

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 1074

Short Title: Stop Waste, Fraud, and Abuse in Govt. Act. (Public)

Sponsors: Representative Moffitt (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: State Personnel, if favorable, Finance.

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES RETIREMENT SYSTEM, AND THE DISABILITY INCOME PLAN OF NORTH CAROLINA TO ENHANCE THE OPERATION OF THE MEDICAL BOARD; TO ESTABLISH GUIDELINES FOR FRAUD INVESTIGATIONS THAT WILL ENHANCE THE DEPARTMENT OF STATE TREASURER'S CAPABILITY TO PREVENT AND DETECT FRAUD, WASTE, AND ABUSE; TO CREATE A REBUTTABLE PRESUMPTION OF FRAUD IN THE AVERAGE FINAL COMPENSATION CALCULATION; AND TO MAKE IT A CLASS 1 MISDEMEANOR TO FRAUDULENTLY RECEIVE THE RETIREMENT BENEFIT OF A DECEASED DISABILITY RETIREE AT LEAST TWO MONTHS AFTER THE RETIREE'S DEATH.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to read:

**"§ 128-38.6. Employee protection and remedies against unlawful retaliation for furnishing information to the Retirement Systems Division.**

(a) In the absence of fraud or malice, no person who furnishes information to the staff of the Retirement Systems Division relating to the investigation of possible violations of retirement law shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply such information to the Division.

(b) Any employee of a participating local employer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee in furtherance of the Retirement Systems Division's receipt of information concerning possible violations of retirement law, including cooperation with the Division's investigation of possible violations, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination or retaliation by the employing unit, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section."

**SECTION 2.(a)** G.S. 128-21 reads as rewritten:

**"§ 128-21. Definitions.**



1 The following words and phrases as used in this Article, unless a different meaning is  
2 plainly required by the context, shall have the following meanings:

3 ...

4 (11b) "Firefighter" means a person (i) who is a full-time paid employee of an  
5 employer that participates in the Local Governmental Employees'  
6 Retirement System and maintains a fire department certified by the North  
7 Carolina Department of Insurance and (ii) who is actively serving in a  
8 position with assigned primary duties and responsibilities for the prevention,  
9 detection, and suppression of fire.

10 (11c) "Fraud investigation" means an independent review or examination by  
11 Retirement Systems Division staff or the Division's authorized  
12 representatives who are assisting the Retirement Systems Division staff of  
13 activities, actions, or decisions by employers or other affiliated or associated  
14 entities having an impact on the Retirement System. The purpose of a fraud  
15 investigation is to help detect and prevent fraud and to ensure full  
16 accountability in the use of pension funds.

17 ~~(11e)~~(11d) "Law Enforcement Officer" means a full-time paid employee of an  
18 employer, who possesses the power of arrest, who has taken the law  
19 enforcement oath administered under the authority of the State as prescribed  
20 by G.S. 11-11, and who is certified as a law enforcement officer under the  
21 provisions of Chapter 17C of the General Statutes or certified as a deputy  
22 sheriff under the provisions of Chapter 17E of the General Statutes. "Law  
23 enforcement officer" also means the sheriff of the county. The number of  
24 paid personnel employed as law enforcement officers by a law enforcement  
25 agency may not exceed the number of law enforcement positions approved  
26 by the applicable local governing board.

27 ...."

28 **SECTION 2.(b)** G.S. 135-1 reads as rewritten:

29 **"§ 135-1. Definitions.**

30 The following words and phrases as used in this Chapter, unless a different meaning is  
31 plainly required by the context, shall have the following meanings:

32 ...

33 (11a) "Filing" when used in reference to an application for retirement shall mean  
34 the receipt of an acceptable application on a form provided by the  
35 Retirement System.

