

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 180

Short Title: State Benefits/Pension Revisions.-AB (Public)

Sponsors: Representatives Goodwin and McNeill (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Pensions and Retirement, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

February 27, 2019

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM'S AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM'S ABILITIES TO COLLECT REIMBURSEMENTS FOR OVERPAYMENTS MADE TO REEMPLOYED BENEFICIARIES, TO EXTEND THE LEGISLATIVE ENACTMENT IMPLEMENTATION ARRANGEMENT UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, TO ALLOW THE STATE TREASURER TO PERFORM CRIMINAL BACKGROUND CHECKS, AND TO MAKE CHANGES RELATED TO THE NORTH CAROLINA STATE HEALTH PLAN.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-3(8)c1 reads as rewritten:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If ~~such a~~ the required report is not received within the required 90 days, the Board may ~~assess do any or all of the following~~:

1. Assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty five dollars (\$25.00).



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1 2. Require the employer to reimburse the Retirement System for
 2 any retirement allowance paid to the beneficiary during a
 3 period when the allowance would have been suspended under
 4 sub-subdivision c. of this subdivision had the report been
 5 received within the required 90 days.

6 3. Require the employer to pay any amounts that the beneficiary
 7 would have been required to pay to the Retirement System
 8 under sub-subdivision f. of this subdivision had the report been
 9 received within the required 90 days.

10 Upon receipt by the employer of notice that ~~a penalty has been~~
 11 ~~assessed under this sub-subdivision,~~ any payment is due to the
 12 Retirement System under this sub-subdivision, the employer shall
 13 remit the payment of the ~~penalty amount due~~ to the Retirement
 14 System, in one lump sum, no later than 90 days from the date of the
 15 notice.

16 If an employer is required to make payments to the Retirement System
 17 under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this
 18 sub-subdivision, then (i) the beneficiary shall have no obligation to
 19 reimburse the Retirement System for related amounts under
 20 sub-subdivisions c. or f. of this subdivision, (ii) the provisions of
 21 G.S. 135-9(b) relating to offsetting overpayments against payments
 22 made from the Retirement System to the member or beneficiary shall
 23 not apply, (iii) the Retirement System shall have no duty under
 24 G.S. 143-64.80 to pursue repayment of overpayments from the
 25 beneficiary, (iv) the overpayments shall not be considered a debt of
 26 the beneficiary under Chapter 105A of the General Statutes, and (v)
 27 the beneficiary's effective date of retirement shall be adjusted if the
 28 adjustment is required under sub-subdivision f. of this subdivision."

29 **SECTION 1.(b)** G.S. 128-24(5)c1 reads as rewritten:

30 "c1. Within 90 days of the end of each month in which a beneficiary is
 31 reemployed under the provisions of sub-subdivision c. of this
 32 subdivision, each employer shall provide a report for that month on
 33 each reemployed beneficiary, including the terms of the
 34 reemployment, the date of the reemployment, and the amount of the
 35 monthly compensation. ~~If such a~~ the required report is not received
 36 within the required 90 days, the Board may ~~assess do any or all of the~~
 37 following:

38 1. Assess the employer with a penalty of ten percent (10%) of the
 39 compensation of the unreported reemployed beneficiaries
 40 during the months for which the employer did not report the
 41 reemployed beneficiaries, with a minimum penalty of
 42 twenty-five dollars (\$25.00). If after being assessed a penalty,
 43 an employer provides clear and convincing evidence that the
 44 failure to report resulted from a lack of oversight or some other
 45 event beyond the employer's control and was not a deliberate
 46 attempt to omit the reporting of reemployed beneficiaries, the
 47 Board may reduce the penalty to not less than two percent (2%)
 48 of the compensation of the unreported reemployed
 49 beneficiaries during the months for which the employer failed
 50 to report, with a minimum penalty of twenty-five dollars
 51 (\$25.00).

1 the management of the Board of Trustees. The purpose of the LEIA is to provide for timely
2 administrative implementation of legislative provisions regarding the retirement of, or payment
3 of retirement benefits to, public officers or public employees. The LEIA shall have the following
4 parameters:

5 ...

