



July 30, 2020

TO: Department Staff

FM: Patrick Kinlaw and Sam Watts

RE: Report on 2019-2020 State Legislative Actions Affecting Retirement and Health Benefits

### Executive Summary/Key Points

The N.C. legislature enacted 16 bills affecting the Retirement Systems or State Health Plan during the 2019 and 2020 sessions.

#### EMPLOYER CONTRIBUTIONS AND FUNDING POLICY

- All major retirement systems fully funded per the Boards' recommendations
- TSERS "stress testing" by an actuary will be required every five years
- Funding statutes for Judicial and National Guard systems strengthened in line with Board policies
- Treasurer may transfer portion of unencumbered balance from Public Employee Health Benefit Fund to Retiree Health Benefit Trust

#### BENEFIT POLICY CHANGES

- Many service purchase provisions updated, to align purchase costs with actuarial value, limit the amount that may be purchased, and require some purchases to be made while in service
- Required Minimum Distribution (RMD) age increased from 70½ to 72 for those born after June 30, 1949
- Public safety line-of-duty death benefit is doubled to \$200,000 when "murdered in the line of duty"
- Certain retirees may return to teach in high-need schools with no effect on pension until June 2021
- Certain retirees may work in COVID-19 positions with no effect on pension until September 2020
- Accident and sickness disability insurance in Separate Insurance Benefits Plan is no longer required

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

- Actuarial assumptions and factors, including pension spiking "cap factor," are exempt from rule-making
- Division may accept electronic notarization or online identity authentication in lieu of notarization
- Felony forfeiture statutes revised to clarify treatment of creditable service arising from transfer, purchase, or sick leave conversion, and to remove reference to judge's finding of "aggravating factor"
- Division may require employers to pay return-to-work overpayment assessed to member if the employer's reporting failure was a cause of the overpayment
- Legislative Enactment Implementation Arrangements (LEIA) extended for five years

### The Session

Five budget-related bills were enacted during 2019-2020 with implications for Retirement System or State Health Plan appropriations: House Bill 226 (Pay Increases/State Employees), House Bill 425 (Implement Conner's Law), House Bill 1136 (Funds for NCSSM-Morganton Campus), House Bill 1218 (Salary-Related Contribs./Debt Service Funds), and Senate Bill 818 (Compensation for Certain School Employees).

During the 2019-2020 sessions, the General Assembly considered 27 bills with public policy implications for the Retirement System and the State Health Plan. Of those 27 bills that received a

hearing in at least one of the pension committees or other action by the General Assembly during the sessions, 11 were ultimately enacted and 16 were not:

BILLS RECEIVING PENSION COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY ENACTED IN 2019-2020

HB 283	Conner's Law
HB 308	Regulatory Reform Act of 2020 #
HB 469	Various Family Law Changes
HB 604	Small Business Retirement Program
HB 1023	Coronavirus Relief Fund/Additions & Revisions #
HB 1096	UNC Omnibus Changes/UNC Lab School Funds #
SB 379	Retirement Systems Admin. Changes
SB 399	Rehire High-Need Teachers
SB 621	Testing Reduction Act #
SB 704	COVID-19 Recovery Act #
SB 719	Retirement Tech./Protect./& Other Changes

BILLS RECEIVING PENSION COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY NOT ENACTED IN 2019-2020

HB 231	UNC & Comm. Coll. Pay/Retiree Bonus
HB 278	Study Parity for First Responders
HB 426	Educators' Pay Increases/Retiree Supplements
HB 467	Establish State Board of Prop.
HB 612	DSS Review of Procedures/Criminal History/OAH
HB 626	Realistic Evaluation of Actuarial Liabilities #
HB 777	Purchase Opt/Credit for Prior Year FT Service
HB 966	2019 Appropriations Act
HB 1042	Increase In-Service Death Benefit/LRS
HB 1074	Omitted Membership Service/TSERS/LGERS
SB 123	Portability of Leave/Charter Schools
SB 284	State Auditor/Verifications & Access
SB 374	Repeal Risky Retirement Payments
SB 398	Felony Forfeiture Changes/Retirement #
SB 408	Pensions Benefits Revision #
SB 599	State and Local Disability Benefit Reform

\* N.C.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 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." Local bills heard by Pensions Committees (HB 445 and SB 47) are not included in list above.

# HB 308 and HB 1023 contain minor, identical provisions amending SB 704.

# HB 612 is not primarily a pensions bill but contains provisions related to agency administrative procedures.

# Portions of HB 626 as heard in committee were included as sections of SB 719 as enacted.

# HB 1096 contains a clarification consistent with current retirement administration.

# Portions of SB 398 as heard in committee were included as sections of SB 719 as enacted.

# Portions of SB 408 as heard in committee were included as sections of SB 379 as enacted; SB 408 was subsequently amended to provide for COLAs for TSERS and Consolidated Judicial Retirement System retirees and was not enacted.

# SB 621 includes provisions amending SB 399.

# The benefits-related provisions of SB 704 were heard in committee as provisions of HB 1043; these provisions were removed from HB 1043 subsequent to committee hearing and included within SB 704; both bills were eventually enacted.

## State Budget & Appropriations

The Department closely monitors budget legislation, particularly as it relates to funding of the Retirement System, the State Health Plan, and the Retiree Health Benefit Trust.

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 series of Session Laws outlined below.