36 (11b) "Fraud investigation" means an independent review or examination by  
37 Retirement Systems Division staff or the Division's authorized  
38 representatives who are assisting the Retirement Systems Division staff of  
39 activities, actions, or decisions by employers or other affiliated or associated  
40 entities having an impact on the Retirement System. The purpose of a fraud  
41 investigation is to help detect and prevent fraud and to ensure full  
42 accountability in the use of pension funds.

43 ~~(11b)~~(11c) "Law-Enforcement Officer" means a full-time paid employee of an employer  
44 who is actively serving in a position with assigned primary duties and  
45 responsibilities for prevention and detection of crime or the general  
46 enforcement of the criminal laws of the State of North Carolina or serving  
47 civil processes, and who possesses the power of arrest by virtue of an oath  
48 administered under the authority of the State.

49 ...."

50 **SECTION 2.(c)** G.S. 128-28 is amended by adding three new subsections to read:

1       "(r) Fraud Investigations – Access to Persons and Records. – In the course of conducting  
2 a fraud investigation, the Retirement Systems Division and the Division's authorized  
3 representatives shall:

4           (1) Have ready access to persons and may examine and copy all books, records,  
5 reports, vouchers, correspondence, files, personnel files, investments, and  
6 any other documentation of any employer. The review of State tax returns  
7 shall be limited to matters of official business, and the Division's report shall  
8 not violate the confidentiality provisions of tax laws.

9           (2) Have such access to persons, records, papers, reports, vouchers,  
10 correspondence, books, and any other documentation that is in the  
11 possession of any individual, private corporation, institution, association,  
12 board, or other organization which pertain to the following:

13           a. Amounts received pursuant to a grant or contract from the federal  
14 government, the State, or its political subdivisions.

15           b. Amounts received, disbursed, or otherwise handled on behalf of the  
16 federal government or the State. In order to determine that payments  
17 to providers of social and medical services are legal and proper, the  
18 providers of such services will give the Retirement Systems Division,  
19 or Retirement Systems Division's authorized representatives, access  
20 to the records of recipients who receive such services.

21           (3) Have the authority, and shall be provided with ready access, to examine and  
22 inspect all property, equipment, and facilities in the possession of any  
23 employer agency or any individual, private corporation, institution,  
24 association, board, or other organization that were furnished or otherwise  
25 provided through grant, contract, or any other type of funding by the  
26 employer agency.

27       (s) Fraud Investigative Reports and Work Papers. – The Director of the Retirement  
28 Systems Division shall maintain for 10 years a complete file of all fraud investigative reports  
29 and reports of other examinations, investigations, surveys, and reviews issued under the  
30 Director's authority. Fraud investigation work papers and other evidence or related supportive  
31 material directly pertaining to the work of the Retirement Systems Division of the Department  
32 of State Treasurer shall be retained according to an agreement between the Director of  
33 Retirement and State Archives. To promote intergovernmental cooperation and avoid  
34 unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel  
35 policies to the contrary, pertinent work papers and other supportive material relating to issued  
36 fraud investigation reports may be, at the discretion of the Director of Retirement and unless  
37 otherwise prohibited by law, made available for inspection by duly authorized representatives  
38 of the State and federal government who desire access to and inspection of such records in  
39 connection with some matter officially before them, including criminal investigations. Except  
40 as provided in this section, or upon an order issued in Wake County Superior Court upon 10  
41 days' notice and hearing finding that access is necessary to a proper administration of justice,  
42 fraud investigation work papers and related supportive material shall be kept confidential,  
43 including any information developed as a part of the investigation.

44       (t) Fraud Reports May Be Anonymous. – The identity of any person reporting fraud,  
45 waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be  
46 maintained as a public record within the meaning of G.S. 132-1."