- 6 (2) Funding of the LEIA. – In the event that the General Assembly creates or
7 modifies any provision for the retirement of, or payment of retirement benefits
8 to, public officers or public employees that has a cost savings as measured by
9 actuarial note required by Article 15 of Chapter 120 of the General Statutes,
10 the Board of Trustees may direct up to one hundredth percent (0.01%) of the
11 required contributions to fund the LEIA. These funds must be deposited in a
12 separate fund from the fund into which regular employer contributions are
13 deposited for the Retirement System. The Board of Trustees shall not direct
14 any employer contributions into the LEIA after November 1, ~~2021~~2026.

15"

16 **SECTION 3.** Article 6 of Chapter 147 of the General Statutes is amended by adding
17 a new section to read:

18 **"§ 147-75.1. Criminal record checks for the Department of State Treasurer.**

19 (a) The Department of State Treasurer may obtain from the State and National
20 Repositories of Criminal Histories or from any other lawful source the criminal history of any of
21 the following individuals:

- 22 (1) A current or prospective permanent or temporary employee of the Department
23 of State Treasurer.
24 (2) A contractor with the Department of State Treasurer.
25 (3) An employee or agent of a contractor with the Department of State Treasurer
26 who is performing or will perform work for the Department of State Treasurer.
27 (4) A volunteer of the Department of State Treasurer.
28 (5) Any other individual otherwise engaged by the Department of State Treasurer
29 who will have access to health or financial information or data maintained by
30 the Department of State Treasurer that is confidential or otherwise nonpublic.

31 (b) The Department of State Treasurer may deny employment to or dismiss any
32 individual identified under subdivisions (1), (2), (4), and (5) of subsection (a) of this section who
33 refuses to consent to a criminal history record check or to the use of fingerprints or other
34 identifying information required by the State or National Repositories of Criminal Histories. Any
35 refusal shall constitute just cause for the employment denial or the dismissal from employment.

36 (c) The Department of State Treasurer may extend a conditional offer of employment
37 pending the results of a criminal history record check authorized by this section."

38 **SECTION 4.(a)** Part 3 of Article 3B of Chapter 135 of the General Statutes is
39 amended by adding a new section to read:

40 **"§ 135-48.37B. Attachment and garnishment of overpayments and unpaid premiums from**
41 **individuals no longer employed by employing units.**

42 (a) Applicability. – This section applies to an individual who is no longer employed by
43 an employing unit and to whom any of the following circumstances apply:

- 44 (1) An overpayment or erroneous payment of benefits, claims, or other amounts
45 has been paid on behalf of the individual or individual's dependent by the Plan
46 and the amount owed had not been repaid to the Plan.
47 (2) Unpaid premiums are owed by the individual for coverage provided by the
48 Plan to the individual or the individual's dependent.

49 (b) Notice of Amount Due. – The Plan shall provide notice to an individual of the
50 amounts owed and provide the individual with at least 30 calendar days to respond to the notice

1 and either (i) repay the amount owed in full or (ii) enter into a payment plan approved by the
2 Plan for the amount owed.

3 (c) Attachment and Garnishment. – Intangible property that belongs to an individual, is
4 owed to an individual, or has been transferred by an individual under circumstances that would
5 permit it to be levied upon if it were tangible property is subject to attachment and garnishment
6 in payment of an overpayment or erroneous payment or unpaid premium that is due from the
7 individual and is collectible under this Article. Intangible personal property includes bank
8 deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property
9 incapable of manual levy or delivery.

10 A person who is in possession of intangible property that is subject to attachment and
11 garnishment is the garnishee and is liable for the amount the individual owes. The liability applies
12 only to the amount of the individual's property in the garnishee's possession, reduced by any
13 amount the individual owes the garnishee.

14 Provided any amount due remains unpaid and provided the individual has not entered into a
15 payment plan approved by the Plan, upon the expiration of the 30 calendar days required by
16 subsection (b) of this section, the Plan may submit to a financial institution, as defined in
17 G.S. 53B-2, information that identifies an individual who owes an overpayment or erroneous
18 payment or an unpaid premium that is collectible under this section and the amount due. The
19 Plan may submit the information on a quarterly basis or, with the agreement of the financial
20 institution, on a more frequent basis. A financial institution that receives the information must
21 determine the amount, if any, of intangible property it holds that belongs to the individual and
22 must inform the Plan of its determination. The Plan must reimburse a financial institution for its
23 costs in providing the information, not to exceed the amount payable to the financial institution
24 under G.S. 110-139 for providing information for use in locating a noncustodial parent.

