



October 27, 2022

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 2022 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 2022 session. This included the State budget law, a budget technical corrections law, and four 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 in October 2022 (4% of annual pension) for TSERS, Judicial, and Legislative monthly payees, and pays fully for anticipated costs within one year

#### BENEFIT POLICY CHANGES

- TSERS/LGERS employers who do not employ a qualifying employee for six consecutive months will automatically be deemed inactive and follow a withdrawal process from the Retirement System
- Employers without taxing authority, seeking to join LGERS after September 1, 2023 must acquire a surety as defined by the Board of Trustees as part of the application process
- For members who joined the Firefighters' and Rescue Squad Workers' Pension Fund prior to July 1, 2018, did not designate a principal beneficiary, and subsequently die in the line of duty, the surviving spouse may receive a lifetime benefit of \$170.00 per month after the member's death

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

- Moratorium on school boards filing CBBC litigation extended for an additional year; working group convened between DST and N.C. School Boards Association has been extended through June 30, 2023
- Public safety line-of-duty death benefits, determined by the Industrial Commission and paid by DST, shall be paid only to the beneficiary or beneficiary's parent or legal guardian

Additionally, on August 2, 2022, the Revisor of Statutes, a member of the General Assembly's staff, informed RSD of a correction to a publishing error in a statutory provision that he made within his authority. Although this was not the result of new legislation, it is summarized at the end of this memorandum since it is a change to the published provisions of the General Statutes.

### The Session

The 2022 "short session" or "second regular session" of the North Carolina General Assembly (General Assembly) initially convened on January 3, 2022 and recessed the same day to be reconvened on January 6. The session adjourned on July 1 to reconvene July 26 (SJR 917, Res 2022-6). Before the July 26 adjournment, 195 House bills or resolutions and 175 Senate bills or resolutions were introduced, for a total of 370 introductions. The legislature enacted 75 of these bills or resolutions.



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During the 2022 session, other than the State budget and budget technical corrections, six bills whose proposed provisions had public policy implications for the Retirement Systems or the SHP 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 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 six bills, four were ultimately enacted:

**BILLS RECEIVING COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY ENACTED IN 2022**

- Retirement Policy (may also have SHP implications)
  - HB 177 Extend Spiking Moratorium/LGERS Surety
  - HB 1056 Ret. & Treasury Admin. Changes Act of 2022
  - HB 1058 Ret. & Treasury Tech. Corrections Act of 2022
  - SB 265 Bond Info Transparency/LGC Toolkit II

**BILLS RECEIVING COMMITTEE HEARING OR OTHER ACTION AND ULTIMATELY NOT ENACTED IN 2022**

- Retirement Policy (may also have SHP implications)
  - HB 1099 Judicial Retirement/Survivor Benefits Parity.-AB
- SHP Policy
  - HB 169 State Health Plan Data Transparency.-AB

**State Budget & Appropriations**

- **2022 Appropriations Act (House Bill 103 / Session Law 2022-74)**

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 2021-2023 biennium. Session Law 2022-73 fully funded the ADECs for all the Retirement Systems for Fiscal Year 2022-2023 based on the Boards’ funding policies adopted in April 2021.

- **Section 39.19 Salary-Related Contributions Adjustment**  
For the fiscal year ending 2023, amends the employer contribution rates from Section 39.22.(c) of Session Law 2021-180 as a percentage of covered salaries for FY 2022-2023 for teachers and State employees, State law enforcement officers (LEOs), the Consolidated Judicial Retirement System (CJRS), and the Legislative Retirement System (LRS). The rates are increased as shown the *Employer Contribution Rates for Retirement, Health, and Related Benefits* Table later in this memo.
- **Section 39.20 One-Time Cost of Living Supplement**  
Amends G.S. 135-5(yyy), G.S. 135-65(jj), and G.S. 120-4.22A(dd), to provide that the one-time supplement for TSERS, CJRS and LRS monthly payees, payable in October 2022, is equal to 4% of the annual allowance. The payments shall be made for the accounts of members who retired on or before September 1, 2022 and are living as of September 1, 2022. 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 September 2022.