47       **SECTION 2.(d)** G.S. 135-6 is amended by adding three new subsections to read:

48       (q) Fraud Investigations – Access to Persons and Records. – In the course of conducting  
49 a fraud investigation, the Retirement Systems Division and the Division's authorized  
50 representatives shall:

- 1           (1) Have ready access to persons and may examine and copy all books, records,  
2 reports, vouchers, correspondence, files, personnel files, investments, and  
3 any other documentation of any employer. The review of State tax returns  
4 shall be limited to matters of official business, and the Division's report shall  
5 not violate the confidentiality provisions of tax laws.
- 6           (2) Have such access to persons, records, papers, reports, vouchers,  
7 correspondence, books, and any other documentation that is in the  
8 possession of any individual, private corporation, institution, association,  
9 board, or other organization that pertain to the following:
- 10           a. Amounts received pursuant to a grant or contract from the federal  
11 government, the State, or its political subdivisions.
- 12           b. Amounts received, disbursed, or otherwise handled on behalf of the  
13 federal government or the State. In order to determine that payments  
14 to providers of social and medical services are legal and proper, the  
15 providers of such services will give the Retirement Systems Division,  
16 or Retirement Systems Division's authorized representatives, access  
17 to the records of recipients who receive such services.
- 18           (3) Have the authority, and shall be provided with ready access, to examine and  
19 inspect all property, equipment, and facilities in the possession of any  
20 employer agency or any individual, private corporation, institution,  
21 association, board, or other organization that were furnished or otherwise  
22 provided through grant, contract, or any other type of funding by the  
23 employer agency.

24           (r) Fraud Investigative Reports and Work Papers. – The Director of the Retirement  
25 Systems Division shall maintain for 10 years a complete file of all fraud investigative reports  
26 and reports of other examinations, investigations, surveys, and reviews issued under the  
27 Director's authority. Fraud investigation work papers and other evidence or related supportive  
28 material directly pertaining to the work of the Retirement Systems Division of the Department  
29 of State Treasurer shall be retained according to an agreement between the Director of  
30 Retirement and State Archives. To promote intergovernmental cooperation and avoid  
31 unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel  
32 policies to the contrary, pertinent work papers and other supportive material relating to issued  
33 fraud investigation reports may be, at the discretion of the Director of Retirement and unless  
34 otherwise prohibited by law, made available for inspection by duly authorized representatives  
35 of the State and federal government who desire access to and inspection of such records in  
36 connection with some matter officially before them, including criminal investigations. Except  
37 as provided in this section, or upon an order issued in Wake County Superior Court upon 10  
38 days' notice and hearing finding that access is necessary to a proper administration of justice,  
39 fraud investigation work papers and related supportive material shall be kept confidential,  
40 including any information developed as a part of the investigation.

41           (s) Fraud Reports May Be Anonymous. – The identity of any person reporting fraud,  
42 waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be  
43 maintained as a public record within the meaning of G.S. 132-1."

44           **SECTION 3.(a)** G.S. 128-21(7a) reads as rewritten:

- 45           "(7a) a. "Compensation" shall mean all salaries and wages prior to any  
46 reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and  
47 457 of the Internal Revenue Code, not including any terminal  
48 payments for unused sick leave, derived from public funds which are  
49 earned by a member of the Retirement System for service as an  
50 employee in the unit of the Retirement System for which he is

1 performing full-time work. In addition to the foregoing,  
2 "compensation" shall include:

- 3 1. Performance-based compensation (regardless of whether paid  
4 in a lump sum, periodic installments, or on a monthly basis);
- 5 2. Conversion of additional benefits to salary (additional  
6 benefits such as health, life, or disability plans), so long as the  
7 benefits are other than mandated by State law or regulation;
- 8 3. Payment of tax consequences for benefits provided by the  
9 employer so long as they constitute an adjustment or increase  
10 in salary and not a "reimbursement of expenses";
- 11 4. Payout of vacation leave so long as such payouts are  
12 permitted by applicable law and regulation;
- 13 5. Employee contributions to eligible deferred compensation  
14 plans; and
- 15 6. Effective July 1, 2009, payment of military differential  
16 wages.

