

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 626

Short Title: Realistic Evaluation of Actuarial Liabilities. (Public)

Sponsors: Representatives McNeill and Ross (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

April 8, 2019

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STRESS TESTING FOR THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, AS RECOMMENDED BY THE PEW FOUNDATION; TO MAKE AMENDMENTS RELATED TO THE PENSION SOLVENCY FUND; TO MAKE AMENDMENTS TO SUBROGATION AND THE RIGHT OF RECOVERY OF THE NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES; AND TO CLARIFY THE LIEN PRIORITY OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AS IT PERTAINS TO CHARTER SCHOOL PAYMENT PLANS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-6(n) reads as rewritten:

"(n) In 1943, and at least once in each five-year period thereafter, the actuary shall ~~make complete an actuarial investigation into~~ experience review of the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the Board of Trustees ~~shall~~ shall do all of the following:

- (1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed ~~necessary; and~~ necessary.
- (2) Certify the rates of contributions payable by the State of North Carolina on account of new entrants at various ages."

SECTION 1.(b) G.S. 135-6 is amended by adding two new subsections to read:

"(n1) Prior to undertaking each quinquennial actuarial experience review as required by this section, the Board of Trustees shall provide the General Assembly and the Governor a report that includes all of the following, as these items apply to the Retirement System:

- (1) A description of, and the process used to determine, the investment return assumption, utilized by the Board of Trustees when determining the contribution rates.
- (2) Projections of assets, liabilities, pension debt, service costs, employee contributions, employer contributions, net amortization, benefit payments, payroll, and funded ratio for the Retirement System for each of the next 30 years based upon the then-current actuarial assumptions, including the assumed rate of return.



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- 1 (3) Projections of assets, liabilities, pension debt, service costs, employee
2 contributions, employer contributions, net amortization, benefit payments,
3 payroll, and funded ratio for the Retirement System assuming that investment
4 returns are two and four percentage points lower than the assumed rate of
5 return and that the State makes employer contributions meeting all of the
6 following:
7 a. The contributions are based upon the then-current funding policy for
8 the Retirement System.
9 b. The contributions are held constant at the levels calculated for
10 subdivision (2) of this subsection.
11 c. The contributions never exceed fifteen percent (15%) of projected total
12 revenue available for appropriation by the General Assembly.
13 (4) Estimates for assets, liabilities, pension debt, service costs, employee
14 contributions, employer contributions, net amortization, benefit payments,
15 payroll, and funded ratio for the Retirement System if there is a one year loss
16 on planned investments of twenty percent (20%) followed by a 20-year period
17 of investment returns two percentage points below plan assumptions, with the
18 following assumptions regarding contributions:
19 a. The contributions are based upon the then-current funding policy for
20 the Retirement System.
21 b. The contributions are held constant at the levels calculated for
22 subdivision (2) of this subsection.
23 c. The contributions never exceed fifteen percent (15%) of projected total
24 revenue available for appropriation by the General Assembly.
25 (5) The estimated actuarially accrued liability, the total plan normal cost for all
26 benefit tiers if multiple tiers exist, and the employer normal cost for all benefit
27 tiers if multiple tiers exist, calculated using all of the following:
28 a. A discount rate equal to the assumed rate of return. If the discount rate
29 used by the Retirement System is different from the investment return
30 assumption, then the report shall provide a calculation of actuarially
31 accrued liability based upon a discount rate that is two percent (2%)
32 and four percent (4%) above and below the long-term rate of return
33 actually used by the Board of Trustees.
34 b. The 10-year average of the yield of 30-year treasury notes.
35 (6) A description of the amortization period for any unfunded liabilities utilized
36 by the Board of Trustees when determining the contribution rates.
37 (7) A calculation of the contribution rates based on an amortization period equal
38 to the estimated average remaining service periods of employees covered by
39 the contributions.
40 (8) A description of the interest assumption rate utilized by the Board of Trustees
41 for reporting liabilities and the process used to determine that assumption.
42 (9) The market value of the assets controlled by the Board of Trustees and an
43 explanation of how the actuarial value assigned to those assets differs from
44 the market value of those assets.
45 (10) An assessment of how the changes of assumptions adopted by the Board of
46 Trustees in the experience review affect any of the other results in the report.
47 (11) Any additional information deemed useful by the Board of Trustees or the
48 Investment Advisory Committee under G.S. 147-69.2 to evaluate or adjust the
49 investment policy statement or to evaluate adherence to or risk associated with
50 statutory constraints on investments.

1 (12) Any additional information deemed useful by the Board to evaluate current or
2 prospective funding or contribution policies.

