



SENATE BILL 719: Retirement Tech./Protect./& Other Changes.

2019-2020 General Assembly

Committee:		Date:	October 27, 2020
Introduced by:		Prepared by:	Theresa Matula Legislative Analyst
Analysis of:	S.L. 2020-48		

OVERVIEW: *S.L. 2020-48 amends statutes pertaining to the following: Teacher's and State Employees' Retirement System (TSERS), the Local Governmental Employees' Retirement System (LGERS), the Consolidated Judicial Retirement System (CJRS), the Legislative Retirement System (LRS), the Supplemental Retirement Income Plan, the Achieving A Better Life Experience (ABLE) Program Trust, the NC National Guard Pension Fund, North Carolina Public School Teachers' and Professional Educators' Investment Plan, local government finance, 403(b) administrative costs, Unfunded Liability Solvency Reserve and Health Benefit Fund, Escheats, Unclaimed Property, and separate insurance benefit plan offerings.*

Except as otherwise provided this act became effective June 26, 2020. See the full summary for details.

BILL ANALYSIS:

PART I-A TECHNICAL CHANGES

Section 1.1 (a) amends *TSERS* statutes and (b) amends *LGERS* statutes to add a definition for "duly acknowledged" which means notarized, electronic notarization, or verification through an identity authentication service.

Section 1.2 (a) amends *TSERS* statutes, (b) amends *LGERS* statutes, (c) amends *CJRS* statutes, and (d) amends *LRS* statutes to increase the age at which a member must begin receiving payments from the retirement system from 70½ to 72. The Department of State Treasurer reports this is needed to conform to changes in federal law (SECURE Act for 2019). Section 1.2(e) provides that this section would become effective January 1, 2021 and applies to members on or after that date. If a member attains age 70½ on or before December 31, 2019, then the statute that is in effect on the day the member attains age 70½ will be applicable to that member.

Section 1.3 (a) and (c) amend the *Supplemental Retirement Income Plan* to remove the term "disability." The Department of State Treasurer reports this is not allowed under Internal Revenue Code. Subsection (b) makes technical and conforming changes.

Section 1.4 (a), (b) and (c) amend the *Achieving A Better Life Experience (ABLE) Program Trust* statutes to add a definition of "sibling to mean a brother, sister, stepbrother, or stepsister" and incorporates this term throughout to allow a sibling of a disabled participant to take certain actions with regard to ABLE accounts. This section became effective July 26, 2020 and applies to actions taken on behalf of an ABLE account owner on or after that date.

PART I-B ADDITIONAL TECHNICAL CHANGES

Section 1.5(a) and (b) amend the *State Health Plan for Teachers and State Employees* to remove the term "group" from references to the health plan and to specify that nothing requires the Plan to permit a

Jeffrey Hudson
Director



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person, or be required, to enroll a person when that enrollment may jeopardize the Plan's preferential tax exempt status as a governmental plan under the Internal Revenue Code.

Section 1.6 amends the *CJRS* statutes to incorporate methods of financing, specifically addressing: that the assets include the employers' contributions held with the Pension Accumulation Fund and employee's contributions held in the Annuity Savings Fund; requiring the Board to have an annual actuarial valuation and to maintain the System on a generally accepted actuarial basis; using an actuarially determined employer contribution calculated annually by the actuary; specifying that the Board may adopt a contribution policy that would recommend a contribution not less than the actuarially determined employer contribution and that it would not be subject to the Administrative Procedures Act; and requiring that the employer contribution rate by the Board each year not be less than the actuarially determined employer contribution.

Section 1.7(a) and (b) makes technical changes pertaining to funding for the *NC National Guard Pension Fund*. The following elements removed from subsection (a) are being relocated to a newly created G.S. 127A-41 in subsection (b): language pertaining to general fund appropriations; the requirement for an annual actuarial valuation; and the Board's responsibility for maintaining the Fund on a generally accepted actuarial basis. New items include: a requirement that the employer contribution be calculated annually by the actuary using assumptions and an approved cost method; and specifying that the Board may adopt a contribution policy that would recommend a contribution not less than the actuarially determined employer contribution and that it would not be subject to the Administrative Procedures Act.