17 b. "Compensation" shall not include any payment, as determined by the  
18 Board of Trustees, for the reimbursement of expenses or payments  
19 for housing or any other allowances whether or not classified as  
20 salary and wages. Notwithstanding any other provision of this  
21 Chapter, "compensation" shall not include:

- 22 1. Supplement/allowance provided to employee to purchase  
23 additional benefits such as health, life, or disability plans;
- 24 2. Travel supplement/allowance (nonaccountable allowance  
25 plans);
- 26 3. Employer contributions to eligible deferred compensation  
27 plans;
- 28 4. Employer-provided fringe benefits (additional benefits such  
29 as health, life, or disability plans);
- 30 5. Reimbursement of uninsured medical expenses;
- 31 6. Reimbursement of business expenses;
- 32 7. Reimbursement of moving expenses;
- 33 8. Reimbursement/payment of personal expenses;
- 34 9. Incentive payments for early retirement;
- 35 10. Bonuses paid incident to retirement;
- 36 11. Contract buyout/severance payments; and
- 37 12. Payouts for unused sick leave.

38 c. In the event an employer reports as "compensation" payments not  
39 specifically included or excluded as "compensation", such payments  
40 shall be "compensation" for retirement purposes only if the employer  
41 pays the Retirement System the additional actuarial liability created  
42 by such payments. However, any salary or other remuneration  
43 determined by Retirement Systems Division staff, upon  
44 investigation, to have been paid for the principal purpose of  
45 enhancing a member's benefits under the plan shall be presumed not  
46 to be compensation. A presumption by administrative staff that salary  
47 or other remuneration was paid for the principal purpose of  
48 enhancing the member's benefits under the plan may be rebutted by  
49 the member or by the employer on behalf of the member. Upon  
50 receipt of sufficient evidence to the contrary, the presumption that  
51 salary or other remuneration was paid for the principal purpose of

1 enhancing the member's benefits under the plan may be reversed. In  
2 all such cases, the decision as to whether the presumption by  
3 administrative staff has been rebutted by sufficient evidence shall lie  
4 solely within the discretion of the Board of Trustees."

5 **SECTION 3.(b)** G.S. 135-1(7a) reads as rewritten:

6 "(7a) a. "Compensation" shall mean all salaries and wages prior to any  
7 reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and  
8 457 of the Internal Revenue Code, not including any terminal  
9 payments for unused sick leave, derived from public funds which are  
10 earned by a member of the Retirement System for service as an  
11 employee or teacher in the unit of the Retirement System for which  
12 he is performing full-time work. In addition to the foregoing,  
13 "compensation" shall include:

- 14 1. Performance-based compensation (regardless of whether paid  
15 in a lump sum, in periodic installments, or on a monthly  
16 basis);
- 17 2. Conversion of additional benefits to salary (additional  
18 benefits such as health, life, or disability plans), so long as the  
19 benefits are other than mandated by State law or regulation;
- 20 3. Payment of tax consequences for benefits provided by the  
21 employer, so long as they constitute an adjustment or increase  
22 in salary and not a "reimbursement of expenses";
- 23 4. Payout of vacation leave so long as such payouts are  
24 permitted by applicable law and regulation;
- 25 5. Employee contributions to eligible deferred compensation  
26 plans; and
- 27 6. Effective July 1, 2009, payment of military differential  
28 wages.

