



October 26, 2023

TO: Boards of Trustees (Boards) of the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS)

FROM: Patrick Kinlaw, Retirement Systems Division (RSD) Director of Policy, Planning, and Compliance;
Sam Watts, Department of State Treasurer (DST) Legislative Liaison

RE: Report on 2023 State Legislative Actions Affecting Retirement and Health Benefits

Executive Summary

The N.C. legislature enacted 6 bills affecting the Retirement Systems or State Health Plan (SHP) during the 2023 session. This included the State budget law and 5 policy bills. Key provisions included:

EMPLOYER CONTRIBUTIONS AND FUNDING POLICY

- All retirement systems fully funded per the Boards' recommendations, based on promised benefits
- State budget provides one-time supplements by November 2023 (4% of annual pension) for TSERS, Judicial, and Legislative monthly payees, and pays fully for anticipated costs within one year

BENEFIT POLICY CHANGES

- Employees hired on or after January 1, 2024 by UNC Health Care and certain health care operations of East Carolina University will not be eligible for TSERS, but instead will be forced into the UNC Optional Retirement Program (ORP), or a "similar program" to the ORP if and when their employer adopts a "similar program"

ADMINISTRATION OF SYSTEMS AND PREVENTION/DETECTION OF FRAUD, WASTE, AND ABUSE

- Contribution-based benefit cap (CBBC) provisions of TSERS amended based on recommendations of the CBBC Working Group convened between the Department of State Treasurer and the N.C. School Boards Association
- New beneficiaries may have their first benefit check direct deposited instead of sent via paper check
- Beneficiaries cannot change their monthly benefit payment options or survivorship designations once their first monthly payment has been issued
- Retirement Systems may apply alternative repayment terms to an overpayment that is entirely due to RSD's administrative error (does not affect current ability to negotiate any reasonable repayment plan)
- Felony forfeiture statutes clarified to define the phrase "conduct directly related to office or employment"

The Session

The 2023 "long session" or "first regular session" of the North Carolina General Assembly (General Assembly) initially convened on January 11, 2023 and adjourned the same day to be reconvened on January 25 (SJR 2, Res 2023-1). As of October 6, 2023, the reconvened session has not adjourned. As of the same day, 896 House bills or resolutions and 755 Senate bills or resolutions have been introduced, for a total of 1,651 introductions. The legislature has enacted 144 of these bills or resolutions. When the session adjourns, or from time to time prior to adjournment, RSD will supplement this report if there have been any additional enactments material to Retirement System or State Health Plan policy.

During the 2023 session to date, other than the State budget, 17 bills whose proposed provisions had public policy implications for the Retirement Systems or the SHP have received a hearing in at least one of the pension committees or other action by the General Assembly. (G.S. 120-111.3 requires that "every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public



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officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of each house.”)

Of those 17 bills, 5 have been enacted:

BILLS RECEIVING COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY ENACTED IN 2023

- Retirement Policy (may also have SHP implications)
 - HB 142 Protect Our Students Act.-AB
 - HB 201 Retirement Admin. Changes Act of 2023.-AB
 - HB 203 DST Technical Corrections.-AB
 - HB 750 Address ESG Factors
 - SB 729 CBBC Working Group Changes

BILLS RECEIVING COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY NOT ENACTED IN 2023

- Retirement Policy (may also have SHP implications)
 - HB 121 Eliminate Transfer of Creditable Svc to CJRS
 - HB 270 Death Benefits Parity/Fire & Rescue Increase
 - HB 363 The Gabe Torres Act (#)
 - HB 417 Anti-Boycott Divestiture
 - HB 768 LEO Return to Work from Retirement
 - HB 810 Alternative LEO Special Separation Allowance
 - SB 187 Teacher Licensure Changes
 - SB 559 Treasury Administrative Changes Act.-AB
 - SB 737 Address ESG Factors (#)
 - SB 743 Transformational Investments in NC Health (#)
- SHP Policy
 - SB 46 Medical Billing Transparency
 - SB 321 Medical Debt De-Weaponization Act

These contain (or contained) provisions that became law through House Bill 259 or one of the policy bills enacted in 2023.

