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HOUSE BILL 1074  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H1074-PCS30659-LL-23

Short Title: Stop Waste, Fraud, and Abuse in Govt. Act.

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND THE DISABILITY INCOME PLAN OF NORTH CAROLINA TO PROVIDE PROTECTION AND REMEDIES FOR REPORTING VIOLATIONS OF RETIREMENT LAW; TO ESTABLISH GUIDELINES FOR FRAUD INVESTIGATIONS THAT WILL ENHANCE THE DEPARTMENT OF STATE TREASURER'S CAPABILITY TO PREVENT AND DETECT FRAUD, WASTE, AND ABUSE; TO MAKE IT A CLASS 1 MISDEMEANOR TO FRAUDULENTLY RECEIVE A DECEDENT'S MONTHLY DISABILITY BENEFIT; AND TO CLARIFY THE APPOINTMENT OF THE MEDICAL BOARD.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to read:

**"§ 128-38.6. Employee protection and remedies against unlawful retaliation for furnishing information to the Retirement Systems Division.**

(a) In the absence of fraud or malice, no person who furnishes information to the staff of the Retirement Systems Division relating to the investigation of possible violations of retirement law shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply such information to the Division.

(b) Any employee of a participating local employer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee in furtherance of the Retirement Systems Division's receipt of information concerning possible violations of retirement law, including cooperation with the Division's investigation of possible violations, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination or retaliation by the employing unit, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section."



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1           **SECTION 2.(a)** G.S. 128-21 reads as rewritten:

2   "**§ 128-21. Definitions.**

3       The following words and phrases as used in this Article, unless a different meaning is  
4 plainly required by the context, shall have the following meanings:

5       ...

6       (5a) "Authorized representatives who are assisting the Retirement Systems  
7 Division staff" means only other staff of the Department of State Treasurer,  
8 staff of the Department of Justice, or persons providing internal auditing  
9 assistance required under G.S. 143-746(b).

10       ...

11       (11b) "Firefighter" means a person (i) who is a full-time paid employee of an  
12 employer that participates in the Local Governmental Employees'  
13 Retirement System and maintains a fire department certified by the North  
14 Carolina Department of Insurance and (ii) who is actively serving in a  
15 position with assigned primary duties and responsibilities for the prevention,  
16 detection, and suppression of fire.

17       (11c) "Fraud investigation" means an independent review or examination by  
18 Retirement Systems Division staff or authorized representatives who are  
19 assisting the Retirement Systems Division staff of activities, actions, or  
20 decisions by employers or other affiliated or associated entities having an  
21 impact on the Retirement System. The purpose of a fraud investigation is to  
22 help detect and prevent fraud and to ensure full accountability in the use of  
23 pension funds.

24       ~~(11e)~~(11d) "Law Enforcement Officer" means a full-time paid employee of an  
25 employer, who possesses the power of arrest, who has taken the law  
26 enforcement oath administered under the authority of the State as prescribed  
27 by G.S. 11-11, and who is certified as a law enforcement officer under the  
28 provisions of Chapter 17C of the General Statutes or certified as a deputy  
29 sheriff under the provisions of Chapter 17E of the General Statutes. "Law  
30 enforcement officer" also means the sheriff of the county. The number of  
31 paid personnel employed as law enforcement officers by a law enforcement  
32 agency may not exceed the number of law enforcement positions approved  
33 by the applicable local governing board.

34       ...."

35           **SECTION 2.(b)** G.S. 135-1 reads as rewritten:

36   "**§ 135-1. Definitions.**

37       The following words and phrases as used in this Chapter, unless a different meaning is  
38 plainly required by the context, shall have the following meanings:

39       ...

40       (5a) "Authorized representatives who are assisting the Retirement Systems  
41 Division staff" means only other staff of the Department of State Treasurer,  
42 staff of the Department of Justice, or persons providing internal auditing  
43 assistance required under G.S. 143-746(b).

44       ...

45       (11a) "Filing" when used in reference to an application for retirement shall mean  
46 the receipt of an acceptable application on a form provided by the  
47 Retirement System.

48       (11b) "Fraud investigation" means an independent review or examination by  
49 Retirement Systems Division staff or authorized representatives who are  
50 assisting the Retirement Systems Division staff of activities, actions, or  
51 decisions by employers or other affiliated or associated entities having an

1 impact on the Retirement System. The purpose of a fraud investigation is to  
2 help detect and prevent fraud and to ensure full accountability in the use of  
3 pension funds.

