the retirement system for which the notice is

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sent on and after that date, regardless of the date the overpayment of benefits or erroneous payment was made.

**SECTION 3: SHP Recovery.** This section amends the State Health Plan when a Plan member recovers any amounts from a liable third party to which the Plan is entitled to provide that if prior to the Plan exercising its right for recovery, a Plan member uses or disposes of the recovered amounts, the Plan may pursue alternative judicial remedies, including a judgment and lien against real property.

**SECTION 4: Garnish credit card receipts.** This section amends Chapter 1 Civil Procedure, Article 31 Supplemental Proceedings, to provide that when the State Health Plan prevails in a civil action against a provider to collect an overpayment, the Plan may attach or garnish the provider's credit card receipts or other third party payments in payment of the amount owed in the manner provided. Further, in addition to the intercept authority under G.S. 135-8(f) and G.S. 128-30(g), when the TSERS, the Disability Income Plan, or the LGERS prevails in a civil action against a participating employer to collect monies owed, the Systems and Plan may attach or garnish the employer's credit card receipts or other third party payments.

**SECTION 5: SHP Liens.** **Section 5(a)** amends the statutory section for the State Health Plan that pertains to liability of third person; right of subrogation; right of first recovery to add a new subsection providing that the priority of any lien held by the State Health Plan is superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. **Sections 5(b), (c)** and **(d)** amend Chapter 44, Article 9 Liens upon Recoveries for Personal Injuries to Secure Sums Due for Medical Attention, etc. Section 5(b) amends G.S. 44-49 to provide that the priority of a lien held by the State Health Plan is superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. Section 5(c) makes a similar amendment to G.S. 44-50. Section 5(d) amends G.S. 44-51 to provide that the statutory section pertaining to disputed claims to be settled before payments does not apply to amounts owed to the State Health plan for past-due account receivables related to claims payments. **Section 5(e)** provides that this section is effective when it becomes law. Priority of the State Health Plan's lien over nongovernmental liens and rights created under the section apply only to nongovernmental liens and right that have attached to the applicable property on or after the effective date of the act (June 25, 2018).

**SECTION 6: Prohibit Repurchase of Forfeited Benefits** Section 6 (a-e) amends the TSERS, LGERS, Consolidated Judicial Retirement System, Legislative Retirement System, and the Firefighters' and Rescue Squad Workers' Pension Fund to prevent any member whose retirement benefits have been forfeited from subsequently purchasing or repurchasing either forfeited benefits or any creditable membership service associated with the forfeited benefits.

**SECTION 7: ORP Reciprocity.** This section amends the TSERS statute pertaining to reciprocity of creditable service with other State-administered retirement systems to prohibit the use of service rendered while participating in the University or Community College Optional Retirement Program (ORP) toward determining benefit eligibility for TSERS. The change applies to members first hired on or after January 1, 2021.

**SECTION 8: SHP & Settlement Agreements.** **Section 8(a)** amends the State Health Plan to add a new section on settlement agreements by employing units. It prohibits employing units from entering into settlement agreements with an employee or former employee unless the employing unit has received written authorization from the Plan's Executive Administrator. It further provides that no settlement agreement can reinstate health benefit coverage under the plan more than one year prior to the date of the settlement agreement. **Section 8(b)** provides that this section is effective when it becomes law and applies to any settlement agreements entered into on or after that date, including any settlement agreements which may be under negotiation on or before that date.

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**SECTION 9: AFC and CBBC.** Section 9(a) amends TSERS and (b) amends LGERS to provide that the retirement allowance of a member with an average final compensation (AFC) of more than \$100,000, indexed, is not subject to the contribution-based benefit cap (CBBC) if the compensation was earned from multiple simultaneous employers, unless an employer's share of the AFC exceeds \$100,000. When these conditions are met, an employer is not required to make contributions unless the employer's share of the AFC exceeds \$100,000.

**SECTION 10 Short-Term Disability.** This section of the act amends the Disability Income Plan for short-term disability benefits to require that a participant who becomes disabled and no longer able to perform his or her occupation, may receive a benefit if all of the following conditions are met:

1. Application for the benefit occurs at least 365 calendar days succeeding the participant's date of initial employment as a teacher or employee.
2. The participant has at least one year of contributing membership service earned within 36 calendar months immediately preceding the date of disability. Salary continuation used during the period will count toward this one year requirement.
3. Application for the benefit occurs no later than 365 days following the first day of the waiting period.
4. The participant's employer and attending physician certify that the participant is mentally or physically incapacitated for the further performance of duty.
5. The participant's incapacity incurred at the time of active employment and has been continuous.

Additionally, the section provides that short-term disability benefits that begin on or after July 1, 2019, will be administered and paid by the employer.

Section 10(b) provides that this section is effective when it becomes law and applies to applications for short term disability benefits beginning on or after that date.

**EFFECTIVE DATE:** The act became effective June 25, 2018.