3 (n2) With regards to payment for the administration of subsections (n), (n1), and (o) of this
4 section, the Retirement Systems Division of the Department of State Treasurer may increase
5 receipts from the retirement assets of the corresponding retirement system or may pay the costs
6 directly from the retirement assets."

7 **SECTION 2.** G.S. 143C-4-10(c) is amended by adding a new subdivision to read:

8 "(3) Any funds, in an amount directed by the State Treasurer to be transferred, that
9 meet all of the following criteria:

10 a. The funds are the result of rebates received by the Department of State
11 Treasurer from a company administering supplemental voluntary
12 insurance benefits authorized under G.S. 120-4.32(b), 128-38.3(b),
13 135-18.8(b), or 135-75(b).

14 b. The funds are not owed to a company administering, or individuals
15 participating in, supplemental voluntary insurance benefits.

16 c. As determined by the Board of Trustees of the Retirement System, the
17 funds are not to be needed to pay future administrative costs of the
18 supplemental voluntary insurance benefits."

19 **SECTION 3.** G.S. 135-48.5(a) reads as rewritten:

20 "(a) There are hereby established two health benefit trust funds, to be known as the Public
21 Employee Health Benefit Fund and the Health Benefit Reserve Fund for the payment of hospital
22 and medical benefits. As used in this section, the term "health benefit trust funds" refers to the
23 fund type described under G.S. 143C-1-3(a)(10).

24 All premiums, fees, charges, rebates, refunds or any other receipts including, but not limited
25 to, earnings on investments, occurring or arising in connection with health benefits programs
26 established by this Article, shall be deposited into the Public Employee Health Benefit Fund.
27 Disbursements from the Fund shall include any and all amounts required to pay the benefits and
28 administrative costs of such programs as may be determined by the Executive Administrator and
29 Board of Trustees.

30 Any unencumbered balance in excess of prepaid premiums or charges in the Public Employee
31 Health Benefit Fund at the end of each fiscal year shall be used ~~first, in the following order:~~

32 (1) First, to provide an actuarially determined Health Benefit Reserve Fund for
33 incurred but unrepresented ~~claims, second, claims.~~

34 (2) Second, an amount determined by the State Treasurer, subject to approval by
35 the Board of Trustees, that does not exceed fifty percent (50%) of any
36 unencumbered balance remaining after providing for incurred but unrepresented
37 claims may be transferred to the Retiree Health Benefit Fund, established
38 under G.S. 135-7(f). Upon the direction and approval of, and in the amount
39 specified by, the State Treasurer, the Office of State Budget Management shall
40 transfer the amount in accordance with this subdivision.

41 (3) Third, to reduce the premiums required in providing the benefits of the health
42 benefits ~~programs, and third programs.~~

43 (4) Fourth, to improve the plan, as may be provided by the ~~General~~
44 ~~Assembly.~~ State Treasurer, subject to approval by the Board of Trustees.

45 The balance in the Health Benefits Reserve Fund may be transferred from time to time to the
46 Public Employee Health Benefit Fund to provide for any deficiency occurring therein. The Public
47 Employee Health Benefit Fund and the Health Benefit Reserve Fund shall be deposited with the
48 State Treasurer and invested as provided in G.S. 147-69.2 and G.S. 147-69.3."

49 **SECTION 4.** G.S. 143C-4-10 is amended by adding a new subsection to read:

50 "(g) Funds Do Not Revert. – No portion of the Fund shall be transferred to the General
51 Fund and any appropriation made to the Fund shall not revert."

1 **SECTION 5.(a)** G.S. 135-48.37 reads as rewritten:

2 "**§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.**

3 (a) ~~The Plan shall have the right of subrogation upon all of the Plan member's right to~~
4 ~~recover from a liable third party for payment made under the Plan, Notwithstanding any other~~
5 ~~provisions of law to the contrary, the Plan shall be subrogated to all Plan member rights of~~
6 ~~recovery, contractual or otherwise, including first-party underinsured or MedPay coverage or~~
7 ~~third-party insurance coverage, for all medical expenses, including provider, hospital, surgical,~~
8 ~~or prescription drug expenses, to the extent these payments are the recovery is related to an injury~~
9 ~~caused by a liable third party. A personal injury or wrongful death claim brought by a Plan~~
10 ~~member or a Plan member's representative or estate against a third party shall include a claim for~~
11 ~~all medical assistance payments for health care items or services furnished to the Plan member~~
12 ~~as a result of the injury. Any personal injury or wrongful death claim brought by a Plan member~~
13 ~~or Plan member's representative or estate against a third party that does not include the Plan's~~
14 ~~claim shall be deemed to include the Plan's claim. The Plan's claim shall be a lien upon any~~
15 ~~recovery that a Plan member or Plan member's representative or estate obtains.~~