4 ~~(11b)~~(11c) "Law-Enforcement Officer" means a full-time paid employee of an employer  
5 who is actively serving in a position with assigned primary duties and  
6 responsibilities for prevention and detection of crime or the general  
7 enforcement of the criminal laws of the State of North Carolina or serving  
8 civil processes, and who possesses the power of arrest by virtue of an oath  
9 administered under the authority of the State.

10 ...."

11 **SECTION 2.(c)** G.S. 128-28 is amended by adding three new subsections to read:

12 "(r) Fraud Investigations – Access to Persons and Records. – In the course of conducting  
13 a fraud investigation, the Retirement Systems Division, or authorized representatives who are  
14 assisting the Retirement Systems Division staff, shall:

15 (1) Have ready access to persons and may examine and copy all books, records,  
16 reports, vouchers, correspondence, files, personnel files, investments, and  
17 any other documentation of any employer. The review of State tax returns  
18 shall be limited to matters of official business, and the Division's report shall  
19 not violate the confidentiality provisions of tax laws.

20 (2) Have such access to persons, records, papers, reports, vouchers,  
21 correspondence, books, and any other documentation that is in the  
22 possession of any individual, private corporation, institution, association,  
23 board, or other organization which pertain to the following:

24 a. Amounts received pursuant to a grant or contract from the federal  
25 government, the State, or its political subdivisions.

26 b. Amounts received, disbursed, or otherwise handled on behalf of the  
27 federal government or the State.

28 (3) Have the authority, and shall be provided with ready access, to examine and  
29 inspect all property, equipment, and facilities in the possession of any  
30 employer agency or any individual, private corporation, institution,  
31 association, board, or other organization that were furnished or otherwise  
32 provided through grant, contract, or any other type of funding by the  
33 employer agency.

34 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of  
35 social and medical services to a beneficiary shall make copies of records they maintain for  
36 services provided to a beneficiary available to the Retirement Systems Division, or to the  
37 authorized representatives who are assisting the Retirement Systems Division staff. Copies of  
38 the records of social and medical services provided to a beneficiary will permit verification of  
39 the health or other status of a beneficiary as required for the payment of benefits under Article  
40 3 of this Chapter. The Retirement Systems Division, or authorized representatives who are  
41 assisting the Retirement Systems Division staff, shall request records in writing by providing  
42 the name of each beneficiary for whom records are sought, the purpose of the request, the  
43 statutory authority for the request, and a reasonable period of time for the production of record  
44 copies by the provider. A provider may charge, and the Retirement Systems Division, or  
45 authorized representatives who are assisting the Retirement Systems Division staff, shall, in  
46 accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the records  
47 provided in accordance with this subsection.

48 (s) Fraud Investigative Reports and Work Papers. – The Director of the Retirement  
49 Systems Division shall maintain for 10 years a complete file of all fraud investigative reports  
50 and reports of other examinations, investigations, surveys, and reviews issued under the  
51 Director's authority. Fraud investigation work papers and other evidence or related supportive

1 material directly pertaining to the work of the Retirement Systems Division of the Department  
2 of State Treasurer shall be retained according to an agreement between the Director of  
3 Retirement and State Archives. To promote intergovernmental cooperation and avoid  
4 unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel  
5 policies to the contrary, pertinent work papers and other supportive material relating to issued  
6 fraud investigation reports may be, at the discretion of the Director of Retirement and unless  
7 otherwise prohibited by law, made available for inspection by duly authorized representatives  
8 of the State and federal government who desire access to and inspection of such records in  
9 connection with some matter officially before them, including criminal investigations. Except  
10 as provided in this section, or upon an order issued in Wake County Superior Court upon 10  
11 days' notice and hearing finding that access is necessary to a proper administration of justice,  
12 fraud investigation work papers and related supportive material shall be kept confidential,  
13 including any information developed as a part of the investigation.

14 (t) Fraud Reports May Be Anonymous. – The identity of any person reporting fraud,  
15 waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be  
16 maintained as a public record within the meaning of G.S. 132-1."