Section 1.8 (a) amends *TSERS* statutes and (b) amends *LGERS* statutes to add a subsection allowing the Retirement Systems Division to provide a credit to an employing agency that made contributions on behalf of a retiree subject to the contribution-based benefit cap when that retiree is subject to a felony forfeiture of retirement benefits.

Section 1.9(a) amends *TSERS* statutes and (b) amends *LGERS* statutes to outline criteria for determining when an employer is inactive and requiring the Retirement Systems Division to make a report to the Board by April 30th on employers who were determined to be inactive in the preceding calendar year.

Section 1.10 makes a terminology change to *local government finance statutes* pertaining to semiannual reports to clarify in the statement that the total revenues received from building inspections be reported by "source" and the total expenditures paid from all revenues received be reported by "object." This section became effective June 30, 2020.

Section 1.11 amends *TSERS* statutes to make technical and clarifying changes related to the transfer of credits from *LGERS*.

Section 1.12(a)-(g) repeals the following outdated *TSERS* statutes:

- G.S. 135-5.2 - Chapel Hill utilities & telephone employees. -This statute pertains to employees of the Chapel Hill Telephone Company or University Service Plants at the time the Chapel Hill telephone services and utilities services are sold to Southern Bell Company and Duke Power. It was enacted in 1977.
- G.S. 135-13 – Certain laws not repealed; suspension of payment and compulsory retirement. – This statute pertains to pensions for school teachers in New Hanover County. It was enacted in 1941 and has not been amended since that time.
- G.S. 135-14 – Pensions of certain former teacher and State employees. – This statute pertains to certain pensions and allowances paid out of the Pension Accumulation Fund. It was enacted in 1943, and last amended in 1983. The Department of State Treasurer reports this relates to the merger of internal accounts for pension funds in 1983.

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- G.S. 135-14.1 – Certain school superintendents and assistant superintendents. – This statute pertains to employees who were superintendents and assist. superintendents for 20 years when TSERS was enacted. It was enacted in 1957 and has not been amended since that time.
- G.S. 135-16 – Employees transferred to North Carolina State Employment Service by act of Congress. - This statute pertains to US Employment Service employees that became employed by the State. It was enacted in 1947. The Department of State Treasurer reports this relates to the merger of internal accounts for pension funds in 1983
- G.S. 135-18.3 – Conditions under which amendments void. – This statute pertains to coverage of governmental employees under Title II of the Social Security Act and the federal-State agreement. It was enacted in 1955.
- G.S. 135-18.5 – Provision for emergency expenses of integration of System. -This statute pertains to the use of funds during the session in 1955 and 1957. It was enacted in 1955 and has not been amended.

Section 1.13 amends *TSERS* statutes to change references to blind or visually impaired employees to blind or visually impaired vendors reflecting changes that were made years ago.

Section 1.14 amends an incorrect statutory reference in *LGERS*.

Section 1.15 amends the community college statutes pertaining to the *Department of State Treasurer-sponsored 403(b) option* to allow administrative costs to be charged to members or deducted from members' accounts

Section 1.16 (a)(b)(c) amend *TSERS* statutes and (d)(e)(f) amend *LGERS* statutes. Subsections (a) and (d) (b) and (e) and (c) and (f) make identical amendments to *TSERS* and *LGERS*. The amendments clarify that information contained in the monthly reports ("watch reports") indicating those most likely to require additional employer contributions should they elect to retire in the following 12 months, is not a public record and requires all parties involved to treat the information as confidential and as though it were still held by the Retirement System under the public records law.

Section 1.17 clarifies in the *State Health Plan* statutes that a local government unit's election to participate is generally irrevocable.