29 b. "Compensation" shall not include any payment, as determined by the  
30 Board of Trustees, for the reimbursement of expenses or payments  
31 for housing or any other allowances whether or not classified as  
32 salary and wages. "Compensation" includes all special pay  
33 contribution of annual leave made to a 401(a) Special Pay Plan for  
34 the benefit of an employee. Notwithstanding any other provision of  
35 this Chapter, "compensation" shall not include:

- 36 1. Supplement/allowance provided to employee to purchase  
37 additional benefits such as health, life, or disability plans;
- 38 2. Travel supplement/allowance (nonaccountable allowance  
39 plans);
- 40 3. Employer contributions to eligible deferred compensation  
41 plans;
- 42 4. Employer-provided fringe benefits (additional benefits such  
43 as health, life, or disability plans);
- 44 5. Reimbursement of uninsured medical expenses;
- 45 6. Reimbursement of business expenses;
- 46 7. Reimbursement of moving expenses;
- 47 8. Reimbursement/payment of personal expenses;
- 48 9. Incentive payments for early retirement;
- 49 10. Bonuses paid incident to retirement;
- 50 10a. Local supplementation as authorized under G.S. 7A-300.1 for  
51 Judicial Department employees;

1 11. Contract buyout/severance payments; and

2 12. Payouts for unused sick leave.

- 3 c. In the event an employer reports as "compensation" payments not  
4 specifically included or excluded as "compensation", such payments  
5 shall be "compensation" for retirement purposes only if the employer  
6 pays the Retirement System the additional actuarial liability created  
7 by such payments. However, any salary or other remuneration  
8 determined by Retirement Systems Division staff, upon  
9 investigation, to have been paid for the principal purpose of  
10 enhancing a member's benefits under the plan shall be presumed not  
11 to be compensation. A presumption by administrative staff that salary  
12 or other remuneration was paid for the principal purpose of  
13 enhancing the member's benefits under the plan may be rebutted by  
14 the member or by the employer on behalf of the member. Upon  
15 receipt of sufficient evidence to the contrary, the presumption that  
16 salary or other remuneration was paid for the principal purpose of  
17 enhancing the member's benefits under the plan may be reversed. In  
18 all such cases, the decision as to whether the presumption by  
19 administrative staff has been rebutted by sufficient evidence shall lie  
20 solely within the discretion of the Board of Trustees."

21 **SECTION 4.** G.S. 135-18.11 reads as rewritten:

22 **"§ 135-18.11. Improper receipt of decedent's retirement allowance.**

23 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
24 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
25 retirement allowance or a decedent's monthly benefit under the Disability Income Plan of North  
26 Carolina and the person (i) knows that he or she is not entitled to the decedent's retirement  
27 ~~allowance~~, allowance or the monthly disability benefit, (ii) receives the benefit at least two  
28 months after the date of the retiree's death, and (iii) does not attempt to inform this Retirement  
29 System of the retiree's death."

30 **SECTION 5.(a)** G.S. 128-28(l) reads as rewritten:

31 "(l) Medical Board. – The Board of Trustees shall designate a Medical Board to be  
32 composed of not less than three nor more than five physicians not eligible to participate in the  
33 Retirement System. The Board of Trustees may structure appointment requirements and term  
34 durations for those medical board members. If required, other physicians may be employed to  
35 report on special cases. The Medical Board shall arrange for and pass upon all medical  
36 examinations required under the provisions of this Chapter, and shall investigate all essential  
37 statements and certificates by or on behalf of a member in connection with an application for  
38 disability retirement, and shall report in writing to the Board of Trustees its conclusion and  
39 recommendations upon all the matters referred to it."

40 **SECTION 5.(b)** G.S. 135-6(k) reads as rewritten:

41 "(k) Medical Board. – The Board of Trustees shall designate a medical board to be  
42 composed of not less than three nor more than five physicians not eligible to participate in the  
43 Retirement System. The Board of Trustees may structure appointment requirements and term  
44 durations for those medical board members. If required, other physicians may be employed to  
45 report on special cases. The medical board shall arrange for and pass upon all medical  
46 examinations required under the provisions of this Chapter, and shall investigate all essential  
47 statements and certificates by or on behalf of a member in connection with an application for  
48 disability retirement, and shall report in writing to the Board of Trustees its conclusion and  
49 recommendations upon all the matters referred to it."

50 **SECTION 6.** This act becomes effective July 1, 2012.