- Pay Increases/State Employees (House Bill 226 / Session Law 2019-209): Fully funded the Actuarially Determined Contributions for all the Retirement Systems and recommendations of the Board of Trustees' contribution policies for Fiscal Year 2019-2020. For Fiscal Year 2020-2021, fully funded the Actuarially Determined Contributions and the Boards' recommendations for the North Carolina National Guard Pension Fund and the Firefighters' and Rescue Squad Workers' Pension Fund, and established contribution rates and amounts for TSERS, CJRS, LRS, DIPNC, TSERS Death Benefits, and the Retiree Health Benefit Fund that were subsequently modified by other legislation.
  - Section 1.1: Mandated Employer Contributions & State Appropriations  
Appropriated state retirement system and health care contributions for Fiscal Years 2019-2020 and 2020-2021. The contributions for Fiscal Year 2020-2021 were later modified by other legislation.
  - Section 3.15: Salary-Related Contribution Rates for Retirement, Health, & Related Benefits  
Provided guidance to the Division regarding contribution rates to charge to agencies participating in the state's retirement systems as employers. Also set the maximum annual amount per employee or retiree payable to the State Health Plan for Teachers and State Employees (SHP). The contribution rates for Fiscal Year 2020-2021, from Section 3.15.(c), and maximum amount payable to SHP for Fiscal Year 2020-2021, from Section 3.15.(e), were subsequently modified by other legislation.
- Funds for NCSSM-Morganton Campus (House Bill 1136 / Session Law 2020-31), Section 2: Established contribution rates for Fiscal Year 2020-21 for TSERS, CJRS, LRS, DIPNC, TSERS Death Benefits, and the Retiree Health Benefit Fund that were subsequently modified by other legislation. This legislation contains the only provision enacted during the 2020 session that did not fully fund a recommendation by the TSERS Board of Trustees. On January 29, 2020, the Board recommended a contribution rate of 0.16% of payroll for the TSERS Death Benefit Plan for active employees and the legislation funded the benefit at 0.13% of payroll, which is \$3.34 million less than the Board's recommendation. The Plan would still be projected to show a small surplus even if the contribution rate were reduced to 0.08%, however reducing the contribution rate to 0.13% may make the Plan cash flow negative. Department staff have cautioned that this rate will likely need to be increased next year as a result of the actuarial experience review that is underway.
- Salary-Related Contribs./Debt Service Funds (House Bill 1218 / Session Law 2020-41): Fully funded the Actuarially Determined Contributions for the Retirement Systems and recommendations of the Board of Trustees' contribution policies for Fiscal Year 2020-2021.
  - Section 1.(a): Provided guidance to the Division regarding contribution rates; however, these rates were repealed by Section 1.(b) because House Bill 1136 / S.L. 2020-31 was enacted.

- Section 1.(c): Provided guidance to the Division regarding contribution rates to charge agencies participating in the state's retirement systems for Fiscal Year 2020-2021.
  - Section 1.(d): Set the maximum annual amount per employee or retiree payable to SHP for Fiscal Year 2020-2021. These amounts were subsequently modified by other legislation.
  - Section 3: Expressed the intent of the General Assembly to restore the contribution rate to the Retiree Health Benefit Fund and the maximum annual amount per employee or retiree payable to SHP to the rates and amounts enacted in House Bill 226 / S.L. 2019-209, if the federal government provides additional relief funds or additional flexibility on existing relief funds.
- Compensation for Certain School Employees (Senate Bill 818 / Session Law 2020-45): Modified the maximum annual amount per employee or retiree payable to SHP for Fiscal Year 2020-21.
    - Section 8.1.(a): Set amounts payable to SHP for Fiscal Year 2020-2021; however, these amounts were repealed by Section 8.1.(b) because House Bill 1218 / S.L. 2020-45 was enacted.
    - Section 8.1.(c): Set amounts payable to SHP for Fiscal Year 2020-2021.
    - Section 8.2: Expressed the intent of the General Assembly to restore the contribution rate to the Retiree Health Benefit Fund and the maximum annual amount per employee or retiree payable to SHP to the rates and amounts enacted in House Bill 226 / S.L. 2019-209, if the federal government provides additional relief funds or additional flexibility on existing relief funds.
  - Implement Conner's Law (House Bill 425 / Session Law 2020-86): Appropriated an additional amount to pay Line-of-Duty Death Benefits during FY 2020-2021 in order to implement the policy provisions of House Bill 425 / S.L. 2019-228 ("Conner's Law").

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

	FY 2019-2020	FY 2020-2021
<b>PENSION ADEC FUNDING/SHP PREMIUMS</b>		
Teachers' & State Employees' Retirement System*	\$2,096,633,833 [A]	\$2,452,206,407 [B]
State Health Plan Employer Premiums for Non-Retired Members**	\$1,985,059,434 [A]	\$1,989,912,886 [C]
Retiree Health Benefit Trust/Retiree Medical*	\$1,180,415,850 [A]	\$1,250,645,365 [B]
Consolidated Judicial Retirement System*	\$25,392,192 [A]	\$28,143,705 [B]
Legislative Retirement System*	\$957,852 [A]	\$988,260 [B]
Disability Income Plan of N.C.*	\$18,165,257 [A]	\$16,777,245 [B]
State Employee Death Benefit Plan*	\$25,864,411 [A]	\$21,568,798 [B]
National Guard Pension Fund***	\$11,031,715 [A]	\$11,031,715 [A]
Firefighters & Rescue Squad Worker's Pension Fund***	\$18,652,208 [A]	\$19,002,208 [A]
Line of Duty Death Benefits***	\$1,986,500 [A]	\$3,186,500 [D]
[A] S.L. 2019-209, Section 1.1. [B] S.L. 2020-41, Section 1.(c). [C] S.L. 2020-45, Section 8.1.(c). [D] S.L. 2019-209, Section 1.1, as modified by S.L. 2020-86, Section 1. *Projected funding based on appropriated contribution rate and projected payroll. **Projected funding based on appropriated contribution rate and actual enrollment. ***Total appropriation.		