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#### Section 39.21 Line of Duty Death Benefit Fund

Requires that 0.02% of the 0.13% of pay from the FY 2022-2023 TSERS Death Benefit employer contribution rate must be deposited in a separate fund that could be used to pay Line of Duty Death (LODD) benefits during the fiscal year. The LODD benefits (\$100,000 or \$200,000 per case determined by the Industrial Commission) must first be paid using funds appropriated to DST and then by all federal funds received by the State that are available and eligible to use for the payment prior to using the funds set aside from the TSERS Death Benefit employer contributions. If there are any unused funds in the new fund at the end of the fiscal year, these would transfer to the TSERS Death Benefit trust.

- **Budget Technical Corrections (House Bill 243 / Session Law 2022-6):**

- **Section 17.3 Non-Designated Surviving Spouse Beneficiaries – Firefighters’ and Rescue Squad Workers’ Pension Fund (FRSWPF)**  
Amends G.S. 58-86-55(d1) to provide that if a member of the FRSWPF became a member prior to July 1, 2018, and had not designated a principal beneficiary prior to being killed in the line of duty, the member’s living spouse may receive a lifetime benefit of \$170.00 per month beginning the month following the member’s month of death.
- **Section 17.4 Additional Funding for Public Safety Employees’ Death Benefits**  
Amends Section 39.2(j) of Session Law 2021-180, pertaining to the funding of pandemic bonuses to State employees, to require a transfer of \$1.2 million to the Department of State Treasurer, for only the fiscal year ending 2022, to pay for line of duty death benefits awarded by the Industrial Commission under Article 12A of Chapter 143 of the General Statutes.

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

|  | FY 2022-2023 Adjusted Per H103 /<br>SL 2022-74  |
|--|---|
| <b>PENSION ADEC FUNDING/SHP PREMIUMS</b>   |   |
| Teachers’ and State Employees’ Retirement System   | \$3,064,475,491   |
| State Health Plan Employer Premiums for Non-Retired Members  | \$2,243,916,935   |
| Retiree Health Benefit Trust/Retiree Medical   | \$1,368,944,886   |
| Consolidated Judicial Retirement System  | \$33,063,020  |
| Legislative Retirement System  | \$901,742   |
| Disability Income Plan of North Carolina   | \$19,782,195  |
| State Employee Death Benefit Plan*   | \$22,921,854  |
| National Guard Pension Fund**  | \$11,031,715  |
| Firefighters & Rescue Squad Worker’s Pension Fund**  | \$19,702,208  |
| Line of Duty Death Benefits**  | \$2,521,500   |
| Coronavirus Relief Fund Reallocation Reimbursing the SHP for COVID-Related Expenses  | Up to \$144,000,000 as unspent funds from previous allotments to other entities are returned to Coronavirus Relief Fund, of which \$101,000,000 was allocated to the SHP. |
| *0.02% of the 0.13% rate (approximately \$3,526,439 of the \$22,921,854) is to be placed in separate fund during the fiscal year to pay line-of-duty death benefits as needed, reverting to TSERS Death Benefit Trust if unspent |   |
| **Total Appropriation  |   |

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### Employer Contribution Rates for Retirement, Health, and Related Benefits

Rates effective July 1, 2022 through June 30, 2023, S.L. 2022-74 (House Bill 103), Section 39.19

| FY 2022-2023            | Total Rate | Breakdown of Rate Type  |                                     |                        |                             |  | Qualified Excess Benefit |
|-------------------------|------------|-------------------------|-------------------------------------|------------------------|-----------------------------|--|--------------------------|
|                         |            | Retirement <sup>^</sup> | Retiree Health Benefit <sup>^</sup> | Disability Income Plan | Death Benefit <sup>^^</sup> | Supplemental Retirement <sup>^^^</sup> |                          |
| TSERS General           | 24.50%     | 17.37%                  | 6.89%                               | 0.10%                  | 0.13%                       |  | 0.01%                    |
| TSERS Law Enforcement   | 29.50%     | 17.37%                  | 6.89%                               | 0.10%                  | 0.13%                       | 5.00%                                  | 0.01%                    |
| UNC ORP                 | 13.83%     | 6.84%                   | 6.89%                               | 0.10%                  |                             |  |                          |
| CJRS                    | 46.84%     | 39.95%                  | 6.89%                               |                        |                             |  |                          |
| Legislative Ret. System | 31.80%     | 24.91%                  | 6.89%                               |                        |                             |  |                          |

