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HOUSE BILL 1074
Committee Substitute Favorable 6/13/12
Third Edition Engrossed 6/20/12
Senate Pensions & Retirement and Aging Committee Substitute Adopted 6/27/12

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

(Public)

Sponsors:

Referred to:

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 PROVIDE PROTECTION AND REMEDIES FOR REPORTING VIOLATIONS OF RETIREMENT LAW; 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 MAKE IT A CLASS 1 MISDEMEANOR TO FRAUDULENTLY RECEIVE A DECEDENT'S MONTHLY DISABILITY BENEFIT; AND TO CLARIFY THE APPOINTMENT OF THE MEDICAL BOARD.

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.



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

...
 (5a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

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

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

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

...."

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

"§ 135-1. Definitions.

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

...
 (5a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

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

(11b) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to

1 help detect and prevent fraud and to ensure full accountability in the use of
2 pension funds.

3 ~~(11b)~~(11c) "Law-Enforcement Officer" means a full-time paid employee of an employer
4 who is actively serving in a position with assigned primary duties and
5 responsibilities for prevention and detection of crime or the general
6 enforcement of the criminal laws of the State of North Carolina or serving
7 civil processes, and who possesses the power of arrest by virtue of an oath
8 administered under the authority of the State.

9 "...."

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

11 "(r) Fraud Investigations – Access to Persons and Records. – In the course of conducting
12 a fraud investigation, the Retirement Systems Division, or authorized representatives who are
13 assisting the Retirement Systems Division staff, shall:

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

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

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

25 b. Amounts received, disbursed, or otherwise handled on behalf of the
26 federal government or the State.

27 (3) Have the authority, and shall be provided with ready access, to examine and
28 inspect all property, equipment, and facilities in the possession of any
29 employer agency or any individual, private corporation, institution,
30 association, board, or other organization that were furnished or otherwise
31 provided through grant, contract, or any other type of funding by the
32 employer agency.

33 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of
34 social and medical services to a beneficiary shall make copies of records they maintain for
35 services provided to a beneficiary available to the Retirement Systems Division, or to the
36 authorized representatives who are assisting the Retirement Systems Division staff. Copies of
37 the records of social and medical services provided to a beneficiary will permit verification of
38 the health or other status of a beneficiary as required for the payment of benefits under Article
39 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are
40 assisting the Retirement Systems Division staff, shall request records in writing by providing
41 the name of each beneficiary for whom records are sought, the purpose of the request, the
42 statutory authority for the request, and a reasonable period of time for the production of record
43 copies by the provider. A provider may charge, and the Retirement Systems Division, or
44 authorized representatives who are assisting the Retirement Systems Division staff, shall, in
45 accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records
46 provided in accordance with this subsection.

47 (s) Fraud Investigative Reports and Work Papers. – The Director of the Retirement
48 Systems Division shall maintain for 10 years a complete file of all fraud investigative reports
49 and reports of other examinations, investigations, surveys, and reviews issued under the
50 Director's authority. Fraud investigation work papers and other evidence or related supportive
51 material directly pertaining to the work of the Retirement Systems Division of the Department

1 of State Treasurer shall be retained according to an agreement between the Director of
2 Retirement and State Archives. To promote intergovernmental cooperation and avoid
3 unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel
4 policies to the contrary, pertinent work papers and other supportive material relating to issued
5 fraud investigation reports may be, at the discretion of the Director of Retirement and unless
6 otherwise prohibited by law, made available for inspection by duly authorized representatives
7 of the State and federal government who desire access to and inspection of such records in
8 connection with some matter officially before them, including criminal investigations. Except
9 as provided in this section, or upon an order issued in Wake County Superior Court upon 10
10 days' notice and hearing finding that access is necessary to a proper administration of justice,
11 fraud investigation work papers and related supportive material shall be kept confidential,
12 including any information developed as a part of the investigation.

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

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

17 "(q) Fraud Investigations – Access to Persons and Records. – In the course of conducting
18 a fraud investigation, the Retirement Systems Division, or authorized representatives who are
19 assisting the Retirement Systems Division staff, shall:

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

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

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

31 b. Amounts received, disbursed, or otherwise handled on behalf of the
32 federal government or the State.

33 (3) Have the authority, and shall be provided with ready access, to examine and
34 inspect all property, equipment, and facilities in the possession of any
35 employer agency or any individual, private corporation, institution,
36 association, board, or other organization that were furnished or otherwise
37 provided through grant, contract, or any other type of funding by the
38 employer agency.

39 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of
40 social and medical services to a beneficiary shall make copies of records they maintain for
41 services provided to a beneficiary available to the Retirement Systems Division, or to the
42 authorized representatives who are assisting the Retirement Systems Division staff. Copies of
43 the records of social and medical services provided to a beneficiary will permit verification of
44 the health or other status of a beneficiary as required for the payment of benefits under Article
45 1, Article 4, or Article 6 of this Chapter. The Retirement Systems Division, or authorized
46 representatives who are assisting the Retirement Systems Division staff, shall request records in
47 writing by providing the name of each beneficiary for whom records are sought, the purpose of
48 the request, the statutory authority for the request, and a reasonable period of time for the
49 production of record copies by the provider. A provider may charge, and the Retirement
50 Systems Division, or authorized representatives who are assisting the Retirement Systems

1 Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for
2 copies of the records provided in accordance with this subsection.

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

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

23 **SECTION 3.(a)** G.S. 135-18.11 reads as rewritten:

24 "**§ 135-18.11. Improper receipt of decedent's retirement ~~allowance~~ allowance or disability**
25 **benefit.**

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

33 **SECTION 3.(b)** G.S. 135-111 reads as rewritten:

34 "**§ 135-111. Applicability of other pension laws.**

35 Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption
36 from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud";
37 G.S. 135-10.1, entitled "Failure to Respond"; G.S. 135-18.11, entitled "Improper receipt of
38 decedent's retirement allowance or disability benefit"; and G.S. 135-17, entitled "Facility of
39 payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of
40 this Article."

41 **SECTION 4.(a)** G.S. 128-28(l) reads as rewritten:

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

51 **SECTION 4.(b)** G.S. 135-6(k) reads as rewritten:

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

10 **SECTION 5.** Section 3(a) of this act becomes effective December 1, 2012, and
11 applies to acts committed on or after that date. The remainder of this act becomes effective
12 July 1, 2012.