MEMORANDUM

TO:	Teachers' and State Employees' Retirement System and Local Governmental Employees' Retirement System Boards of Trustees
FROM:	Sam Watts, Retirement Systems Division Policy Development Analyst
DATE:	April 20, 2018
SUBJECT:	Recommended Agency Legislation for 2018

This memorandum focuses on items being recommended by the Department to the General Assembly for policy legislation that may be considered by the legislature during the 2018 Short Session.

The four bills being recommended are:

1. Financial Accountability, Integrity, and Recovery Act (FAIR) Act -AB
2. Retirement Complexity Reduction Act of 2018 -AB
3. Admin. Changes Ret. System/Treasurer - 2018 -AB
4. Technical Corrections Act of 2018 -AB

Bills Being Recommended

1: Financial Accountability, Integrity, and Recovery Act -AB

Section 1: Simplify Garnishment of Wages of State & Local Government Employees to Recover SHP/RSD Claims & Overpayments

135-48.37A; 135-7.3; 135-111; 128-29.2

Garnishment of wages of state and local government employees is allowed under current law, but employing agencies may choose not to allow the garnishment. This provision would require agencies to garnish wages of employees if monies are owed to the State Health Plan or the Retirement Systems Division.

Section 2: Increase Subrogation Rights for SHP Vendors Involved in Collections of Fraudulent Claims

135-48.37(e) [NEW]; [or include in (d)]

Improves the ability of vendors working on collections on behalf of the State Health Plan to use the power of the state to facilitate collections.

Section 3: Interception of Credit Card Receipts from SHP Providers/RSD Employers for Funds Owed

1-359(c) & (d) [NEW]
Allows SHP/RSD to intercept credit card receipts from providers and employing agencies to collect funds owed to the state. A similar provision has been successfully utilized by the Division of Employment Security.

Section 4: Place Liens on Real Property for Funds Owed to SHP/RSD
44-49(a); 44-50; 44-50.1; 44-51
Enhances ability of SHP/RSD to place liens on real estate owned by individuals who owe funds to the State Health Plan or the Retirement Systems.

Section 5/6: No Pay Go Funding Policies for Future OPEBs
143C [Section 5 & 6 will be combined in the bill language]
Adds a statutory prohibition within the Executive Budget Act to the creation of new pay-as-you-go OPEB plans. Under this provision, in order to create a new OPEB plan, the state would have to fund it on an actuarial reserve basis or repeal the new prohibition.

Section 6/5: Prohibition on Hidden Pension Debt/One-Year Amortization of Benefit Enhancements/Legislative Benefit Reserve
135‑8; 135-69; 120-4.20; 58-86-20; 127A-40; 143C [Section 5 & 6 will be combined in the bill language]
Requires the General Assembly to create a reserve upon the initial increase in required contributions by state employers resulting from a benefit improvement for all defined benefit retirement systems funded by state appropriations (TSERS/CJRS/LRS/ FRSWPF/NGPF). The General Assembly would appropriate funds to that reserve when a pension benefit enhancement is made or special bonus leave is granted. The reserve would be equal to the present value of future benefits attributable to the pension benefit enhancement or the special annual bonus leave granted, thereby funding the additional liability accrued in the corresponding retirement system(s) when the benefit improvement is granted. This additional present value of future benefits shall be calculated using an interest rate assumption equal to the interest rate assumption adopted by the Retirement Systems Board of Trustees under G.S. 135‑6(o) and G.S. 128-28(p) minus two percent (2%). The new reserve would be an employee benefits trust under GASB.

Section 7: Felony Forfeiture/Prohibit Re-purchase of Service
135-18.10; 135-18.10A; 128-38.4A; 128-38.4A; 135-75.1; 135-75.1A; 120-4.33; 120-4.33A; 58-86-100
Prohibits re-purchase of retirement creditable service that has been forfeited due to a felony conviction.

