



SENATE BILL 117: Forfeit. Retmt/Anti-Spiking/Serv. Purch/TC.

2017-2018 General Assembly

Committee:		Date:	December 3, 2018
Introduced by:	Sens. Pate, Tucker	Prepared by:	Theresa Matula
Analysis of:	Fifth Edition		Legislative Analyst

OVERVIEW: *Senate Bill 117 does the following:*

- **Requires retirement benefit forfeiture for any judge who has been convicted on impeachment by the General Assembly, or removed from office by the Supreme Court, for acts committed after October 1, 2019.**
 - *If the judge has not vested in the Consolidated Judicial Retirement System (CJRS) on October 1, 2019, and is convicted on impeachment or removed from office for acts committed after October 1, 2019, then the judge forfeits all benefits under the system, except for a return of member contributions plus interest.*
 - *If the judge has vested in the CJRS on October 1, 2019, and is convicted on impeachment or removed from office for acts committed after October 1, 2019, then the judge is not entitled to any creditable service that accrued after October 1, 2019.*
- **Amends the Teachers' and State Employees' Retirement System (TSERS), Local Governmental Employees Retirement System (LGERS), Legislative Retirement System (LRS) and CJRS felony retirement benefit forfeiture laws by repealing a requirement related to certain felony convictions.**
- **Provides an exemption from rulemaking for actuarial tables, assumptions, methods, and factors in the LGERS and TSERS and clarifies that the anti-pension-spiking contribution-based benefit cap is exempt from rulemaking.**
- **Amends the dates for the service purchase provision changes for TSERS, LGERS, CJRS, and LRS if House Bill 1055, 2017 Regular Session, becomes law.**
- **Adjusts the optional retirement allowance elections in TSERS and LGERS if House Bill 1055, 2017 Regular Session, becomes law.**
- **Clarifies the lien priority for charter schools electing to cease participation in the TSERS.**
- **Makes technical conforming changes to S.L. 2018-22, 25-Year LEO Retirement Option, so the year in the statutes and the year in the Session Law are in agreement.**

[As introduced, this bill was identical to H160, as introduced by Reps. Burr, Lewis, Bumgardner, Bert Jones, which is currently in House Pensions and Retirement.]

BILL ANALYSIS:

PART I. FORFEITURE OF RETIREMENT BENEFITS/JUDGES

Section 1(a) adds a new section to Article 4 of Chapter 135 to the laws pertaining to the Consolidated Judicial Retirement System, providing for the forfeiture of retirement benefits for conviction on impeachment or removal from office.

- The Board of Trustees is prohibited from paying retirement benefits or allowances, except for a return of member contributions plus interest to any justice or judge if:
 - (1) the judge is convicted on impeachment under Article IV of the Constitution and Chapter 123 of the General Statutes for reasons other than physical and mental incapacity; or

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(2) the judge is removed from office by the Supreme Court under G.S. 7A-376(b).

- This section also adds a new subsection to provide for the restoration of retirement benefits if the conviction on impeachment or removal from office is vacated or set aside. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest and the individual will receive reinstatement of the service credit forfeited.

Section 1(b) amends G.S. 135-75.1B which was recently enacted and makes a conforming change to include the statute in Section 1(a) to prohibit the purchase of forfeited service.

Section 1(c) adds a new subsection (k) to G.S. 135-56 providing that:

- If a justice or judge who is in service and has not vested in the Consolidated Judicial Retirement System on October 1, 2019, is convicted on impeachment or removed from office for acts committed after October 1, 2019, then the member forfeits all benefits under the system, except for a return of member contributions plus interest.
- If a member who is in service and has vested in the Consolidated Judicial Retirement System on October 1, 2019, is convicted on impeachment or removed from office for acts committed after October 1, 2019, then that member is not entitled to any creditable service that accrued after October 1, 2019.

Section 1(d) makes a conforming change to G.S. 7A-376(b), to clarify that a judge removed from office receives a return of member contributions plus interest as provided in G.S. 135-56(k).

Section 1(e) requires the General Assembly and the Supreme Court to notify the State Treasurer and the Board of Trustees of the conviction on impeachment or removal from office of a justice or judge.

Section 1(f) provides that this section becomes effective October 1, 2019 and applies to offenses committed on or after that date.