25 No more than ten percent (10%) of an individual's wages or salary is subject to attachment
26 and garnishment. The wages or salary of an employee of the United States, the State, or a political
27 subdivision of the State are subject to attachment and garnishment.

28 (d) Notice to Garnishee. – Before the Plan attaches and garnishes intangible property in
29 payment of an overpayment or erroneous payment or unpaid premium, the Plan must send the
30 garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with
31 a return receipt requested, or, with the agreement of the garnishee, by electronic means. The
32 notice must contain all of the following information:

33 (1) The individual's name.

34 (2) The individual's social security number or federal identification number.

35 (3) The amount of money the individual owes the Plan.

36 (4) An explanation of the liability of a garnishee for the amounts owed.

37 (5) An explanation of the garnishee's responsibility concerning the notice.

38 (e) Action. – A garnishee must comply with a notice of garnishment or file a written
39 response to the notice within the time set in this subsection. A garnishee that is a financial
40 institution must comply or file a response within 20 days after receiving a notice of garnishment.
41 All other garnishees must comply or file a response within 30 days after receiving a notice of
42 garnishment. A written response must explain why the garnishee is not subject to garnishment
43 and attachment.

44 Upon receipt of a written response, the Plan must contact the garnishee and schedule a
45 conference to discuss the response or inform the garnishee of the Plan's position concerning the
46 response. If the Plan does not agree with the garnishee on the garnishee's liability, the Plan may
47 proceed to enforce the garnishee's liability any amounts owed under this section by civil action.

48 (f) Limitations. – Nothing in this Part shall be construed to limit the Plan's ability to
49 pursue alternative judicial remedies against an individual, including the pursuit of a judgment
50 and lien against real property."

1 **SECTION 4.(b)** This section is effective October 1, 2019, and applies to notices of
2 amounts due sent by the Plan on or after that date.

3 **SECTION 5.(a)** G.S. 135-48.1(9) reads as rewritten:

4 "(9) Dependent child. – Subject to the eligibility requirements of subsections (a)
5 and ~~(b)~~-(c) of G.S. 135-48.41, and except as provided in subsection (b) of
6 G.S. 135-48.41, any of the following individuals, up to the first month
7 following the dependent child's individual's 26th birthday:

8 a. A natural or legally adopted child or children of the employee, whether
9 or not the child is living with the employee.

10 b. A foster child or children of the employee, whether or not the child is
11 living with the employee.

12 c. A child for which an employee is a court-appointed guardian.

13 d. A stepchild of a member who is married to the stepchild's natural
14 parent.

15 e. Repealed by Session Laws 2011-96, s. 3(a), effective July 1, 2011."

16 **SECTION 5.(b)** G.S. 135-48.41 read as rewritten:

17 "**§ 135-48.41. Additional eligibility provisions.**

18 ...

19 (b) ~~A dependent child shall not be eligible for coverage under the Plan if the dependent~~
20 ~~child is eligible for employer based health care outside of the State Health Plan for Teachers and~~
21 ~~State Employees, other than a parent's claim. Coverage~~ Notwithstanding the age requirement
22 under G.S. 135-48.1(9), coverage of a dependent child may be extended continued beyond the
23 dependent child's 26th birthday if the dependent child is physically or mentally incapacitated to
24 ~~the extent that he or she is incapable of earning a living and (i) such handicap developed or began~~
25 ~~to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to~~
26 ~~develop before the dependent's 26th birthday disabled and if the dependent child was covered by~~
27 ~~the Plan in accordance with G.S. 135-48.40(d)(7) on the dependent child's 26th birthday.~~
28 Verification of the dependent child's disability must be provided to the Plan no later than 60 days
29 after the dependent child's 26th birthday.

30 (c) No person shall be eligible for coverage as a dependent if eligible as an employee or
31 retired employee, except when a spouse is eligible on a fully contributory ~~basis.~~ basis or when
32 the person is a dependent child. In addition, no person shall be eligible for coverage as a
33 dependent of more than one employee or retired employee at the same time.