<sup>^</sup> Section 2.2.(u) of the law describes the allocation of \$40 million appropriated from the Unfunded Liability Solvency Reserve to support a small portion of the employer contribution rate toward retirement and retiree health benefits.

<sup>^^</sup> Pursuant to Sections 39.19(2) and 39.21 of the law, out of the 0.13% "Death Benefit" contribution rate for TSERS members during the fiscal year, the Department of State Treasurer will deposit 0.11% directly to the TSERS Death Benefit Trust. The remaining 0.02% will be placed in a separate account in case needed during the fiscal year to pay line-of-duty death benefits to beneficiaries of public safety workers awarded by the Industrial Commission under Chapter 143, Article 12A. To the extent the separate account is unspent as of June 30, 2023, it will revert to the TSERS Death Benefit Trust.

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

### Other Policy Provisions in House Bill 103 / Session Law 2022-74 Not Directly Administered by RSD

- Section 39.18 Mitigate Bonus Leave  
During the 2022-2023 fiscal year, 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 39.1 Eligible State-Funded Employees' Legislative Salary Increase Effective July 1, 2022  
Amends Section 39.1(a1) of Session Law 2021-180 to increase the legislative salary increase provided by that section from 2.5% to 3.5% for fiscal year ending 2023.
- Bonuses or Other Employee Payments  
Session Law 2022-74 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 2022

- Ret. & Treasury Admin. Changes Act of 2022 (House Bill 1056 / Session Law 2022-14):
  - Sections 1.1 through 1.4 Supplemental Retirement Plans Transfer Benefit  
Amend G.S. 135-5(m1), 135-5(m2), 128-27(m1), and 128-27(m2) to provide that if a member transfers funds from their 401(k) or other retirement savings into TSERS or LGERS toward a "Transfer Benefit," and it is later discovered that the member was not eligible to make the transfer due to federal or State law, then the Retirement System must return the funds to plan in which the money originated. If the Retirement System cannot return the funds to the account in which the funds originated, then the member



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may designate another eligible account under the transferor plan or receive a lump sum distribution paid directly to the member. These provisions are effective July 1, 2022.

- Sections 2.1 and 2.2 Inactive Employers  
Amend G.S. 135-5.5 and 128-23.1 to provide that employers under TSERS and LGERS automatically become “inactive” if they have not reported any qualifying employees for at least six consecutive months. By May 15 of each year, RSD will notify employers who are in “inactive status,” informing them that they will withdraw from the Retirement System on October 1 of the same year. Upon receiving this notice, an employer may request by June 30 that the Board of Trustees extend the employer’s inactive status by one additional year, by providing clear and convincing evidence of their intent to hire an eligible employee. On October 1 of each calendar year, inactive employers who have not had their inactive status extended by the Board will cease participation in the Retirement System and be required to pay a withdrawal liability. These provisions are effective December 31, 2022.
- Sections 3.1 and 3.2 Discontinuance of 403(b) Plan  
Add G.S. 115C-341.2(d) and 115D-25.4(d) related to the 2022 discontinuation of the 403(b) program, providing that effective July 1, 2022, DST may use a procurement process to choose a default individual retirement account (IRA) provider for any participants whose employers do not select one.
- Section 4.1 Line of Duty Death Benefit Payment Clarification  
Amends G.S. 143-166.3 to clarify that when a public safety line-of-duty death benefit is determined by the Industrial Commission, DST shall pay only the beneficiary or the beneficiary’s parent or legal guardian. For example, DST would not directly pay an attorney representing the beneficiary. This provision is effective July 1, 2022.
- Section 5.1 Codification of “Editor’s Note” for Long-Term Disability (LTD) Benefits in the Disability Income Plan of North Carolina (DIPNC)  
Adds G.S. 135-106(e) clarifying effective July 1, 2022 that the LTD provisions from G.S. 135-106 as of July 31, 2007 apply to members who had at least five years of membership service credit as of July 31, 2007 and did not withdraw that membership service prior to LTD provisions applying.

