

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H.B. 1074
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HOUSE PRINCIPAL CLERK

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HOUSE DRH80303-LL-185 (05/01)

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

(Public)

Sponsors: Representative Moffitt.

Referred to:

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.



* D R H 8 0 3 0 3 - L L - 1 8 5 *

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.