34 "

35 **SECTION 5.(c)** This section is effective when it becomes law and applies to all new
36 enrollment or reenrollment in the State Health Plan on and after that date.

37 **SECTION 6.(a)** G.S. 135-48.37 reads as rewritten:

38 "**§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.**

39 (a) ~~The Plan shall have the right of subrogation upon all of the Plan member's right to~~
40 ~~recover from a liable third party for payment made under the Plan, Notwithstanding any other~~
41 provisions of law to the contrary, the Plan shall be subrogated to all Plan member rights of
42 recovery, contractual or otherwise, including first-party underinsured or MedPay coverage or
43 third-party insurance coverage, for all medical expenses, including provider, hospital, surgical,
44 or prescription drug expenses, to the extent those payments are the recovery is related to an injury
45 caused by a liable third party. A personal injury or wrongful death claim brought by a Plan
46 member or a Plan member's representative or estate against a third party shall include a claim for
47 all medical assistance payments for health care items or services furnished to the Plan member
48 as a result of the injury. Any personal injury or wrongful death claim brought by a Plan member
49 or Plan member's representative or estate against a third party that does not include the Plan's
50 claim shall be deemed to include the Plan's claim. The Plan's claim shall be a lien upon any
51 recovery that a Plan member or Plan member's representative or estate obtains.

1 (a1) ~~The Plan member shall do nothing to prejudice these rights. the Plan's rights under~~
2 ~~this section. The Plan has the right to first recovery-recovery over all nongovernmental liens and~~
3 ~~rights, on any amounts so-recovered, recovered that are related to an injury caused by a liable~~
4 ~~third party regardless of (i) whether the nongovernmental liens and rights arose prior to or arise~~
5 ~~subsequent to the Plan's lien, (ii) whether the amount was recovered by the Plan or Plan, the Plan~~
6 ~~member, or the Plan member's representative or estate, and (iii) whether the amount was~~
7 ~~recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any~~
8 ~~other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall~~
9 ~~not apply to the Plan's right of subrogation of Plan members.~~

10 (b) If the Plan is precluded from exercising its right of subrogation, it may exercise its
11 rights of recovery against any third party who was overpaid. If the Plan recovers damages from
12 a liable third party in excess of the claims paid, any excess will be paid to the member, less a
13 proportionate share of the costs of collection.

14 (c) In the event a Plan member or a Plan member's representative or estate recovers any
15 amounts from a liable third party to which the Plan is entitled under this section, the Plan may
16 recover the amounts directly from the Plan member-member, the Plan member's representative
17 or estate, or the insurance company. If, prior to the Plan exercising its rights under this section, a
18 Plan member or the Plan member's representative or estate utilizes or otherwise disposes of any
19 amounts that were recovered from a liable third party to which the Plan is entitled under this
20 section, then the Plan may pursue alternative judicial remedies against the Plan member or Plan
21 member's representative or estate to recover the amount to which the Plan is entitled, including
22 the pursuit of a judgment and lien against real property.

23 (c1) The Plan has a lien, for not more than the value of claims paid related to the liability
24 of the third party, on any damages subsequently recovered by a Plan member or a Plan member's
25 representative or estate against any liable third party. If the Plan member or Plan member's
26 representative or estate fails to pursue the remedy against a liable third party, the Plan is
27 subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own
28 name or in the name of the Plan member for the amount paid by the Plan.

29 (c2) Within 14 days of receipt of the proceeds of a settlement or judgment related to a
30 claim under this section, the Plan member, the Plan member's representative or estate, or the
31 insurance company shall notify the Plan of the receipt of proceeds.

32 (c3) Within 30 days of receipt of the proceeds of a settlement or judgment related to a
33 claim under this section, the Plan member, the Plan member's representative or estate, or the
34 insurance company shall distribute to the Plan an amount sufficient to fully satisfy the Plan's lien
35 as required by this section. If that amount is not distributed to the Plan member within 30 days,
36 then the Plan may recover the amount directly from the Plan member or the Plan member's estate
37 or Plan member's representative through any remedy available to the Plan.