State Budget & Appropriations

• **2023 Appropriations Act (House Bill 259 / Session Law 2023-134)**

Each year, the Department’s foremost public policy objective is to obtain full funding for actuarially determined employer contributions (“ADECs,” formerly “ARCs”) for each of the pension plans as well as full funding for the employer premiums for the State Health Plan for active employees and funding of the health premiums for the Retiree Health Benefit Trust commensurate with the funding provided for active employees. That goal was achieved for all the pension plans through the State budget enacted for the 2023-2025 biennium. Session Law 2023-134 fully funded the ADECs for all the Retirement Systems for Fiscal Year 2023-2024, as well as the anticipated recommendations for Fiscal Year 2024-2025 based on the Boards’ funding policies adopted in April 2021. This included funding of the expected cost of the supplements provided under Section 39.27, each funded fully through employer contributions in the year when paid.

- Section 2.1.(a) Direct Appropriations
Appropriated State contributions to the Firefighters’ and Rescue Squad Workers’ Pension Fund (FRSWPF) and the Line of Duty Death benefit program (LODD) where benefits are determined by the

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Industrial Commission and paid by RSD. The State’s contributions to the North Carolina National Guard Pension Fund (NCPNGPF) were reduced to zero for the 2023-2025 biennium, matching the ADEC requirement associated with current benefit levels.

- Section 39.26 Salary-Related Contributions Adjustment
Appropriated State retirement system and health care contributions for Fiscal Years 2023-2024 and 2024-2025. See “Employer Contribution Rates for Retirement, Health, and Related Benefits” and “Maximum Amount of State/Employer Share of SHP Premium Per Employee or Retiree” below.
- Section 39.27 One-Time Cost of Living Supplement
Provided a one-time supplement for TSERS, CJRS and LRS monthly payees, payable by November 30, 2023, equal to 4% of the annual allowance. The payments shall be made for the accounts of members who retired on or before October 1, 2023 and are living as of October 1, 2023. This payment will not be prorated based on the member’s retirement date. The annual allowance is calculated based on 12 times the monthly allowance that was payable for October 2023.

Summary of Appropriations for Retirement, Health, and Related Benefits
Appropriations from All Funding Sources

	FY 2023-2024	FY 2024-2025
PENSION ADEC FUNDING/SHP PREMIUMS		
Teachers’ and State Employees’ Retirement System	\$3,361,271,130	\$3,199,305,118
State Health Plan Employer Premiums for Non-Retired Members	\$2,175,660,300	\$2,330,550,500
Retiree Health Benefit Trust/Retiree Medical	\$1,531,188,708	\$1,499,020,878
Consolidated Judicial Retirement System	\$30,614,220	\$32,106,750
Legislative Retirement System	\$747,530	\$796,400
Disability Income Plan of North Carolina	\$23,490,308	\$27,761,273
State Employee Death Benefit Plan	\$24,771,273	\$24,771,273
National Guard Pension Fund*	\$0	\$0
Firefighters & Rescue Squad Worker’s Pension Fund*	\$20,052,208	\$20,402,208
Line of Duty Death Benefits*	\$2,721,500	\$2,521,500
<i>*Total Appropriation</i>		

Employer Contribution Rates for Retirement, Health, and Related Benefits
Rates effective July 1, 2023 through June 30, 2024, S.L. 2023-134 (House Bill 259), Section 39.26.(b)

FY 2023-2024	Total Rate	Breakdown of Rate Type					
		Retirement	Retiree Health Benefit	Disability Income Plan	Death Benefit	Supplemental Retirement [^]	Qualified Excess Benefit
TSERS General	25.02%	17.63%	7.14%	0.11%	0.13%		0.01%
TSERS Law Enforcement	30.02%	17.63%	7.14%	0.11%	0.13%	5.00%	0.01%
UNC ORP	14.09%	6.84%	7.14%	0.11%			
CJRS	42.42%	35.28%	7.14%				
Legislative Ret. System	27.79%	20.65%	7.14%				