Section 8: Eliminate ORP Reciprocity with TSERS/New Hires
135-4.1
Prohibits use of service rendered while participating in the University or Community College Optional Retirement Program (ORP) toward determining benefit eligibility for TSERS. This change applies to members first hired on or after January 1, 2021. TSERS currently receives no additional funds from the University to cover the cost to the Retirement System to provide this benefit.

Section 9: Restrict OSHR Settlement Agreements involving SHP
135-48.46
Requires settlement agreements in employee grievance cases that affect the State Health Plan be approved by the Executive Administrator of the Plan.

Section 10: CBBC: Multiple Employer Anti-Pension Spiking CBBC Liability
135-5(a3); 128-27(a3)
Clarifies treatment of CBBC liabilities generated when a member has multiple employers. The change specifies that the CBBC liability only applies if it is generated on a member's service to one employer at a time or when the salary earned by the member from one of the member's employers exceeds the CBBC salary threshold.

Section 11: Felony Forfeiture Modifications

161-50.5
Clarifies that for a retirement plan administered by the Department of State Treasurer without specific felony forfeiture provisions, the Retirement Systems Division shall use the provisions of the largest plan overseen by the same Board of Trustees as the system without a more specific provision.

Section 12: Synchronize Short-Term Disability Filing Period with Long-Term Filing Period
135-105; 135-106
Limits the time period for application for DIPNC Short-Term Disability to no longer than six months after termination of employment. Limits the time period for application for DIPNC Long-Term Disability to the earlier of no longer than six months after termination of employment or six months after the end of Short-Term Disability.

Section 13: Employers Pay for Entire Short Term Disability Period
135-105
Currently, during the second six months of Short-Term Disability, employers are reimbursed for the cost of providing the benefit from the disability plan trust. This change would halt reimbursements of employers for the second six months of Short-Term Disability.

2: Retirement Complexity Reduction Act of 2018 -AB

Section 1: Simplification of Service Purchase Statutes/Rewrite/Eliminate
135-4; 128-26
Rewrites service purchase provisions in TSERS/LGERS/CJRS/LRS to ensure compliance with federal law, improve internal consistency and increase ease of administration. Additionally, cost formulas used for most provisions would be aligned to facilitate collection and to ensure appropriate pricing of the benefits being purchased. (Includes a non-controversial Workers Comp service purchase change that was originally envisioned as a separate section of the bill.)

Section 2: Option 4/Option 6-2/Option 6-3 Sunset
135-5(g), 128-27(g)
Closes three of the current seven benefit payment options to members who retire on or after August 1, 2018. The three payment options being closed are:
- Option 4: Social Security Leveling;
- Option 6-2: Modified Joint & Survivor – 100% for named beneficiary with pop-up to maximum allowance if beneficiary predeceases the member; and
- Option 6-3: Modified Joint & Survivor – 50% for named beneficiary with pop-up to maximum allowance if beneficiary predeceases the member.

Section 3: 150B Exemption for Actuarial Factors/Clarify CBBC as Actuarial Factor
150B-1(d)(29) [New]; 135-6(n); 128-28(o)
Clarifies that actuarial factors selected by the Board of Trustees do not require rule-making. Further clarifies that the anti-pension spiking benefit cap factor set by Board of Trustees is an actuarial factor.

Section 4: Pension Spiking Report "If Applicable" Clarification/Public Records Clarification
115C-436; 135-8(i); 128-30(i)
Clarifies that the 2017 provision requiring that chief financial officers of participating employers transmit a copy of pension spiking "watch reports" to chief executive officers and to governing boards means that if an agency has a governing board, the report must be transmitted to that board. Further provides that for purposes of transmitting this report to the agency's governing board, the information contained therein is to be treated as a retirement record as if it were still held by the Retirement System under the public records law.

Section 5: Confirm Irrevocability of Local Government Participation in SHP
135-48.47

Increases the transparency of the irrevocability provision for employer participation in the State Health Plan.

Section 6: Background Checks for Treasury Employees
143B (Requires the bill to be referred to the Finance Committees)
Allows the Department of State Treasurer to obtain background checks from the Department of Public Safety.