**Employer Contribution Rates for Retirement, Health, and Related Benefits**  
**Rates effective July 1, 2019 through June 30, 2020**  
**S.L. 2019-209, Section 3.15.(b)**

FY 2019-2020	Total Rate	Breakdown of Rate Type					
		Retirement	Retiree Health Benefit	Disability Income Plan	Death Benefit	Supplemental Retirement <sup>^</sup>	Qualified Excess Benefit
TSERS General	19.70%	12.96%	6.47%	0.10%	0.16%		0.01%
TSERS Law Enforcement	24.70%	12.96%	6.47%	0.10%	0.16%	5.00%	0.01%
UNC ORP	13.41%	6.84%	6.47%	0.10%			
CJRS	40.07%	33.60%	6.47%				
Legislative Ret. System	32.93%	26.46%	6.47%				

<sup>^</sup>The "Supplemental Retirement" contributions for State Law Enforcement Officers are paid to Prudential for the NC 401(k) Plan.

**Employer Contribution Rates for Retirement, Health, and Related Benefits**  
**Rates effective July 1, 2020 through June 30, 2021**  
**S.L. 2020-41, Section 1.(c)**

FY 2020-2021	Total Rate	Breakdown of Rate Type					
		Retirement	Retiree Health Benefit	Disability Income Plan	Death Benefit	Supplemental Retirement <sup>^</sup>	Qualified Excess Benefit
TSERS General	21.68%	14.77%	6.68%	0.09%	0.13%		0.01%
TSERS Law Enforcement	26.68%	14.77%	6.68%	0.09%	0.13%	5.00%	0.01%
UNC ORP	13.61%	6.84%	6.68%	0.09%			
CJRS	43.12%	36.44%	6.68%				
Legislative Ret. System	33.98%	27.30%	6.68%				

<sup>^</sup>The "Supplemental Retirement" contributions for State Law Enforcement Officers are paid to Prudential for the NC 401(k) Plan.

**Maximum Amount Per Employee or Retiree Payable to State Health Plan**  
**S.L. 2019-209, Section 3.15.(d) for FY 2019-2020; S.L. 2020-45, Section 8.1.(c) for FY 2020-2021**

State Health Plan		Jul-Dec	Jan - Jun		Jul-Dec	Jan - Jun
<u>Employer Premiums</u>	<u>2019-2020</u>	<u>Monthly</u>	<u>Monthly*</u>		<u>2020-2021</u>	<u>Monthly*</u>
Medicare Eligible	\$4,900	\$403.06	\$413.60		\$4,916	\$413.60
Non-Medicare Eligible	\$6,306	\$518.64	\$532.36		\$6,326	\$532.36

**PENSION AND BENEFIT POLICY PROVISIONS OF HOUSE BILL 226 / SESSION LAW 2019-209:**

- Section 3.1 – Eligible State-Funded Employees Awarded Legislative Salary Increases/Effective July 1, 2019, and July 1, 2020  
 Provides a legislative salary increase of 2.5% for Fiscal Year 2019-2020, and a legislative salary increase of 2.5% for Fiscal Year 2020-2021, to state-funded employees with certain exceptions.
- Section 3.14 – Special Annual Leave:  
 Any person who is (1) a full-time, permanent employee of the state or a community college on July 1, 2019, other than correctional officers and Law Enforcement Officers in the State Highway Patrol or the State Bureau of Investigation and Alcohol Law Enforcement, and (2) eligible to earn annual leave receives a one-time additional five days of annual leave credited on July 1, 2019.
  - The additional leave granted in this act will be accounted for separately with the leave provided by 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; Section 35.10A of S.L. 2014-100; Section 35.18A of S.L. 2017-57; and Section 35.26 of S.L. 2018-5.
  - The leave will remain available during the length of the employee's employment, notwithstanding any other limitation on the total number of days of annual leave that may be carried forward. Part-time, permanent employees shall receive a pro rata amount of the five days.
  - The additional leave awarded under this section has no cash value and is not eligible for cash in. If not used prior to the time of separation or retirement, the bonus leave cannot be paid out and is lost.
  - Any vacation leave remaining on December 31 of each year in excess of 30 days will be reduced by the number of days awarded in this section that were actually used by the employee during the year such that the calculation of vacation leave days that would convert to sick leave will reflect a deduction of those days of special annual leave awarded in this section that were used by the employee during the year.
- Section 3.17 – Short-Term Disability Benefits  
Designates 0.05% of payroll from each entity's appropriations to be used to pay short-term disability benefits directly to that entity's employees during the biennium. Prior to this biennium, short-term disability benefits were paid from the Disability Income Plan of North Carolina (DIPNC) and employing entities contributed a percentage of payroll to DIPNC.