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Rates effective July 1, 2024 through June 30, 2025, S.L. 2023-134 (House Bill 259), Section 39.26.(c)

FY 2024-2025	Total Rate	Breakdown of Rate Type					Qualified Excess Benefit
		Retirement	Retiree Health Benefit	Disability Income Plan	Death Benefit	Supplemental Retirement [^]	
TSERS General	24.04%	16.78%	6.99%	0.13%	0.13%		0.01%
TSERS Law Enforcement	29.04%	16.78%	6.99%	0.13%	0.13%	5.00%	0.01%
UNC ORP	13.96%	6.84%	6.99%	0.13%			
CJRS	43.99%	37.00%	6.99%				
Legislative Ret. System	28.99%	22.00%	6.99%				

[^]The "Supplemental Retirement" contributions for State Law Enforcement Officers are paid to Empower for the NC 401(k) Plan.

**Maximum Amount of State/Employer Share of SHP Premium Per Employee or Retiree
S.L. 2023-134, Section 39.26.(d) for FY 2023-2024, and Section 39.26.(e) for FY 2024-2025**

S.L. 2023-143 states the following maximum premiums per employee or retiree for each fiscal year of the biennium. The SHP Board of Trustees will adjust the maximum annual fiscal year rates to monthly rates effective for the SHP's plan year, which is a calendar year. The SHP issues invoices for premiums in the month prior to applicable coverage.

Employer Premiums

	FY 2023-2024	FY 2024-2025
Active Employees	\$7,557	\$8,095
Retirees	\$5,525	\$5,405

Policy Provisions in House Bill 259 / Session Law 2023-134

- Section 4.10 UNC Health Care and East Carolina University Operational Flexibility
Affords operational and personnel flexibility to UNC Health and certain health care operations of ECU. Appears to provide that their employees as of December 31, 2023 may make a one-time irrevocable election to leave TSERS or the ORP for a "similar plan" to the ORP that their employer may create. Further, any new employees of these operations on or after January 1, 2024 would not be eligible to join TSERS. They would be forced instead to participate in the ORP, or in the "similar plan" if and when it is adopted. Likewise, any member who was previously employed and returns to work at these operations on or after January 1, 2024 could not elect to return as a TSERS member.
- Section 8.14 UNC Faculty Realignment Incentive Program
Allows the UNC System to establish a program for the 2023-2025 fiscal biennium where faculty who meet specific criteria could receive a severance payment equivalent to the member's base salary from the previous year, plus the value of up to a year of employer premiums toward retiree health coverage if the faculty member does not already qualify for the full employer contribution. TSERS members participating in this program would have to be eligible for an early or service retirement allowance. The severance payment would not be paid by TSERS, and would not count as compensation for purposes of TSERS.