3: Admin. Changes Retirement System/Treasurer – 2018 -AB

Section 1: OPEB Committee/Make Executive Administrator of SHP Ex-Officio Non-Voting Member
135-48.12
Amends the statute governing membership on the State's Committee on Actuarial Valuation of Retired Employees' Health Benefits. Retains the Executive Administrator of the State Health Plan as a member of the Committee, but provides that she or he is an ex-officio non-voting member of the committee. The status of the Administrator of the Plan as a voting member of the Committee predates the inclusion of the Plan within the Department of State Treasurer.

Section 2: LGC/NCCFFA Board Liability Protection
159-1; 142-101; 159D 38(a) & (f)
Provides personal immunity from civil liabilities for decisions made by members of the Local Government Commission (LGC) and the Board of Directors of the North Carolina Capital Facilities Finance Agency (NCCFFA) for actions taken in their official capacity.

Section 3: Federal Law Compliance Provision for ACA
135-48.48 [NEW]/Similar to 135-48.43(f)
Creates new statute explicitly allowing preemption of state law to comply with provisions of the federal Affordable Care Act.

Section 4: Eliminate Statutory Requirement to Have Deputy Executive Administrator of SHP
135-48.23
Eliminates statutory requirement that the State Health Plan have a Deputy Executive Administrator. This requirement predates the inclusion of the Plan within the Department of State Treasurer.

Section 5: SHP Board Qualifications
135-48.20(j)
Adjusts qualification statutes for the State Health Plan Board of Trustees to include a requirement that one member be a medical doctor and that one member must have a background in actuarial science or health economics.

Section 6: NC Health Information Exchange Advisory Board/Add Executive Administrator of SHP as Ex Officio Non-voting Member
90-414.8
Adds the Executive Administrator of the State Health Plan as an ex-officio non-voting member NC Health Information Exchange Advisory Board.

Section 7: Conform Passive Index Strategies Definition in Iran & Sudan Divestment Acts
147-86.57(3); 147-86.42
Clarifies that the Department's new internally-managed index strategy is consistent with the Iran and Sudan Divestment Acts.

Section 8: SRP Fee Clarification
135-91(e)

Clarifies that the fee-setting authority granted to the Board of Trustees of the Supplemental Retirement Plans extends to all plans and programs under the purview of the Board. This is a standing interpretation of current statutes that is being codified for additional transparency.

Section 9: SHP Dependent Children Clarification
135-48.41(b)
Conforms state law to Affordable Care Act requirements regarding coverage of dependent children under age 26 and clarifies the continuation of Plan coverage for disabled dependent children beyond age 26.

Section 10: Withdrawal Liability Payment Plans/Charter Schools
135-5.3(f)
When a charter school withdraws from the Retirement System under G.S. 135-8(i), the school must bear the full cost of future investment risk to the Retirement System to pay for service earned by school employees while the school participated in the Retirement System rather than leaving that risk behind to be reallocated to all other employing agencies.
This new provision allows for payment plans to satisfy withdrawal liabilities with the following provisos:

1. Retirement System Board of Trustees must approve payment plans;
2. as of the date of Retirement Board action, employees of the agency would no longer earn retirement service credit;
3. payment plans would be only available if a withdrawal liability exceeds $2 million;
4. 50 percent of the withdrawal liability as calculated under G.S. 135-8(i) must be paid up front;
5. the agency may make no more than 36 equal monthly payments of the remaining amount;
6. the Retirement System will put a lien on real property owned by the school in the event that the school fails to pay; and
7. the Retirement System will use existing law allowing interception of public school allotments if school fails to pay and is still receiving funds from the state.

4: Technical Corrections Act of 2018 -AB

Section 1: Clarify that 135-108 includes Extended Short-Term Disability/Excludes Regular Short-Term Disability
135-108
Clarifies that governance of post-disability benefit adjustments for recipients of DIPNC extended short-term disability is the responsibility of the TSERS Board. This is a standing interpretation of current statutes that is being codified for additional transparency.