38 (d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages
39 recovered by the Plan member, exclusive of the Plan member's reasonable and proportionate
40 costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the
41 Plan as to the reasonable ~~cost~~-and proportionate costs of collection is conclusive and is not a
42 "final agency decision" for purposes of a contested case under Chapter 150B of the General
43 Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is
44 represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

45 (e) ~~The priority of any lien held by the State Health Plan for Teachers and State~~
46 ~~Employees shall be superior to all nongovernmental liens and rights, whether such liens and~~
47 ~~rights are prior or subsequent to the lien.~~

48 (f) Any governmental liens having priority over the Plan's right to first recovery shall be
49 deducted from the total damages recovered by the Plan member or Plan member's representative
50 or estate before satisfying the Plan's lien. In no event shall other liens be deducted from the Plan's
51 right to recovery under this section. If insufficient funds remain to fully satisfy the Plan's lien

1 after deducting the Plan member's or the Plan member's representative's or estate's costs of
2 collection and any priority liens from the total damages recovered, then the Plan shall be entitled
3 to receive the remaining balance of the total damages recovered by the Plan member or Plan
4 member's representative or estate."

5 **SECTION 6.(b)** This section is effective when it becomes law and applies to claims
6 brought by Plan members or Plan members' representatives or estates on or after that date, as
7 well as liens arising on or after that date.

8 **SECTION 7.(a)** G.S. 135-48.41 is amended by adding a new subsection to read:

9 "(L) If an employee or retiree withdraws his or her accumulated contributions and then
10 later is reemployed as an employee, then the date of reemployment will be considered the first
11 hired date for purposes of membership eligibility in the Plan. Any rights granted under this
12 Article relating to the hire date associated with the withdrawn contributions shall be void ab initio
13 as a matter of law."

14 **SECTION 8.** G.S. 135-48.33(a) reads as rewritten:

15 "(a) The Board of Trustees must approve all Plan contracts in excess of five hundred
16 thousand dollars (\$500,000), one million dollars (\$1,000,000) including contracts with an initial
17 cost of less than five hundred thousand dollars (\$500,000), one million dollars (\$1,000,000), but
18 that may exceed five hundred thousand dollars (\$500,000) one million dollars (\$1,000,000)
19 during the term of the contract."

20 **SECTION 9.** G.S. 135-48.25 reads as rewritten:

21 **"§ 135-48.25. Rules.**

22 (a) The State Treasurer, in consultation with the Board of Trustees, may adopt rules to
23 implement this Article. The State Treasurer shall provide to all employing units, all health benefit
24 representatives, all relevant health care providers affected by a rule, and to any other persons
25 requesting a written description and approved by the State Treasurer written notice and an
26 opportunity to comment not later than 30 days prior to adopting, amending, or rescinding a rule,
27 unless immediate adoption of the rule without notice is necessary in order to fully effectuate the
28 purpose of the rule. Rules of the Board of Trustees shall remain in effect until amended or
29 repealed by the State Treasurer. The State Treasurer shall provide a written description of the
30 rules adopted under this section to all employing units, all health benefit representatives, all
31 relevant health care providers affected by a rule, and to any other persons requesting a written
32 description and approved by the State Treasurer on a timely basis. Rules adopted by the State
33 Treasurer to implement this Article are not subject to Article 2A of Chapter 150B of the General
34 Statutes.

35 (b) The State Treasurer shall provide at least 30 calendar days for interested parties to
36 comment prior to adopting, amending, or repealing a rule, unless immediate adoption,
37 amendment, or repealing of the rule without notice is necessary in order to fully effectuate the
38 purpose of the rule. A rule remains in effect until amended or repealed by the State Treasurer.
39 Upon request and in a timely manner, the State Treasurer shall provide a written description of a
40 rule adopted under this section.

41 (c) Benefit booklets published by the Department of State Treasurer on its Web site shall
42 have the force and effect of rules for the applicable benefit year. This subsection applies, but is
43 not limited in its application, to contested cases brought by employees, retired employees,
44 dependents of employees, and dependents of retired employees under Article 3 of Chapter 150B
45 of the General Statutes regarding (i) an eligibility, premium credit, or other enrollment-related
46 determination made by the Plan or (ii) the administration of Plan benefit offerings and
47 exclusions."