#### **Policy legislation passed in 2019:**

- Rehire High-Need Teachers (Senate Bill 399 / Session Law 2019-110):

Allows certain retired teachers under TSERS to return to work in certain high-need schools and still receive their full retirement benefits. The act was effective as of July 1, 2019, and expires June 30, 2021. In order to qualify, a high-need retired teacher is required to meet the following:

- Retired on or before February 1, 2019, after attaining one of the following:
  - The age of 65 with 5 years of creditable service.
  - The age of 60 with 25 years of creditable service.
  - 30 years of creditable service.
- Re-employed by a local board of education to teach at a high-need school or schools. (This portion of the definition was subsequently clarified by Section 7 of Senate Bill 621 / Session Law 2019-212.)

The Department of Public Instruction must certify to TSERS that a retiree is employed to work as a high-need retired teacher.

High-Need School: A high-need school is defined as a school that, at any point on or after July 1, 2017, (i) is a Title I school as defined by federal law or (ii) receives an overall school performance grade of D or F, as calculated by the State Board of Education.

Re-Employment: High-need retired teachers are paid on the first step of the teacher salary schedule. If re-employed to teach STEM (science, technology, engineering, and math) or special education, the high-need retired teacher will be paid on the sixth step of the salary schedule. High-need retired teachers cannot receive any State salary supplements or bonuses and cannot move to higher steps on the salary schedule. High-need retired teachers do receive any applicable local salary supplements. The contract between a local board of education and a high-need retired teacher cannot be for more than one school year. Any retiree employed as a high-need retired teacher is not eligible to elect into a position that would lead him or her to be eligible to accrue any additional benefits under TSERS.

Private Letter Ruling: The State Treasurer is required to seek a Private Letter Ruling from the Internal Revenue Service (IRS) regarding the provisions of S.L. 2019-110. If the IRS determines that the provisions jeopardize the status of TSERS under the Internal Revenue Code, S.L. 2019-110 will be repealed within 30 days of that determination. The State Treasurer will then notify all Local Education Agencies of the repeal and publicly notice the information on the website of the Department of State Treasurer. Local Education Agencies will then be required to notify all employed high-need retired teachers of the repeal. As of the date of this memorandum, the Department of State Treasurer has submitted the required request but not received the Private Letter Ruling from the IRS.

- *Testing Reduction Act of 2019 (Senate Bill 621 / Session Law 2019-212):*

Section 7 makes the following changes to Senate Bill 399 / S.L. 2019-110, effective July 1, 2019 and expiring June 30, 2021:

- Clarifies that a high-need retired teacher must be a teacher, as defined in the retirement statutes, employed on an annual contract to provide classroom instruction exclusively at a high-need school or schools.
- Clarifies that a high-need retired teacher is not restored to service as a teacher or employee, as defined in the retirement statutes.
- Requires local boards of education to notify TSERS by September 15 each year if they will not employ high-need retired teachers.
- In the event of an adverse determination from the IRS resulting from a Private Letter Ruling request, repeals S.L. 2019-110 on the last day of the month following the month of receipt of such determination.

- *Small Business Retirement Program (House Bill 604 / Session Law 2019-205):*

Creates a ten-member Joint Legislative Study Committee on Small Business Retirement Options to study and report findings and recommendations by March 31, 2020, on ways to reduce burdens on small businesses offering payroll deduction retirement savings options, the feasibility of combining similar retirement programs, and mechanisms to encourage citizens to retire in a financially secure manner. The Treasurer or the Treasurer's designee serves as one member of the committee. The act became effective August 27, 2019. The end date of reporting by the committee was subsequently extended by Senate Bill 704 / Session Law 2020-3 ("COVID-19 Recovery Act") to August 1, 2020. The Committee's report recommends an extension of the Committee's deliberations through December 2020, but no provision was made in any legislation to allow the additional extension.

- *Conner's Law (House Bill 283 / Session Law 2019-228):*

- Section 2 amends the Public Safety Employees' Death Benefit Act to provide an additional death benefit of \$100,000 (i.e., increasing the benefit from \$100,000 to \$200,000) when any covered person is murdered in the line of duty. "Murdered in the line of duty" is defined as "killed in the line of duty in a manner reasonably determined by the Industrial Commission to be directly caused by the intentional harmful act of another person." This section is effective as of July 1, 2017, and applies to qualifying deaths occurring on or after that date. House Bill 425 / S.L. 2020-45 ("Implement Conner's Law") appropriates the funds for implementation of this section.
- Section 3 makes a technical correction to the existing \$100,000 line-of-duty death benefit, effective as of April 1, 2017. Prior to the correction, the statute provided that the benefit would be paid (1) to the surviving spouse; (2) to any surviving dependent child(ren) if there is no surviving spouse; (3) to any surviving dependent parent(s) if there is no surviving spouse and no surviving dependent child(ren); and (4) to the deceased

person's estate "if there is no surviving spouse, surviving dependent child, or surviving parent." The technical correction adds the word "dependent" between "surviving" and "parent" in part (4).

- *Various Family Law Changes (House Bill 469 / Session Law 2019-172):*

Section 1 requires the use of the "separate interest" approach to dividing benefits between former spouses if the applicable plan allows it. If the "separate interest" approach is not available, it allows the court to order joint-and-survivor annuity protection for the nonparticipant spouse. It adds Domestic Relations Orders (DROs) to the permissible orders to divide benefits. Sections 1.1 and 1.2 amend the TSERS and LGERS statutes regarding assignability of benefits to make explicit provisions for payment to a former spouse pursuant to a DRO, consistent with the System-designed template DRO.