Section 2: Conform Statement of Income Requirements in LGERS Disability to DIPNC
128-27(e)(4)
Conforms Statement of Income deadline requirements in LGERS to DIPNC requirements enacted in 2016 to facilitate parallel administration of both programs. This change would provide an administrative efficiency by not requiring submission of forms using different deadlines.

Section 3: Clarify Treatment of Military Service Purchase/CBBC
135-5(a3); 128-27(a3)
Clarifies that purchased military service is treated as creditable service rather than membership service for purposes of calculating a contribution-based benefit cap liability. This clarifies that purchased military service is treated like all other service purchases in the Retirement System and, consequently, does not negatively impact the member or the member's employer under the anti-pension spiking law.

Section 4: Clarify Separation of Service Requirement for CJRS Members Returning to Work in the ORP
135-53(16)

Clarifies that the same standard separation of service provision used for the Consolidated Judicial Retirement System (CJRS) applies when a retired judicial branch member is re-employed in an Optional Retirement Plan-eligible position as when the member is re-employed in a TSERS-eligible position.

Section 5: Remove Archaic Legislative Service Purchase Provision
120-4.14
Removes archaic service purchase provision from the Legislative Retirement System (LRS) that only applied to members serving prior to 1975. The Department believes no living persons are still eligible to use this provision.

Section 6: Conform State Health Plan Eligibility to Federal Definition of Governmental Employer
135-48.40(d)(13) and 135-48.43(e)
State law allowing volunteer firefighters to participate in the State Health Plan was determined to violate federal tax law limiting participants to individuals working for governmental entities. This provision would repeal the state law provision that conflicts with federal law in order to protect the tax status of the State Health Plan.

Section 7: Update State Health Plan Reporting Requirement
135-48.23
Updates State Health Plan quarterly reporting requirement to allow the report to be transmitted to the General Assembly as a part of the Department of State Treasurer's normal annual reporting. The reporting requirement modified by the provision pre-dates the inclusion of the State Health Plan in the Department of State Treasurer.

Section 8: Remove Archaic Prior Service Provision
135-4(c)
Removes archaic service purchase provision from TSERS that only applied to members working for state or local government prior to 1941. The Department believes no living persons are eligible to use this provision.

Section 9: Fix Typo in LGERS Public Records Law
135-4(c)
Changes reference in LGERS public records law from "state employees" to "local government employees"

Section 10: Clarify FRSWPF Line-of-Duty Survivor Benefit
58-86
Clarifies that a line-of-duty survivor benefit in the FRSWPF cannot be paid if a refund has been paid.

Section 11: Clarify that Board Members are not Employees for Retirement Purposes
135-1(20)
Clarifies that members of Boards and Commissions are not considered employees for retirement purposes.

Section 12: Eliminate Report that is No Longer Needed
135-5(m2); 128-27(m2)
Eliminates report to General Assembly on the transfer benefit. Legislative staff agree report is no longer useful.

Section 13: Fix Typo in LGERS Board of Trustees Rule Making Statute
128-28(g)

Corrects reference from Chapter to Article of the statutes.

Section 14: Fix Typo in LGERS Anti-Pension Spiking Law
128-30(j)
Corrects statute reference.

TSERS COLA and Pension Supplement Amortization Schedule/Appropriated Benefit Increases*

	Benefit Increase (%)	***Total Cost Amortized (millions)***	***Annual COLA Cost (millions)***	***Number of Years to Pay***
Granted 2012	1.0%	$361.3	$51.0	12
Granted 2014	1.0%	$401.0	$51.4	12
Granted 2016	1.6%**	$70.2	$70.2	1
Granted 2017	1.0%	$430.3	$62.8	12
If Granted 2018	1.0%	$448.9	$66.4	12
If Granted 2019	1.0%	$481.2	$68.4	12