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- Section 16.14 Raise Mandatory Retirement Age for Appellate Judges
Effective October 3, 2023, increases the mandatory retirement age for appellate court judges (i.e., N.C. Supreme Court justices and judges on the N.C. Court of Appeals) from 72 to 76 years of age.
- Section 19F.4 State Bureau of Investigation as Independent Department
Effective December 1, 2023, establishes the State Bureau of Investigation as a single, unified cabinet-level department.
- Section 21.2 Amend Rulemaking Procedures in the Administrative Procedure Act
Establishes response deadlines after receiving declaratory judgements, revised rules, proposed replacement rules for temporary rules, and objections to temporary rules made by the Rules Review Commission to the agency. Develops a procedure for returning temporary and permanent rules submitted to the Commission prior to the law's effective date of October 3, 2023.
- Section 27.10.(h) Technical Correction to the Legislative Enactment Implementation Arrangement (LEIA) Statute
Effective October 3, 2023, amends G.S. 128-29(g)(5) and G.S. 135-7(h)(5), which are part of the statutory provisions governing LGERS and TSERS respectively, by deleting "Government" and substituting "Governmental" when referring to the Joint Legislative Commission on Governmental Operations.
- Section 36.1 Public Safety Employees' Line Of Duty Death Benefit
Provides for the Law Enforcement Officer Line-of-Duty death benefits pursuant to G.S. 143-166.3(a) and G.S. 143-166.3(e) to be payable to officers murdered by use of firearm, while off duty but en route to perform official duties, on or after October 12, 2022 and before October 31, 2022.
- Section 39.1 Eligible State-Funded Employees' Legislative Salary Increase Effective July 1, 2023, and July 1, 2024
Provides legislative salary increases of 4% for Fiscal Year 2023-2024, and 3% for Fiscal Year 2024-2025, to State-funded employees, except for certain categories of employees, such as those whose salaries are set by schedules, or whose salary increases are in other provisions of House Bill 259.
- Section 39.24 Mitigate Bonus Leave
Provides that during the 2023-2025 biennium, State agencies, departments, institutions, the North Carolina Community College System, and The University of North Carolina may offer State employees the opportunity to use or to cash in special bonus leave benefits that have accrued pursuant to Section 28.3A of S.L. 2002-126, Section 30.12B(a) of S.L. 2003-284, Section 29.14A of S.L. 2005-276, and Section 35.10A of S.L. 2014-100, subject to certain conditions.
- Section 39.28 Unfunded Liability Solvency Reserve (ULSR)
Changes the distribution of the ULSR so that all funds will be transferred into the Retiree Health Benefit Trust Fund as soon as practicable. TSERS will no longer receive funds from the ULSR. This is effective for the current fiscal year.
- Section 39.28A Temporary Waiver of TSERS Reporting Requirements for Gaston County Public Schools
Provides a waiver of all penalty payments assessed to Gaston County Public Schools related to reporting employee and employer contributions pursuant to G.S. 135-8(f)(3) for the period of January 1, 2022 through June 30, 2023.



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- Section 39.29 Authorize State Treasurer to Pay Premiums to Purchase Alternative Coverage in Lieu of State Health Plan
Effective January 1, 2024, allows the State Treasurer, after adopting administrative rules, to offer payment or reimbursement for premiums for alternative health benefits in lieu of coverage under the State Health Plan for periods which the Plan member chooses premium payments in lieu of coverage.
- Bonuses or Other Employee Payments
Session Law 2023-134 includes various provisions for employee bonuses. The legislation provides that many of these payments are not defined as compensation for purposes of retirement.

Retirement Policy Legislation Enacted in 2023

- **CBBC Working Group Changes (Senate Bill 729 / Session Law 2023-48):**

Amends the CBBC provisions of TSERS and institutes policies related to the CBBC according to the framework provided by the working group.

- Section 1 establishes the framework for Public School Units (PSUs) to certify to RSD that they do not have to pay additional contributions to TSERS due to members exceeding the CBBC. The member's employment and compensation history must meet specific conditions for the PSU to be eligible for an exemption from either the full contribution or 50% of the contribution. The section is effective for retirements effective on or after July 1, 2023, and also applies (based on a provision in Section 2) to unpaid invoices that were issued by RSD on or after January 1, 2021.
- Section 2, effective June 19, 2023, authorizes the Department of State Treasurer to use the framework to resolve currently pending legal actions against the State.
- Section 3, effective July 1, 2023, authorizes the State Treasurer to designate legal counsel, including private counsel, to represent the interests of the administration of TSERS, CJRS, DIPNC, and the State Health Plan.

- **Address ESG Factors (House Bill 750 / Session Law 2023-64):**

Effective June 27, 2023, requires the State Treasurer to consider only pecuniary factors when evaluating an investment or evaluating or exercising any right appurtenant to an investment; and allows the State Treasurer to reasonably conclude that not exercising a right appurtenant to an investment is in the best interest of the fund's beneficiaries.

- **DST Technical Corrections.-AB (House Bill 203 / Session Law 2023-89):**

Effective January 1, 2024, makes various clarifying and technical changes pertaining to the Retirement Systems. Section 1.1 allows TSERS retirees who violated the six-month "waiting period" to perform no work of any kind for a State employer after their effective retirement date, and who are unable to make the lump-sum payment to the Retirement System equal to three times the amount of compensation earned during the six-month period, to instead have their entire monthly retirement benefit withheld until the overpayment has been satisfied.