**Policy legislation passed in 2020:**

- *COVID-19 Recovery Act (Senate Bill 704 / Session Law 2020-3):*

- Section 4.21: State Health Plan Premium and Debt Payment Deferral Option During Declaration of Emergency

Authorizes the State Treasurer, with approval of the Board of Trustees for the State Health Plan, to give certain members or employing units the option to defer premium or debt payment when there is a state of disaster or emergency. A deferral period may not last beyond 90 days from the last day of the time period in which there is a state of disaster. Any payments in arrears continue to be owed to the State Health Plan. This section was effective as of January 1, 2020.

- Section 4.22: Interim Determinations and Interim Certifications for Certain Disability Benefits

Temporarily allows the Executive Director of the Retirement Systems Division to make interim, eligibility-only determinations and certifications regarding disability benefits under TSERS, LGERS, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Disability Income Plan of North Carolina. These certifications are in place only until the Medical Board is able to make a final determination. The Director may not determine that any individual is not eligible for disability benefits. If the Medical Board later determines that an individual found eligible by the Director is not eligible for benefits, then the Medical Board's decision is a final decision and the benefit payments will cease. An individual is not required to refund any payments or benefits received during that interim period. This section was effective as of May 4, 2020, and expires August 1, 2020, provided that any interim eligibility determinations made before the expiration are valid until the Medical Board makes a final determination.

- Section 4.23: Temporarily Remove Barriers to Allow Retirees of TSERS and LGERS to Return to Work on a Part-Time, Temporary, or Interim Basis During State of Emergency Related to COVID-19

Temporarily changes the six-month separation requirement for TSERS retirees to a one-month separation requirement, applying to individuals retiring on or after October 1, 2019, but before April 1, 2020, who return in a position needed due to COVID-19. This section temporarily lifts the earnings caps for TSERS and LGERS retirees from March 10, 2020 until expiration for those retirees who retired prior to April 1, 2020 and return in a position needed due to COVID-19. This section also requires that any work performed between March 10, 2020 and the time that this section expires does not impact a Law Enforcement Officer's special separation allowance benefits if the officer returns in a position needed due to COVID-19. This section became effective May 4, 2020 and expired August 1, 2020 according to this legislation, but subsequent legislation extended the expiration date to August 31, 2020.



- Section 4.26: Authorize the Chief Administrative Law Judge to Extend the Time Period for the Filing of Contested Cases During Catastrophic Conditions  
Authorizes the Chief Administrative Law Judge to extend the time period for the filing of petitions for contested cases, but only if the Chief Justice of the North Carolina Supreme Court has determined that catastrophic conditions exist. This section was effective as of March 10, 2020.
- Section 4.37: Extend the Joint Legislative Study Committee on Small Business Retirement Options  
Extends until August 1, 2020, the Joint Legislative Study Committee on Small Business Retirement Options final report and any legislative proposals to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Fiscal Research Division. This section was effective as of March 31, 2020.
- Section 4.38: Authorize State Agencies to Exercise Regulatory Flexibility During the Coronavirus Emergency in Order to Protect the Economic Well-Being of the Citizens and Businesses of the State  
Directs State agencies to exercise regulatory flexibility during the Coronavirus emergency. Notwithstanding any other provision of State law, if a State agency determines that, due to the impacts of the Coronavirus, it is in the public interest, including the public health, safety, and welfare and the economic well-being of the citizens and businesses of the State, the agency must: (i) delay the collection or modify the method of collection of any fees, fines, or late payments assessed by the agency under its statutes, including interest accruals; (ii) delay the renewal dates of permits, licenses, and other similar certifications, registrations, and authorizations issued by the agency pursuant to its statutes; and (iii) delay or modify any educational or examination requirements implemented by the agency pursuant to its statutes. On or before October 1, 2020, each State agency must report to the General Assembly and the Office of State Budget Management on its efforts to exercise regulatory flexibility. State agencies are directed to exercise the authority granted in this section to the maximum extent practicable. State agencies are authorized to adopt emergency rules for implementation and such rules will remain in effect during the pendency of Coronavirus emergency, unless the State agency specifies an earlier expiration date. This section was effective as of March 10, 2020 and expires August 1, 2020.
- Retirement Systems Admin. Changes (Senate Bill 379 / Session Law 2020-29):
  - Section 1: Service Purchase Provisions
    - Section 1.(a) amends the creditable service purchase provisions in TSERS (G.S. 135-4).
      - Removes outdated language.
      - Amends the calculation for the purchase of armed service credit.
      - Amends the provisions on withdrawn service purchases. For withdrawn service purchased on and after January 1, 2022, the member must be in service when purchasing withdrawn service and the creditable service purchased may not exceed five years. The cost of such purchases is equal to a lump sum amount equal to the full liability increase based on certain actuarial assumptions specific to the calculation, to include an administrative fee set by the Board of Trustees. An employer may pay all or part of the cost of a service purchase of a member in service.
      - Amends the provisions on the purchase of creditable service rendered to the federal government, as well as service to any state, territory, or other governmental subdivision of the United States purchased on or after January 1, 2022, so that the service must be purchased by paying a lump-sum payment and the creditable service purchased may not exceed a total of five years.