48 **SECTION 9.(b)** This section is effective when it becomes law and applies to rules
49 adopted on or after that date and contested cases brought on or after that date.

50 **SECTION 10.(a)** G.S. 135-48.22(3) is repealed.

51 **SECTION 10.(b)** G.S. 135-48.24 reads as rewritten:

1 **"§ 135-48.24. Administrative review.**

2 (a) If, after exhaustion of internal appeal handling as outlined in the contract with the
 3 Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the
 4 attention of the Executive Administrator ~~and Board of Trustees, which who~~ shall promptly decide
 5 whether the subject matter of the appeal is a determination subject to external review under Part
 6 4 of Article 50 of Chapter 58 of the General Statutes. The Executive Administrator ~~and Board of~~
 7 ~~Trustees~~ shall inform the aggrieved person and the aggrieved person's provider of the decision
 8 and shall provide the aggrieved person notice of the aggrieved person's right to appeal that
 9 decision as provided in this subsection. If the Executive Administrator ~~and Board of Trustees~~
 10 ~~decide finds~~ that the subject matter of the appeal is not a determination subject to external review,
 11 then the Executive Administrator ~~and Board of Trustees~~ may make a binding decision on the
 12 matter in accordance with procedures established by the Executive Administrator ~~and Board of~~
 13 ~~Trustees~~. ~~The Executive Administrator and Board of Trustees shall provide a written summary~~
 14 ~~of the decisions made pursuant to this section to all employing units, all health benefit~~
 15 ~~representatives, all relevant health care providers affected by a decision, and to any other parties~~
 16 ~~requesting a written summary and approved by the Executive Administrator and Board of~~
 17 ~~Trustees to receive a summary immediately following the issuance of a decision.~~ Administrator.
 18 A decision by the Executive Administrator ~~and Board of Trustees~~ that a matter raised on internal
 19 appeal is a determination subject to external review as provided in subsection (b) of this section
 20 may be contested by the aggrieved person under Chapter 150B of the General Statutes. The
 21 person contesting the decision may proceed with external review pending a decision in the
 22 contested case under Chapter 150B of the General Statutes.

23 (b) The State Treasurer, in consultation with the Board of Trustees, shall adopt and
 24 implement utilization review and internal grievance procedures that are substantially equivalent
 25 to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations
 26 shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes.
 27 As used in this section, "determination" is a decision by the State Treasurer, or the Plan's
 28 designated utilization review organization administrated by or under contract with the Plan that
 29 an admission, availability of care, continued stay, or other health care service has been reviewed
 30 and, based upon information provided, does not meet the Plan's benefit offerings or requirements
 31 for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and
 32 the requested service is therefore denied, reduced, or terminated."

33 **SECTION 10.(c)** G.S. 150B-1(e) reads as rewritten:

34 "(e) Exemptions From Contested Case Provisions. – The contested case provisions of this
 35 Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The
 36 contested case provisions of this Chapter do not apply to the following:

37 ...

38 (13) The State Health Plan for Teachers and State Employees with respect to
 39 determinations by the Executive Administrator ~~and or the~~ Board of Trustees,
 40 the Plan's designated utilization review organization, or a self-funded health
 41 maintenance organization under contract with the Plan that an admission,
 42 availability of care, continued stay, or other health care service has been
 43 reviewed and, based upon the information provided, does not meet the Plan's
 44 benefit offering or requirements for medical necessity, appropriateness, health
 45 care setting, or level of care or effectiveness, and the requested service is
 46 therefore denied, reduced, or terminated.

47"

48 **SECTION 10.(d)** This section is effective when it becomes law and applies to
 49 administrative reviews and appeals requested or filed on or after that date.