- **Ret. & Treasury Tech. Corrections Act of 2022 (House Bill 1058 / Session Law 2022-16):**

Effective July 1, 2022, makes various clarifying and technical changes pertaining to the Retirement Systems and the Achieving a Better Life Experience (ABLE) program. Section 2.3 clarifies that the payees eligible to receive a one-time supplement authorized by the LGERS Board and payable in October of a given year are the payees as of September 1 instead of July 1.

- **Bond Info Transparency/LGC Toolkit II (Senate Bill 265 / Session Law 2022-53):**

- Section 9.5 Charter Schools in Ancillary Governmental Participant Investment Program (AGPIP)  
Adds G.S. 115C-218.15(f), and amends G.S. 115C-218.100(a), 147-69.2, 147-69.3(b), 159-30(g), and 159-30.1(a), effective October 1, 2022, to allow charter schools to participate in the AGPIP, and to add the AGPIP as an option that charter schools who are TSERS employers can use for maintaining the fund of at least \$50,000 to be reserved for closure expenses.





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• **Extend Spiking Moratorium/LGERS Surety (House Bill 177 / Session Law 2022-70):**

- **Section 1.(a) Extension to Pension Spiking Moratorium**  
Amends Section 3.2 of Session Law 2021-72 to extend until June 30, 2023 the moratorium on legal actions filed by school boards related to the contribution-based benefit cap (CBBC) of G.S. 135-5(a3). Provides that, prior to September 1, 2023, RSD is not to request an interception of State appropriations for unpaid CBBC contributions attributable to retirements that occurred between July 1, 2021, and June 30, 2022.
- **Section 1.(b) Extension to Pension Spiking Working Group**  
Amends Section 4 of Session Law 2021-72 to extend from April 1, 2022 to December 15, 2022 the date by which the working group convened by DST and the N.C. School Boards Association may report its findings to the Joint Legislative Oversight Committee on General Government.
- **Section 2 Surety Requirement for Non-Taxing Authority Employers Seeking to Join LGERS**  
Adds G.S. 128-23(i), providing that any local government employer that is not a taxing authority and is not a participating employer in LGERS on September 1, 2023, is not eligible to commence participation in LGERS without obtaining a surety as defined in rules adopted by the Board of Trustees. Provides that the rules adopted by the Board shall address how an eligible employer that is not a taxing authority will cover the withdrawal liability that may be incurred by the employer if they cease participation in LGERS. Provides that the Board shall adopt rules necessary to enforce this section by August 1, 2023.

**Correction by the Revisor of Statutes to G.S. 135-106(a) as Published**

On August 2, 2022, RSD received a notarized letter from the Revisor of Statutes, a member of the General Assembly staff. The Revisor of Statutes disclosed that there had been a publishing error involving the company that publishes the N.C. General Statutes, resulting in an incorrect statutory provision being published for at least fifteen consecutive years dating back to 2007. The Revisor of Statutes also reported that he recently took action within his authority to correct the published statute. According to the Revisor of Statutes, the publishing error was in the third paragraph of G.S. 135-106(a), defining the 96-month period within which a member of DIPNC must earn at least five years of membership service in order to qualify for LTD benefits. Prior to correction by the Revisor of Statutes, the sentence stated: "As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits." After correction by the Revisor of Statutes, the sentence states: "As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to becoming disabled or upon cessation of continuous salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits." In other words, the words, "prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later," were corrected to, "prior to becoming disabled or upon cessation of continuous salary continuation payments, whichever is later."

*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.*

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