Fiscal Year Beginning	***State's Total Payment (M)***	***COLA Granted 2012***	***COLA Granted 2014***	***Supplement Granted 2016***	***COLA Granted 2017***	***Cost If COLA Granted 2018***	***Cost If COLA Granted 2019***
7/1/2012	$51.0	$51.0	-	-	-	-	-
7/1/2013	$51.0	$51.0	-	-	-	-	-
7/1/2014	$102.4	$51.0	$51.4	-	-	-	-
7/1/2015	$102.4	$51.0	$51.4	-	-	-	-
7/1/2016	$172.6	$51.0	$51.4	$70.2	-	-	-
7/1/2017	$165.2	$51.0	$51.4	-	$62.8	-	-
7/1/2018	$231.6	$51.0	$51.4	-	$62.8	$66.4	-
7/1/2019	$300.0	$51.0	$51.4	-	$62.8	$66.4	$68.4
7/1/2020	$300.0	$51.0	$51.4	-	$62.8	$66.4	$68.4
7/1/2021	$300.0	$51.0	$51.4	-	$62.8	$66.4	$68.4
7/1/2022	$300.0	$51.0	$51.4	-	$62.8	$66.4	$68.4
7/1/2023	$300.0	$51.0	$51.4	-	$62.8	$66.4	$68.4
7/1/2024	$249.0	-	$51.4	-	$62.8	$66.4	$68.4
7/1/2025	$249.0	-	$51.4	-	$62.8	$66.4	$68.4
7/1/2026	$197.6	-	-	-	$62.8	$66.4	$68.4
7/1/2027	$197.6	-	-	-	$62.8	$66.4	$68.4
7/1/2028	$197.6	-	-	-	$62.8	$66.4	$68.4
7/1/2029	$134.8	-	-	-	-	$66.4	$68.4
7/1/2030	$68.4	-	-	-	-	-	$68.4

*Hypothetical Chart, shows COLAs and Supplements only, assumes no liability before 2012 COLA
** 1.6% One-time Pension Supplement was granted by the General Assembly

TSERS COLA Cost

- TSERS Board's Cost of Living Adjustment (COLA) policy is that when there are sufficient investment gains on the pension plan to pay for a benefit increase, the Board may recommend a COLA to the General Assembly

- Based on the 2016 market returns of 6.22% and actuarial investment loss recognized in this December 31, 2016, valuation, no Cost-of-Living Adjustment (COLA) that would be effective July 1, 2018, was recommended by the TSERS Board in January 2018

- Based on the 2017 market returns of 13.53% and methods and assumptions used for TSERS, we *estimate* that a potential COLA effective July 1, 2019, could *not* be funded by actuarial investment gains following the December 31, 2017, valuation because:
  - If calendar year 2017 market value returns would have exceed 16.9% (or about $10.7B for TSERS), the plan would be estimated to have had an actuarial investment gain (rather than a loss) and a COLA could be considered.
  - If calendar year 2017 market value returns had exceeded 20.7% (or about $13.1B for TSERS), the plan would have been estimated to have had an actuarial investment gain (rather than a loss) and such gain might have been enough to provide a 1% COLA.

Appropriated COLA Cost = Hidden Debt

- TSERS COLAS and pension supplements granted in 2012, 2014, 2016, and 2017 are being paid for by appropriations by the General Assembly
  - 2012, 2014, 2017 are being paid for using 12 annual payments each
  - 2016 was paid for in the year it was granted, but was not a permanent increase
- Those four benefit increases for TSERS added $1.3 billion in pension debt to the state
  - Comparatively, $2 billion in debt was added by Connect NC Bonds voted on in 2016
  - Annual "debt service" for these benefit increases is $165 million per year
  - This is a "hidden debt" enacted by the General Assembly because it is within the pension employer contributions
- If two more consecutive 1% COLAs are added in 2018 and 2019, the state's pension debt from benefit increases not funded from investment returns would be about $2 billion and the annual debt service for these would be approximately $300 million, with payments extending to 6/30/2031.