- Amends the law on credit for prior temporary State employment, to limit service credit purchased on or before December 31, 2021.
  - Amends the law on the purchase of part-time service credit to exclude part-time service rendered as a bus driver to a public school while a full-time high school student, and temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program, unless that service was rendered on a permanent part-time basis and required at least 20 hours of service per week.
  - Makes other changes similar to those outlined above for the purchase of creditable service under G.S. 135-4 subsection (s) for temporary employment; subsection (w) for federal employment; subsection (z) for leave due to extended illness; subsection (aa) for parental leave, pregnancy or childbirth-related leave, or certain involuntary furloughs; subsection (bb) for probationary local government employment; and subsection (hh) for service with the University of North Carolina during which the member participated in the Optional Retirement Program.
- Section 1.(b) amends the LGERS provisions to make the same or similar changes as in Section 1.(a) for TSERS.
  - Section 1.(c) amends the law for the purchase of creditable service for periods of employment with a licensing or examining board prior to election to participate in TSERS.
  - Sections 1.(d) and 1.(e) amend the Consolidated Judicial Retirement System provisions to make the same or similar changes as noted above.
  - Section 1.(f) amends the Legislative Retirement System provisions to make the same or similar changes as noted above.
  - Section 1.(g) amends the law on repayments and purchases in the Legislative Retirement System to make the same or similar changes as noted above.
  - Section 1.(h) amends the current law on the calculation of a TSERS discontinued service retirement allowance to include an amount to be deposited in the Retiree Health Benefit Fund and requires that the salary used to determine such allowance is the same as the average final compensation.
  - Section 1.(i) amends TSERS membership requirements to remove old language related to members absent from service and clarifying that membership ceases when a member withdraws accumulated contributions, becomes a beneficiary, or dies.
  - Section 1.(j) amends LGERS membership requirements to remove old language related to members absent from service and clarifying that membership ceases when a member withdraws accumulated contributions, becomes a beneficiary, or dies.
  - Section 1.(k) provides that the Division must accept and process all service purchase forms that are received on or before December 31, 2021, for all service purchases that are required to have been made by December 31, 2021.
  - The provisions of this section became effective June 19, 2020, except for certain provisions of current law that are extended to December 31, 2021.
- Section 2 requires that no decision of the TSERS Board of Trustees or the LGERS Board of Trustees related to the Retirees' Contributory Death Benefit will take effect unless and until the same decision has been made and voted on by the other Board. This section became effective as of June 19, 2020.
  - Section 3 excludes the Department's call centers from the requirements of the "first menu operator access law" in G.S. 143-162.1. This section became effective as of June 19, 2020.

- Section 4 sets the date for payment of a contribution-based benefit cap liability under TSERS or LGERS to be 12 months after the member's effective date of retirement. This section became effective as of June 19, 2020.
- Section 5 does not directly pertain to the Retirement Systems or the State Health Plan.
- Section 6 removes the sunset in current law that allows sheriffs to use accumulated sick leave for retirement creditable service that typically would be used for LGERS to be used for the Sheriffs' Supplemental Pension Fund instead, provided the same sick leave is not used for both plans. This section becomes effective October 1, 2020 and applies to all elections to have sick leave applied to service under the Sheriffs' Supplemental Pension Fund on or after that date.
- Section 7 allows TSERS and LGERS to require an employing agency to pay a portion of a return-to-work overpayment assessed to a retiree if actions by the employer are found to have partially caused the overpayment. Specifically, the Board may do any or all of the following: (1) Assess the employer a penalty of 10% of the compensation of the unreported re-employed beneficiaries (minimum penalty of \$25); (2) Reimburse the Retirement System for any retirement allowance paid to the beneficiary during a period when the allowance would have been suspended had the required report been received; (3) Pay any amount that the beneficiary would have been required to pay to the Retirement System had the required report been received. This section is effective July 1, 2021, and applies to reports required to be made on or after that date.
- Section 8 extends the Legislative Enactment Implementation Arrangement (LEIA) for TSERS and LGERS for an additional five years. The Boards of Trustees cannot direct any employer contributions into the LEIA after November 1, 2026. This section became effective as of June 19, 2020.
- Section 9 allows the State Treasurer to obtain criminal background checks on current, prospective, permanent or temporary employees, contractors, contractors' agents or employees, volunteers, and others engaged by the Department who have access to confidential health or financial information or data. It also allows the State Treasurer to deny employment or terminate certain individuals who refuse to consent to a criminal background check or to the use of fingerprints or other identifying information required for the criminal background check. This section became effective as of June 19, 2020.
- *Retirement Tech./Protect./& Other Changes (Senate Bill 719 / Session Law 2020-48):*

Except where specifically noted otherwise, this act became effective as of June 26, 2020. Section 1.10 and Section 3 do not directly pertain to the Retirement Systems or the State Health Plan.

- Section 1: Technical Changes
  - Section 1.1 amends TSERS and LGERS statutes to add a definition for "duly acknowledged" which means notarization, electronic notarization, or verification through an identity authentication service.
  - Section 1.2 amends TSERS, LGERS, Consolidated Judicial Retirement System, and Legislative Retirement System statutes to increase the age at which a member must begin receiving payments from the Retirement System from 70½ to 72. This change conforms with changes made to federal law by the SECURE Act of 2019. This section is effective January 1, 2021 and applies to members on or after that date. If a member attains age 70½ on or before December 31, 2019, then the statute in effect on the day the member attained age 70½ is applicable to that member.
  - Section 1.3 amends the Supplemental Retirement Income Plan to remove the term "disability" to conform with the Internal Revenue Code, and to make other technical and conforming changes.