CURRENT LAW ON PART I

Removal from Office: Article IV, Section 17(1) of the North Carolina Constitution provides that a judge's removal from office by the General Assembly for any reason other than mental or physical incapacity shall be by impeachment.¹ Pursuant to **G.S. 123-5**, each member of the Council of State and each justice or judge of the General Court of Justice can be impeached for commission of any felony, commission of any misdemeanor involving moral turpitude, malfeasance in office, or willful neglect of duty. Upon conviction by the Senate with concurrence of two-thirds of the Senators present, the judge can be removed from office and/or disqualified from holding any office of honor, trust, or profit under this State.²

In addition to the General Assembly's power to remove a judge, **G.S. 7A-376(b)** authorizes the North Carolina Supreme Court to remove any justice or judge of the General Court of Justice for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. **G.S. 7A-376(c)** provides that a judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity of disability retirement under any provision of State law.

Pension Benefit Forfeiture Laws: The General Assembly has previously enacted laws pertaining to pension benefit forfeiture: S.L. 2012-193 and S.L. 2007-179.

S.L. 2012-193 amended the laws governing the State's public retirement systems to establish retirement benefit restrictions for members convicted of any felony under federal or State law for acts committed after December 1, 2012, if the offense is committed while in service and the conduct resulting in the

¹ Pursuant to Article IV, Section 17(a), the General Assembly may remove a judge for mental or physical disability by joint resolution of two-thirds of all the members of each house.

² G.S. 123-13.

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conviction is directly related to the member's office or employment. The impact of the benefit restriction depends on whether the member vested on or after December 1, 2012. Section 5 and 6 of that act amended the Consolidated Judicial Retirement System by adding G.S. 135-75.1A Forfeiture of retirement benefits for certain felonies related to employment or office holding, and G.S. 135-56(j). G.S. 135-56(j) provides that if a member [of the Consolidated Judicial Retirement System] is in service and has not vested on December 1, 2012, and is convicted of an offense for acts committed after December 1, 2012, then the member must forfeit all benefits under the System, except for a return of member contributions plus interest. If a member has vested on December 1, 2012, and is convicted of an offense for acts committed after December 1, 2012, then the member is not entitled to any creditable service that accrued after December 1, 2012.

S.L. 2007-179 provided that elected officials who are members of the Legislative Retirement System (LRS), the Local Governmental Employees' System (LGERS), or the Consolidated Judicial Retirement System (CJRS) forfeit their pensions upon conviction of a State or federal offense involving public corruption or a felony violation of election laws. (Specific offenses are listed in the law.) The federal or State offense must be committed while serving as an elected government official and the conduct on which the offense is based must be directly related to the member's service as an elected official. If a member who is an elected official has not vested on July 1, 2007, and is convicted of a specified offense for acts committed after July 1, 2007, then the member forfeits all benefits except for a return of member contributions plus interest. If the member has vested on July 1, 2007, is convicted of a specified offense for acts committed after July 1, 2007, then the member is not entitled to any creditable service accrued after July 1, 2007. No member forfeits benefits or creditable service earned from a position not as an elected official. The act became effective July 1, 2007, and applied to offenses committed on or after that date.

PART II. FELONY FORFEITURE STATUTES

Section 2(a) amends the felony retirement benefit forfeiture law in TSERS to repeal a requirement that the forfeiture applies to felony convictions where the court finds as an aggravating factor in sentencing that "the defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment." (G.S. 15A-1340.16(d)(9).)

Section 2(b), (c), and (d) make similar changes in LGERS, CJRS, and LRS.

CURRENT LAW ON PART II provides pensions can be forfeited upon conviction of certain felonies under federal or state law when the offense is committed while the member is in service and the conduct on which the offense is based is directly related to the member's service as an elected official, a member of the General Assembly, or other office or employment.

PART III. ANTI-PENSION-SPIKING CONTRIBUTION-BASED BENEFIT CAP

Section 3(a) amends G.S. 135-5(a3) for TSERS, and **Section 3(b)** amends G.S. 128-27(a3) for LGERS, to provide that the adoption of a contribution-based benefit cap factor by the Board of Trustees is not subject to rulemaking under Article 2A of Chapter 150B.

Section 3(c) amends G.S.135-6(l) for TSERS and **Section 3(d)** amends G.S. 128-28(m) for LGERS, to clarify the duties of the actuary related to contribution-based benefit cap provisions and to provide that the materials related are not subject to rulemaking under Article 2A of Chapter 150B.

