SENATE BILL 374:
Repeal Risky Retirement Payments.

2019-2020 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	April 26, 2019
Introduced by:	Sens. Wells, Brown	**Prepared by:**	Tawanda N. Foster
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: Senate Bill 374 eliminates the Option 4 and Option 6 retirement optional allowances under the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS).

CURRENT LAW: G.S. 135-4(g) provides the options for benefit payments of retirement optional allowances under TSERS.

G.S. 128-27(g) provides the options for benefit payments of retirement optional allowances under LGERS.

Current law for both TSERS and LGERS allows the following benefit payment options:

- Maximum Allowance
- Option 2: 100% Joint & Survivor
- Option 3: 50% Joint & Survivor
- Option 4: Social Security Leveling
- Option 6-2: Modified Joint & Survivor (combination Maximum Allowance and Option 2)
- Option 6-3: Modified Joint & Survivor (combination Maximum Allowance and Option 3)

BILL ANALYSIS: This bill close three of the current benefit payment options to members who retire after July 1, 2020. The payment options being closed are:

- Option 4: Social Security Leveling;
- Option 6-2: Modified Joint & Survivor – 100% for named beneficiary with pop-up to maximum allowance if beneficiary predeceases the member; and
- Option 6-3: Modified Joint & Survivor – 50% for named beneficiary with pop-up to maximum allowance if beneficiary predeceases the member.

EFFECTIVE DATE: This act is effective when it becomes law. If any provision of this act or its application is held unconstitutional, then the act applies to new members joining the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System on or after July 1, 2020.

BACKGROUND: A constitutional challenge could be made asserting the provisions of this bill violates the contracts clause.

Article 1, Section 10 of the United States Constitution provides, " [n]o State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, *or Law impairing the Obligation of Contracts*, or grant any Title of Nobility."

- It could be argued that legislation eliminating benefit payment options previously available to vested members of the Retirement System is an impairment of the contract rights of governmental employees. There is significant and instructive case law on this issue.
  - Bailey v. State, 348 N.C. 130 (1998)-The Supreme Court held in this case state employee plaintiffs had an enforceable contract right that was unconstitutionally impaired when legislation was passed requiring the State of North Carolina to place a cap on tax exemptions for state and local government employees' retirement benefits. In its analysis the Court held the relationship between the Retirement Systems and state employees who have vested in those systems is contractual in nature. The basic premise underlying Bailey and similar cases preceded by it is that retirement benefits are presently earned but deferred compensation to which employees have vested is a contractual right. By extension, any taking of vested retirement benefits could be found to be a breach of the contracts clause.
  - The test for whether or not an action violates the contracts clause is set forth in *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977). This test requires a court to ascertain: (1) whether a contractual obligation is present, (2) whether the state's actions impaired that contract, and (3) whether the impairment was reasonable and necessary to serve an important public purpose.