50 **SECTION 11.(a)** G.S. 135-48.2(a) reads as rewritten:

51 **"§ 135-48.2. Undertaking.**

1 (a) The State of North Carolina undertakes to make available a State Health Plan
2 (~~hereinafter called the "Plan"~~)-exclusively for the benefit of eligible employees, eligible retired
3 employees, and certain of their eligible dependents, ~~which that~~ will pay benefits in accordance
4 with the terms of this Article. The Plan shall have all the powers and privileges of a corporation
5 and shall be known as the State Health Plan for Teachers and State Employees. The State
6 Treasurer, Executive Administrator, and Board of Trustees shall carry out their duties and
7 responsibilities as fiduciaries for the Plan. The Plan shall administer one or more group health
8 plans that are comprehensive in coverage. The State Treasurer may operate group plans as a
9 preferred provider option, or health maintenance, point-of-service, or other organizational
10 arrangement. The State Treasurer may also operate a flexible compensation plan for eligible
11 employees, eligible retired employees, and certain of their eligible dependents, including dental
12 and vision health benefit offerings paid for at full contribution by employees and retired
13 employees."

14 **SECTION 11.(b)** G.S. 135-48.1(2b) reads as rewritten:

15 "(2b) Claim Payment Data. – Data fields within a Claims Data Feed that reflect the
16 provider and the amount the provider billed for services provided to a Plan
17 member, the allowed amount applied to the claim by the Claims Processor,
18 ~~and~~ the amount paid by the Plan on the claim, claim, and the rate negotiated
19 with or agreed to by the provider. The term "Claim Payment Data" includes
20 any document, material, or other work, whether tangible or electronic, that is
21 derived from, is based on, or reflects any of the foregoing data fields or
22 information contained therein. If the Claims Processor designates Claim
23 Payment Data as a trade secret, the Claim Payment Data shall be treated as a
24 trade secret as defined in G.S. 66-152(3)."

25 **SECTION 11.(c)** G.S. 135-48.32 reads as rewritten:

26 **"§ 135-48.32. Contracts to provide benefits.**

27 (a) The Plan benefits shall be provided under contracts between the Plan and the claims
28 processors selected by the Plan. The contracts necessarily will conform to applicable State law.

29 (b) Unless otherwise directed by the Plan, each Claims Processor shall provide the Plan
30 with a Claims Data Feed, which includes all Claim Payment Data, at a frequency agreed to by
31 the Plan and the Claims Processor. The frequency shall be no less than monthly. The Claims
32 Processor is ~~not~~ required to disclose Claim Payment Data that reflects rates negotiated with or
33 agreed to by a ~~noncontracted third party but, upon request, shall provide to the Plan sufficient~~
34 ~~documentation to support the payment of claims for which Claim Payment Data is withheld on~~
35 ~~such basis.provider.~~

36 (c) Any provision of any contract between a Claims Processor and a health care provider,
37 subcontractor, or third party that would prevent or prohibit the Claims Processor from disclosing
38 Claim Payment Data to the Plan, in accordance with this section, shall be void and unenforceable,
39 but only to the extent the provision prevents and prohibits disclosure to the Plan.

40 (d) The Plan may use and disclose Claim Payment Data solely for the purpose of
41 administering and operating the State Health Plan for Teachers and State Employees in
42 accordance with G.S. 135-48.2 and the provisions of this Article. The Plan shall not make any
43 use or disclosure of Claim Payment Data that would compromise the proprietary nature of the
44 data or, as applicable, its status as a trade secret, or otherwise misappropriate the data.

45 (e) ~~The Plan may not use a provider's Claim Payment Data to negotiate rates, fee~~
46 ~~schedules, or other master charges with that provider or any other provider.~~

47 (f) The Plan may disclose Claim Payment Data to a third party to use on the Plan's behalf
48 as agreed upon between the Plan and the Claims Processor. The Plan must ~~obtain the agreement~~
49 ~~of~~ provide notice to the Claims Processor for each third party to whom the Plan seeks to disclose
50 Claim Payment Data and for each use the third party will make of the data. The Plan may not
51 disclose Claim Payment Data to any third party without first entering into a contract with the

1 third party that contains restrictions on the use and disclosure of the Claim Payment Data by the
2 third party that are at least as restrictive as the provisions of this section.

3 (g) A Claims Processor who discloses Claim Payment Data in accordance with this
4 section shall not incur any civil liability and shall not be subject to equitable relief in connection
5 for the disclosure."

6 **SECTION 12.** If any provision of this act or its application is held invalid, the
7 invalidity does not affect other provisions or applications of this act that can be given effect
8 without the invalid provisions or application, and to this end the provisions of this act are
9 severable.

10 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
11 law.