Section 1.18 corrects an incorrect statute reference by amending the *State Treasurer's discharge of duties* statute to correctly reference (G.S. 147-69.2(b)(8)) pertaining to the retirement systems.

Section 1.19 corrects a typographical error in a civil procedure statute so that it references "G.S. 135-1", rather than "G.S. 35-1."

PART II-A REQUIRE STRESS TESTING OF THE RETIREMENT SYSTEM AS RECOMMENDED BY THE PEW FOUNDATION

Section 2.1(a) amends *TSERS* statutes to clarify that the actuary must complete an actuarial experience review of the mortality, service and compensation experience of the members and beneficiaries at least once every five years. Subsection (b) requires a report to the General Assembly and the Governor prior to undertaking the five-year actuarial experience review and the subsection outlines elements of the report. A new statutory subsection is also added to allow the Retirement Systems Division to pay costs directly from the retirement assets or to increase receipts from the retirement assets to cover the cost of administering the requirements. The Department of State Treasurer reports this change is recommended by the Pew Foundation.

PART II-B AMENDMENTS RELATED TO THE PENSION SOLVENCY FUND

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Section 2.2(a) adds a new subdivision under the *Unfunded Liability Solvency Reserve, Source of Funds, in the State Budget Act* to require that any funds, in an amount directed by the State Treasurer to be transferred, must be: 1) the result of rebates from a company administering supplemental voluntary insurance benefits, 2) are not owed to a company administering, or individuals participating in, supplemental voluntary insurance benefits, and 3) the funds are not to be needed to pay future administrative costs of the supplemental voluntary insurance benefits.

Subsection (b) amends the *State Health Plan, health benefit trust fund statute* to provide that any unencumbered balance in excess of prepaid premiums or charges in the Public Employee Health Benefit Fund must be paid in a specified order. The second item in the specified order specifies that an amount determined by the State Treasurer, subject to approval by the Board, that does not exceed 25% of any unencumbered balance remaining after providing for incurred but unrepresented claims may be transferred to the Retiree Health Benefit Fund. The Office of State Budget Management is required to transfer the amount in accordance with the subdivision upon the direction and approval of and in the amount specified by the State Treasurer.

Subsection (c) further amends the *Unfunded Liability Solvency Reserve in the State Budget Act* to add a new subsection preventing the reversion of funds by specifying that no portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert.

This section is effective July 1, 2020.

PART III UNCLAIMED REAL AND PERSONAL PROPERTY CHANGES

Section 3.1 (a), (b), (c), (d), (e), (f) and (g) change the current title of Article 1 of Chapter 116B from "Escheats" to "General;" creates a new Article 1A of Chapter 116B titled "*Escheats*;" recodifies two current statutes pertaining to escheats to place them under the newly created Article 1A; and makes conforming changes to various statutes to reflect the recodification.

Section 3.2 adds a new statutory section to the newly renamed Article 1 of Chapter 116B to provide that the policy of the State is to recover and transfer property to rightful owners and if the rightful owner cannot be determined, it is the policy of the State that all benefits realized from any unclaimed or abandoned property will accrue to the benefit of higher education.

Section 3.3 amends a statute under the *North Carolina Unclaimed Property Act* to incorporate the term "loss," thereby providing the Treasurer shall hold the property without liability for "loss," income or gain. Previously the statute only contemplated income or gain.

Section 3.4 amends the enforcement statutes in the *North Carolina Unclaimed Property Act* to strengthen the Treasurer's authority regarding the requirement that a person produce reports, make required payments, and make the required delivery of property.

Section 3.5 amends the reporting requirements of abandoned property under the *North Carolina Unclaimed Property Act* to permit filing in an electronic format regardless of the number of property owner records. This section is effective July 1, 2021, and applies to reports filed on or after that date.

Section 3.6 amends the reporting requirements of abandoned property under the *North Carolina Unclaimed Property Act* to provide clarification regarding property reported in an aggregate amount.

