



# SENATE BILL 117: Forfeiture of Retirement Benefits/Judges.

2017-2018 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	April 7, 2017
<b>Introduced by:</b>	Sens. Pate, Tucker	<b>Prepared by:</b>	Theresa Matula Committee Staff
<b>Analysis of:</b>	Third Edition		

**OVERVIEW:** *Senate Bill 117 would establish retirement benefit restrictions 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 December 1, 2017. If the judge has not vested in the Consolidated Judicial Retirement System (CJRS) on December 1, 2017, is convicted on impeachment or removed from office for acts committed after December 1, 2017, 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 December 1, 2017, is convicted on impeachment or removed from office for acts committed after December 1, 2017, then the judge is not entitled to any creditable service that accrued after December 1, 2017. The bill would become effective December 1, 2017, and apply to offenses committed on or after that date.*

[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:** **Section 1** of Senate Bill 117 would add G.S. 135-75.1B 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. Except as provided in G.S. 135-56(k) (Section 2 of the bill), 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 of the General Court of Justice 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
- (2) the judge is removed from office by the Supreme Court under G.S. 7A-376(b).

This section adds G.S. 135-75.1B(b) to address restoration in the event that the conviction on impeachment or removal from office is vacated or set aside. If a justice or judge, or former justice or judge, whose benefits were forfeited has the conviction on impeachment or removal from office vacated or set aside, the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. 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 2** of the bill would add 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 December 1, 2017, is convicted on impeachment or removed from office for acts committed after December 1, 2017, then the member forfeits all benefits under the system, except for a return of member contributions plus interest.

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- If a member who is in service and has vested in the Consolidated Judicial Retirement System on December 1, 2017, is convicted on impeachment or removed from office for acts committed after December 1, 2017, then that member is not entitled to any creditable service that accrued after December 1, 2017.

**Section 3** would make 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 4** would require 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.

**EFFECTIVE DATE:** Senate Bill 117 would become effective December 1, 2017, and apply to offenses committed on or after that date.

## **CURRENT LAW:**

**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.<sup>1</sup> 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.<sup>2</sup>

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 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.

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<sup>1</sup> 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.

<sup>2</sup> G.S. 123-13.

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**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.