



SENATE BILL 117: Forfeit. Retirmt Benefits/Anti-Pen. Spiking.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2017-2018 General Assembly

Committee:	House Pensions and Retirement	Date:	June 14, 2017
Introduced by:	Sens. Pate, Tucker	Prepared by:	Tawanda N. Foster Committee Counsel
Analysis of:	PCS to Third Edition S117-CSTV-12		

OVERVIEW: *The PCS to Senate Bill 117 does the following:*

- 1) *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 December 1, 2017.*
 - a. *If the judge has not vested in the Consolidated Judicial Retirement System (CJRS) on December 1, 2017, and 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.*
 - b. *If the judge has vested in the CJRS on December 1, 2017, and 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.*
- 2) *Amends the felony retirement benefit forfeiture laws to repeal a requirement related to certain felony convictions.*
- 3) *Clarifies anti-pension-spiking contribution-based benefit cap provisions.*
- 4) *Provides an exemption from rulemaking for the Retirement System Boards of Trustees.*

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

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- 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 2 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 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.
- 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 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 4 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.

PART II. FELONY FORFEITURE STATUTES

Current law 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.

Sections 5.(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."

Section 5.(b) makes a similar change as Section 5.(a) in LGERS.

Section 5.(c) makes a similar change as Section 5.(a) in CJRS.

Section 5.(d) makes a similar change as Section 5.(a) in LRS.

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

Section 6.(a) clarifies the anti-pension-spiking contribution-based benefit cap provisions in TSERS is not subject to rulemaking under Article 2A of Chapter 150B.

Section 6.(b) makes a similar change as in Section 6.(a) in LGERS.

Section 6.(c) clarifies the duties of the actuary related to contribution-based benefit cap provisions in TSERS and that the materials related are not subject to rulemaking under Article 2A of Chapter 150B.

Section 6.(d) makes a similar change as Section 6.(c) in LGERS.

Section 6.(e) provides this section makes clarifying changes.

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Section 6.(f) makes this section effective when it becomes law and applies it retroactively to January 1, 2015.

PART IV. EXEMPTION FROM RULEMAKING

Section 7.(a) adds a new subdivision to G.S. 150B-1 to exempt the Retirement System Boards of Trustees 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 and assumptions:

- Interest rate assumptions.
- Salary increase assumptions.
- Required contribution rates.
- Mortality assumptions.
- Separation and retirement assumptions.
- Joint and survivor tables.
- Reserve transfer tables.
- Contribution based benefit cap factors.

Section 7.(b) adds contribution-based benefit cap factors to the list of items in TSERS the Board of Trustees may adopt after actuarial investigation and valuation at least once every five years.

Section 7.(c) makes a similar change as Section 7.(b) in LGERS.

Section 7.(d) provides this section makes clarifying changes.

Section 7.(e) makes this section effective when it becomes law and applies retroactively to January 1, 2015.¹

EFFECTIVE DATE: Sections 1-4 would become effective December 1, 2017, and apply to offenses committed on or after that date. Section 5 would become effective when it becomes law. Sections 6 and 7 would become effective when it becomes law and applies retroactively to January 1, 2015.

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.² 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.³

¹ Sections 6 and 7 are being retroactively applied because it impacts ongoing litigation in Wilkes County Board of Education v. Board of Trustees, Teachers' and State Employees Retirement System, 17 CVS 1649 (2017). In this case, the Wake County Superior Court held the retirement system could not apply the contribution-based benefit cap factor because it had not adopted it as a rule in accordance with the Administrative Procedures Act.

² 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.

³ G.S. 123-13.

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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.

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.

Theresa Matula, Legislative Analyst substantially contributed to this summary.