Section 3.7 amends the *North Carolina Unclaimed Property Act* as it pertains to custody by the State, recovery by the holder, and defense of the holder, to provide further clarification and to allow a refund to the holder when an error has occurred.

This section became effective June 26, 2020, and applies to filings made on or after that date.

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PART IV. PENSION PROTECTION CHANGES

Section 4.1 (a) amends a *TSERS* statute and (b) amends a *LGERS* statute pertaining to the duties of the actuary. The changes add the contribution-based benefit cap factor to the materials, such as experience studies, actuarial calculations, assumptions used by the actuary, including mortality tables, interest rates, annuity factors, and other similar materials that are provided to the Board and further provides that they are not subject to rule-making. The section also specifies that materials are effective the first day of the month following adoption, unless a different date is specified, and that the effective date does not retroactively affect a contribution rate. Subsection (c) amends the Administrative Procedures Act on rulemaking to exempt specified actuarial tables, assumptions, methods, and factors from rulemaking. This section became effective June 26, 2020, and subsection (c) applies to actuarial tables, assumptions, and contribution-based benefit cap factors adopted or changed on or after that date.

Section 4.2(a) further amends a *TSERS* statute that is also amended in Section 2.1(a) of the act, subsection (b) also amends a *TSERS* statute and subsections (c) and (d) amend *LGERS* statutes. For *TSERS* and *LGERS*, this section adds the adoption of any necessary contribution-based benefit cap factors to the duties of the Boards of Trustees after the actuarial investigation and valuation after each five-year period. It also allows the Retirement Systems Division to pay for the administration costs of these sections by increasing receipts from the retirement assets of system or pay costs directly from the retirement assets. This section became effective June 26, 2020, and applies to actuarial investigations and calculations made on or after that date.

Section 4.3 (a)-(d) repeals the following statutes in *TSERS*, *LGERS*, *CJRS*, and *LRS* pertaining to forfeiture of retirement benefits for certain felonies related to employment or holding office: G.S. 135-18.10A(b), G.S. 128-38.4A(b), G.S. 135-75.1A(b), G.S. 120-4.33A(b). In each forfeiture statute, one of the two factors that require forfeiture is the "conduct resulting in the member's conviction is directly related to the member's office or employment." This language is not being repealed. Each subsection being repealed mentions this language only by reference and further provides that it applies to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment. The language being repealed removes the reference to Chapter 15A of the General Statutes pertaining to aggravating factors in the Criminal Procedure Act.

Section 4.4 (a)(b) amend *TSERS* statutes, subsections (c)(d) amend *LGERS* statutes, subsections (e)(f) amend *CJRS* statutes, and subsections (g)(h) amend *LRS* statutes all in an identical manner. The retirement system statutes are amended to clarify the current law on felony forfeiture of pensions for elected officials and members applies regardless of whether the creditable service was earned by membership in the System, accrued by conversion of sick leave at the point of the member's retirement, accrued by transfer of service from another retirement system, purchased by the member, or accrued by any other means. The changes further clarify that creditable service attributable to the conversion of sick leave accrues in this System on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

Section 4.5(a) amends *TSERS*, subsection (b) amends *LGERS*, subsection (c) amends *CJRS*, and subsection (d) amends *LRS* to clarify that forfeited service may not be used for the purposes of eligibility for benefits in any retirement system that provides reciprocal benefits.

PART V. AMEND SPECIAL INSURANCE BENEFITS PLAN OFFERINGS

Section 5.1 repeals G.S. 143-166.60(d)(1) which allows the *TSERS* and *LGERS* Boards of Trustees to promulgate rules and regulations, within the availability of funds, to provide an accident and sickness

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disability insurance benefit under the Separate Insurance Benefits Plan for State and Local Government law enforcement officers.

PART VI. SEVERABILITY

Section 6.1 contains a severability clause.

PART VII. EFFECTIVE DATE

Section 7.1 provides that except as otherwise provided, this act became effective June 26, 2020.