- Section 1.4 amends the Achieving a Better Life Experience (ABLE) Program Trust statutes to add a definition of “sibling” and allow a sibling of a disabled participant to take certain actions related to ABLE accounts.
- Section 1.5 amends the State Health Plan statutes to remove the term “group” from references to the health plan and specify that nothing requires the Plan to permit a person, or be required to enroll a person, when that enrollment may jeopardize the Plan’s preferential tax-exempt status as a governmental plan under the Internal Revenue Code.
- Section 1.6 amends the Consolidated Judicial Retirement Systems statutes to incorporate methods of financing, specifically addressing: that assets include the employers’ contributions held with the Pension Accumulation Fund and employees’ contributions held with the Annuity Savings Fund; requiring the Board to have an annual actuarial valuation and to maintain the system on a generally accepted actuarial basis; using an actuarially determined employer contribution calculated annually by the actuary; specifying that the Board may adopt a contribution policy that would recommend a contribution not less than the actuarially determined employer contribution and that it would not be subject to the Administrative Procedures Act; and requiring that the employer contribution rate recommended by the Board each year not be less than the actuarially determined employer contribution.
- Section 1.7 makes technical changes pertaining to funding for the North Carolina National Guard Pension Fund. The following elements removed from subsection (a) are relocated to a newly created G.S. 127A-41 in subsection (b): language pertaining to General Fund appropriations; the requirement for an annual actuarial valuation; and the Board’s responsibility for maintaining the Fund on a generally accepted actuarial basis. New items include: a requirement that the employer contribution be calculated annually by the actuary using assumptions and an approved cost method; and specifying that the Board may adopt a contribution that would recommend a contribution not less than the actuarially determined employer contribution and that it would not be subject to the Administrative Procedures Act.
- Section 1.8 amends TSERS and LGERS statutes to allow the Division to provide a credit to an employing agency that made contributions on behalf of a retiree subject to the contribution-based benefit cap when that retiree is later subject to a felony forfeiture of retirement benefits.
- Section 1.9 amends TSERS and LGERS statutes to outline criteria for determining when an employer is inactive and requires the Division to make a report to the Board by April 30 on employers who were determined to be inactive during the preceding calendar year.
- Section 1.11 amends TSERS statutes to make technical and clarifying changes related to the transfer of credits from LGERS.
- Section 1.12 repeals the following outdated TSERS statutes:
  - G.S. 135-5.2 – Chapel Hill utilities & telephone employees. This statute pertained to employees of the Chapel Hill Telephone Company or University Service Plants at the time the Chapel Hill telephone services and utility services were sold to Southern Bell Company and Duke Power. It was enacted in 1977.
  - G.S. 135-13 – Certain laws not repealed; suspension of payment and compulsory retirement. This statute pertained to pensions for school teachers in New Hanover County. It was enacted in 1941 and had not been amended since that time.
  - G.S. 135-14 – Pensions of certain former teachers and State employees. This statute pertained to certain pensions and allowances paid out of the Pension Accumulation Fund. It was enacted in 1943, and last amended in 1983 related to the merger of internal accounts for pension funds in 1983.

- G.S. 135-14.1 – Certain school superintendents and assistant superintendents. This statute pertained to employees who were superintendents and assistant superintendents for 20 years when TSERS was enacted. It was enacted in 1957 and had not been amended since that time.
  - G.S. 135-16 – Employees transferred to North Carolina State Employment Service by act of Congress. This statute pertained to U.S. Employment Service employees that became employed by the State. It was enacted in 1947.
  - G.S. 135-18.3 – Conditions under which amendments void. This statute pertained to coverage of governmental employees under Title II of the Social Security Act and the Federal-State agreement. It was enacted in 1955.
  - G.S. 135-18.5 – Provision for emergency expenses of integration of System. This statute pertained to the use of funds during the session in 1955 and 1957. It was enacted in 1955 and had not been amended.
    - Section 1.13 amends TSERS statutes to change references to blind or visually impaired employees to blind or visually impaired vendors, reflecting changes that were made years ago.
    - Section 1.14 amends an incorrect statutory reference in LGERS.
    - Section 1.15 amends the community college statutes pertaining to the Department-sponsored 403(b) plan to allow administrative costs to be charged to members or deducted from members' accounts.
    - Section 1.16 amends TSERS and LGERS statutes to clarify that the information contained in monthly reports ("watch reports") indicating those most likely to require additional employer contributions under the contribution-based benefit cap provisions should they elect to retire in the following 12 months, is not a public record and requires all parties involved to treat the information as confidential and as though it were still held by the Retirement System under the public records law.
    - Section 1.17 clarifies in the State Health Plan statutes that a local governmental unit's election to participate is generally irrevocable.
    - Section 1.18 amends an incorrect statute reference relating to the State Treasurer's discharge of duties.
    - Section 1.19 corrects a typographical error in a civil procedure statute that references the TSERS statute.
- Section 2: Changes to Require Stress Testing of the Retirement System, as Recommended by The Pew Foundation; Amendments Related to the Pension Solvency Fund
- Section 2.1(a) amends TSERS statutes to clarify that the actuary must complete an actuarial experience review of the mortality, service and compensation experience of the members and beneficiaries at least once every five years. Subsection (b) requires a report to the General Assembly and the Governor prior to undertaking the five-year actuarial experience review and the subsection outlines elements of the report. This change was recommended by The Pew Foundation. A new statutory subsection is also added to allow the Division to pay costs directly from the retirement assets or to increase receipts from the retirement assets to cover the cost of administering the requirements.
  - Section 2.2(a) adds a new subdivision under the Unfunded Liability Solvency Reserve, Source of Funds, in the State Budget Act to require that any funds, in an amount directed by the State Treasurer to be transferred, must be: (1) the result of rebates from a company administering, or individuals participating in, supplemental voluntary insurance benefits, (2) not owed to a company administering, nor individuals participating in, such benefits, and (3) not needed to pay future administrative costs of such benefits.