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- **Retirement Admin. Changes Act of 2023.-AB (House Bill 201 / Session Law 2023-105):**
 - **Section 1.1 through 1.4 Contributory Death Benefit (CDB) Beneficiary Designation**
For members who retired on or after January 1, 2015, this section ensures that the CDB payment will be issued to the deceased member's legal representative if there is no surviving designated beneficiary.
 - **Section 2 Employer Reimbursement for Short-Term Disability Benefits**
Requires employers who are requesting reimbursement of the second six months of short-term disability benefits from DIPNC to notify RSD prior to January 1, 2024, and requires the TSERS Board to adopt an administrative rule implementing the notification cutoff date. The provision allowing reimbursement for the second six months applies only to disability benefits with effective dates before July 1, 2019.
 - **Section 3 Short-Term & Extended Short-Term Disability Determinations**
Effective January 1, 2024, allows the Retirement Systems Division to make eligibility determinations for members who have applied for short-term and extended short-term disability benefits from DIPNC, and requires the TSERS Board to adopt an administrative rule implementing the new provision.
 - **Section 4 Establishing Extended Short-Term Disability Application Timeframe**
Effective January 1, 2024, requires members who are applying for extended short-term disability from DIPNC to do so within 180 days of the conclusion of the short-term disability period, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later. Additionally, requires the TSERS Board to adopt an administrative rule implementing this application deadline. The change in the application deadline is consistent with requirements to apply for long-term disability benefits.
 - **Section 5 Changes to the First Benefit Payment for Payees**
Effective January 1, 2024, allows a member's first retirement benefit payment to be direct deposited instead of issued via paper check, if the member wishes to receive a direct deposit of the first payment and follows the process and timing requirements to do so. All members going through the retirement process, whether their first payment is issued via paper check or direct deposit, will be permitted to make changes to their payment option elections and survivorship beneficiary designations until the first retirement payment becomes normally due and the first payment has occurred. They will not be permitted to make such changes after that date.
 - **Section 6 Technical Change to the Death Benefit Trust Fund Statute**
Effective January 1, 2024, enacts a technical amendment recommended by RSD's federal tax counsel.
 - **Section 7 Change to the Survivors Alternate Benefit Beneficiary Default**
Effective January 1, 2024, identifies the recipient of the Return of Contributions (ROC) to be the contingent beneficiary's legal representative, if the contingent beneficiary elects the Survivor's Alternate Benefit (SAB) and then dies before the member contribution balance is distributed.
 - **Section 8. Overpayment Safe Harbor due to RSD Administrative Error**
Effective January 1, 2024, provides that if RSD determines an overpayment occurred entirely due to administrative error of RSD, the recoupment from monthly benefit payments toward the overpayment shall be not less than 8.5% and no more than 25% of the monthly benefit payment after deductions, and that RSD shall be deemed to be satisfying its duty to pursue repayment of the overpayment as required by law. RSD can continue to negotiate repayment plans under the current process for all individuals who have received overpayments.



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- **Protect Our Students Act (House Bill 142 / Session Law 2022-70):**

Section 3A clarifies the Retirement Systems' felony forfeiture statutes by adding a definition of the phrase "conduct directly related to employment" in both G.S. 128-21 (LGERS) and G.S. 135-1 (TSERS), effective for offenses committed on or after July 1, 2023. It defines "conduct directly related to employment" as any of the following:

- An offense in G.S. 115C-270.35(b) committed while employed in a public school. G.S. 115C-270.35(b) defines offenses that require the automatic revocation of an educator's license.
- An offense which required the revocation of a member's license or certification required for the member's employment.
- Conduct directly related to the member's employment as determined by the Board of Trustees.

Please note that some parts of this report are extracted almost verbatim from publicly available documents created by our colleagues at the Department and from the work of legislative staff members. It is not intended to be presented as entirely original work as it is merely a compilation for convenience for users of this document.