Section 3(e) provides that if House Bill 1055, 2017 Regular Session, becomes law, then 3(c) and 3(d) become effective on the date that Section 1 of that act becomes effective and apply to calculations on or after that date and Sections 3(a) and (b) become effective January 1, 2019, and apply to calculations on or after that date. If House Bill 1055 does not become law then this section becomes effective January 1, 2019, and applies to calculations made on or after that date.

PART IV. EXEMPTION FROM RULEMAKING

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Section 4(a) adds a new subdivision to G.S. 150B-1 to exempt the Retirement System Boards of Trustees established under G.S. 128-28 (LGERS) and G.S. 135-6 (TSERS) when adopting actuarial tables, assumptions, and contribution based benefit cap factors after presentation of recommendations from the actuary. This exemption includes, but is not limited to, the following actuarial tables, assumptions, methods, and factors:

- Joint and survivor tables.
- Reserve transfer tables.
- Interest rate assumptions.
- Salary increase assumptions.
- Mortality assumptions.
- Separation and retirement assumptions.
- Asset smoothing methods.
- Actuarial cost methods.
- Contribution based benefit cap factors.
- Required contribution rates.
- Amortization policies.

Section 4(b) amends G.S. 135-6(n) for TSERS, and **Section 4(c)** amends G.S. 128-28(o) for LGERS, to clarify the responsibilities of each Board of Trustees regarding the contribution-based benefit cap factors for each System when conducting actuarial investigations and valuations.

Section 4(d) provides that if House Bill 1055, 2017 Regular Session, becomes law, then this section becomes effective on the date that Section 1 of that act becomes effective and applies to actuarial tables, assumptions, and contribution based cap factors changed on or after that date and actuarial investigations and calculations made on or after that date. If House Bill 1055, 2017 Regular Session, does not become law, then this section becomes effective January 1, 2019 and applies to actuarial tables, assumptions, and contribution based cap factors changed on or after that date and actuarial investigations and calculations made on or after that date.

PART V. SERVICE PURCHASE PROVISION EFFECTIVE DATES

Section 5(a)-5(f) amend HB 1055, Sections 5(a)-5(f), 2017 Regular Session, if enacted, to extend by approximately six months the dates related to service purchase provision changes in TSERS, LGERS, CJRS, and LRS.

Section 5(g) amends HB 1055, Section 5(k), 2017 Regular Session, if enacted, to extend by approximately six months the date by which all service purchases are required to have been made and then accepted and processed by the Retirement Systems Division of the Department of State Treasurer.

Section 5(h) provides that this Section becomes effective when Section 5 of House Bill 1055, 2017 Regular Session, becomes effective.

PART VI. ADJUSTMENTS TO OPTIONAL RETIREMENT ALLOWANCE ELECTIONS

Section 6(a) and 6(b) amend HB 1055, Sections 6(a) and 6(b), 2017 Regular Session, if enacted, to remove the sunset on Option 4/four in both TSERS and LGERS. It also extends the sunset of Option 6/six in TSERS and LGERS from December 1, 2018 to January 1, 2020. **Section 6(c)** provides that if HB 1055, 2017 Regular Session, is enacted, then this section becomes effective on the date that Section 6 of that act becomes effective.

PART VII. CLARIFICATION OF LIEN PRIORITY

Section 7(a) amends HB 1055, Section 3(b), 2017 Regular Session, if enacted, to clarify that application of the lien priority for charter schools electing to cease participation in the TSERS will apply during the

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entire period of the payment plan. If HB 1055 is not enacted, **Section 7(b)** amends S.L.2018-84 (HB 977), Admin. Changes Retirement System/Treasurer-2018, to create a five-year sunset on withdrawal payment plans and to provide that any charter school entering a withdrawal liability payment plan prior to the expiration date will have three years to complete the payment plan and that the lien priority will apply during the entire period of the payment plan.

PART VIII. TECHNICAL CORRECTION TO LEO 25-YEAR RETIREMENT

Section 8 Makes technical conforming changes to S.L. 2018-22 (HB 284), 25-Year LEO Retirement Option, so the year in the statutes and the year in the Session Law are in agreement. This section becomes effective July 1, 2019.

PART IX. EFFECTIVE DATE

Except as otherwise provided, this act would become effective when it becomes law.

Tawanda Foster, Committee Staff, substantially contributed to this summary.