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

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

29 (c) In the event a Plan member or a Plan member's representative or estate recovers any
30 amounts from a liable third party to which the Plan is entitled under this section, the Plan may
31 recover the amounts directly from the Plan ~~member. member, the Plan member's representative~~
32 ~~or estate, or the insurance company.~~ If, prior to the Plan exercising its rights under this section, a
33 Plan member or the Plan member's representative or estate utilizes or otherwise disposes of any
34 amounts that were recovered from a liable third party to which the Plan is entitled under this
35 section, then the Plan may pursue alternative judicial remedies against the Plan member or Plan
36 member's representative or estate to recover the amount to which the Plan is entitled, including
37 the pursuit of a judgment and lien against real property.

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

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

47 (c3) Within 30 days of receipt of the proceeds of a settlement or judgment related to a
48 claim under this section, the Plan member, the Plan member's representative or estate, or the
49 insurance company shall distribute to the Plan an amount sufficient to fully satisfy the Plan's lien
50 as required by this section. If that amount is not distributed to the Plan member within 30 days,

1 then the Plan may recover the amount directly from the Plan member or the Plan member's estate
2 or Plan member's representative through any remedy available to the Plan.

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

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

13 (f) Any liens having priority over the Plan's right to first recovery shall be deducted from
14 the total damages recovered by the Plan member or Plan member's representative or estate before
15 satisfying the Plan's lien. In no event shall other liens be deducted from the Plan's right to
16 recovery under this section. If insufficient funds remain to fully satisfy the Plan's lien after
17 deducting the Plan member's or the Plan member's representative's or estate's costs of collection
18 and any priority liens from the total damages recovered, then the Plan shall be entitled to receive
19 the remaining balance of the total damages recovered by the Plan member or Plan member's
20 representative or estate."

21 **SECTION 5.(b)** G.S. 44-49(a) reads as rewritten:

22 "(a) From and after March 26, 1935, there is hereby created a lien upon any sums
23 recovered as damages for personal injury in any civil action in this State. This lien is in favor of
24 any person, corporation, State entity, municipal corporation or county to whom the person so
25 recovering, or the person in whose behalf the recovery has been made, may be indebted for any
26 drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse,
27 or hospital, or hospital attention or services rendered in connection with the injury in
28 compensation for which the damages have been recovered. Where damages are recovered for
29 and in behalf of minors or persons non compos mentis, the liens shall attach to the sum recovered
30 as fully as if the person were sui juris. The priority of a lien held by the State Health Plan for
31 Teachers and State Employees shall be superior to all nongovernmental medical liens and rights,
32 whether ~~such~~ those medical liens and rights are prior or subsequent to the lien."

33 **SECTION 5.(c)** G.S. 44-50 reads as rewritten:

34 "**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated;**
35 **evidence; attorney's fees; charges.**

36 A lien as provided under G.S. 44-49 shall also attach upon all funds paid to any person in
37 compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney
38 represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their
39 disbursement, any person that receives those funds shall retain out of any recovery or any
40 compensation so received a sufficient amount to pay the just and bona fide claims for any drugs,
41 medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or
42 hospital, or hospital attention or services, after having received notice of those claims. Evidence
43 as to the amount of the charges shall be competent in the trial of the action. Subject to
44 G.S. 135-48.37, the priority of a lien held by the State Health Plan for Teachers and State
45 Employees shall be superior to all nongovernmental medical liens and rights, whether ~~such~~ those
46 medical liens and rights are prior or subsequent to the lien. Nothing in this section or in
47 G.S. 44-49 shall be construed so as to interfere with any amount due for attorney's services. The
48 lien provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the
49 amount of damages recovered. Except as provided in G.S. 44-51, a client's instructions for the
50 disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to
51 the extent that the instructions conflict with the requirements of this Article."

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

4 **SECTION 6.** Section 3(b) of Session Law 2018-84 reads as rewritten:

5 **"SECTION 3.(b)** This section is effective when it becomes law and applies to charter
6 schools electing to cease participation in the Teachers' and State Employees' Retirement System
7 on or after that date. Priority of the lien over nongovernmental liens and rights, created under
8 subsection (a) of this section, shall apply only to nongovernmental liens and rights that have
9 attached to the applicable property on or after the effective date of this section. This section
10 expires June 14, 2023. Any charter school entering a withdrawal liability payment plan before
11 June 14, 2023, shall have the full three years to complete the payment plan and the lien priority
12 shall apply during the entire period of the payment plan."

13 **SECTION 7.** Except as otherwise provided, this act becomes effective July 1, 2019.