- Section 2.2(b) amends the State Health Plan / Health Benefit Trust Fund statute to provide that any unencumbered balance in excess of prepaid premiums or charges in the Public Employee Health Benefit Fund must be paid in a specified order. The second item in the specified order specifies that an amount determined by the State Treasurer, subject to approval by the State Health Plan Board of Trustees, that does not exceed 25% of any unencumbered balance remaining after providing for incurred but unrepresented claims may be transferred to the Retiree Health Benefit Fund. The Office of State Budget Management is required to transfer the amount in accordance with the subdivision upon the direction and approval of and in the amount specified by the State Treasurer.
    - Section 2.2(c) further amends the Unfunded Liability Solvency Reserve in the State Budget Act to add a new subsection preventing the reversion of funds by specifying that no portion of the Fund shall be transferred to the General Fund, an any appropriation made to the Fund shall not revert.
    - Section 2.2 (a through c) became effective as of July 1, 2020.
  - Section 4: Pension Protection Changes
    - Section 4.1 amends TSERS and LGERS statutes pertaining to the duties of the actuary. The changes add the contribution-based benefit cap factor to the materials, such as experience studies, actuarial calculations, assumptions used by the actuary, including mortality tables, interest rates, annuity factors, and other similar materials that are provided to the Board of Trustees and further provides that they are not subject to rule-making. The section also specifies that materials are effective the first day of the month following adoption, unless a different date is specified, and that the effective date does not retroactively affect a contribution rate. The section also amends the Administrative Procedures Act on rulemaking to exempt specified actuarial tables, assumptions, methods, and factors from rule-making. This section was effective as of June 25, 2020, and the exemption from rule-making applies to actuarial tables, assumptions, and contribution-based benefit cap factors adopted or changed on or after that date.
    - Section 4.2 amends TSERS and LGERS statutes to add the adoption of any necessary contribution-based benefit cap factors to the duties of the Boards of Trustees after the actuarial investigation and valuation after each five-year period. It also allows the Division to pay for the administration costs by increasing receipts from the retirement assets of the system or pay costs directly from the retirement assets. This section was effective as of June 25, 2020, and applies to actuarial investigations and calculations made on or after that date.
    - Section 4.3 repeals certain statutes in TSERS, LGERS, the Consolidated Judicial Retirement System, and the Legislative Retirement System pertaining to forfeiture of retirement benefits for certain felonies related to employment or holding office. In each forfeiture statute, one of the two factors that require forfeiture is that “the conduct resulting in the member’s conviction is directly related to the member’s office or employment.” This language is not repealed. Each subsection that is repealed mentioned this language only by reference and further provided that it applies to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member’s conduct is directly related to the member’s office or employment. The repeal removes the reference to Chapter 15A of the General Statutes pertaining to aggravating factors in the Criminal Procedure Act.
    - Section 4.4 amends statutes in TSERS, LGERS, the Consolidated Judicial Retirement System, and the Legislative Retirement System in an identical manner. The amendments clarify that the law on felony forfeiture of pensions for elected officials and members applies regardless of whether the creditable service being forfeited was earned by membership in the system, accrued by conversion of sick leave at the point of the member’s retirement, accrued by transfer of service from another retirement system, purchased by the member, or accrued by any other means. The changes further clarify that creditable service

attributable to the conversion of sick leave accrues on the date of retirement, service transferred from another system accrues on the effective date of the transfer, and purchased service accrues on the date of the purchase.

- Section 4.5 amends statutes in TSERS, LGERS, the Consolidated Judicial Retirement System, and the Legislative Retirement System to clarify that forfeited service may not be used for the purposes of eligibility for benefits in any retirement system that provides reciprocal benefits.
- Section 5: Amend Special Insurance Benefits Plan Offerings  
Repeals G.S. 143-166-60(d)(1), which allowed the TSERS and LGERS Boards of Trustees to promulgate rules and regulations, within the availability of funds, to provide an accident and sickness disability insurance benefit under the Separate Insurance Benefits Plan for State and Local Government Law Enforcement Officers.
- Regulatory Reform Act of 2020 (House Bill 308 / Session Law 2020-74), Section 9
- Coronavirus Relief Fund/Additions & Revisions (House Bill 1023, Session Law 2020-80), Section 1.1(f)

These sections contain identical provisions effective July 1, 2020, amending Senate Bill 704 / S.L. 2020-3 to extend the expiration of the COVID-19-related exemptions from return-to-work restrictions, from August 1, 2020 to August 31, 2020.

- UNC Omnibus Changes/UNC Lab School Funds (House Bill 1096, Session Law 2020-56)

Section 7 exempts commissioned police officers of the University of North Carolina from most provisions of the North Carolina Human Resources Act. It clarifies that these officers continue to be eligible for employment and retirement benefits provided to State Law Enforcement Officers.

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*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.*