17 **SECTION 2.(d)** G.S. 135-6 is amended by adding three new subsections to read:

18 "(q) Fraud Investigations – Access to Persons and Records. – In the course of conducting  
19 a fraud investigation, the Retirement Systems Division, or authorized representatives who are  
20 assisting the Retirement Systems Division staff, shall:

21 (1) Have ready access to persons and may examine and copy all books, records,  
22 reports, vouchers, correspondence, files, personnel files, investments, and  
23 any other documentation of any employer. The review of State tax returns  
24 shall be limited to matters of official business, and the Division's report shall  
25 not violate the confidentiality provisions of tax laws.

26 (2) Have such access to persons, records, papers, reports, vouchers,  
27 correspondence, books, and any other documentation that is in the  
28 possession of any individual, private corporation, institution, association,  
29 board, or other organization that pertain to the following:

30 a. Amounts received pursuant to a grant or contract from the federal  
31 government, the State, or its political subdivisions.

32 b. Amounts received, disbursed, or otherwise handled on behalf of the  
33 federal government or the State.

34 (3) Have the authority, and shall be provided with ready access, to examine and  
35 inspect all property, equipment, and facilities in the possession of any  
36 employer agency or any individual, private corporation, institution,  
37 association, board, or other organization that were furnished or otherwise  
38 provided through grant, contract, or any other type of funding by the  
39 employer agency.

40 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of  
41 social and medical services to a beneficiary shall make copies of records they maintain for  
42 services provided to a beneficiary available to the Retirement Systems Division, or to the  
43 authorized representatives who are assisting the Retirement Systems Division staff. Copies of  
44 the records of social and medical services provided to a beneficiary will permit verification of  
45 the health or other status of a beneficiary as required for the payment of benefits under Article  
46 1, Article 4, or Article 6 of this Chapter. The Retirement Systems Division, or authorized  
47 representatives who are assisting the Retirement Systems Division staff, shall request records in  
48 writing by providing the name of each beneficiary for whom records are sought, the purpose of  
49 the request, the statutory authority for the request, and a reasonable period of time for the  
50 production of record copies by the provider. A provider may charge, and the Retirement  
51 Systems Division, or authorized representatives who are assisting the Retirement Systems

1 Division staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for  
2 copies of the records provided in accordance with this subsection.

3 (r) Fraud Investigative Reports and Work Papers. – The Director of the Retirement  
4 Systems Division shall maintain for 10 years a complete file of all fraud investigative reports  
5 and reports of other examinations, investigations, surveys, and reviews issued under the  
6 Director's authority. Fraud investigation work papers and other evidence or related supportive  
7 material directly pertaining to the work of the Retirement Systems Division of the Department  
8 of State Treasurer shall be retained according to an agreement between the Director of  
9 Retirement and State Archives. To promote intergovernmental cooperation and avoid  
10 unnecessary duplication of fraud investigative effort, and notwithstanding local unit personnel  
11 policies to the contrary, pertinent work papers and other supportive material relating to issued  
12 fraud investigation reports may be, at the discretion of the Director of Retirement and unless  
13 otherwise prohibited by law, made available for inspection by duly authorized representatives  
14 of the State and federal government who desire access to and inspection of such records in  
15 connection with some matter officially before them, including criminal investigations. Except  
16 as provided in this section, or upon an order issued in Wake County Superior Court upon 10  
17 days' notice and hearing finding that access is necessary to a proper administration of justice,  
18 fraud investigation work papers and related supportive material shall be kept confidential,  
19 including any information developed as a part of the investigation.

20 (s) Fraud Reports May Be Anonymous. – The identity of any person reporting fraud,  
21 waste, and abuse to the Retirement Systems Division shall be kept confidential and shall not be  
22 maintained as a public record within the meaning of G.S. 132-1."

23 **SECTION 3.(a)** G.S. 135-18.11 reads as rewritten:

24 "**§ 135-18.11. Improper receipt of decedent's retirement ~~allowance~~ allowance or disability**  
25 **benefit.**

26 A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud,  
27 receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's  
28 retirement allowance or a decedent's monthly benefit under the Disability Income Plan of North  
29 Carolina and the person (i) knows that he or she is not entitled to the decedent's retirement  
30 ~~allowance~~, allowance or the monthly disability benefit, (ii) receives the benefit at least two  
31 months after the date of the retiree's death, and (iii) does not attempt to inform this Retirement  
32 System of the retiree's death."

33 **SECTION 3.(b)** G.S. 135-111 reads as rewritten:

34 "**§ 135-111. Applicability of other pension laws.**

35 Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption  
36 from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud";  
37 G.S. 135-10.1, entitled "Failure to Respond"; G.S. 135-18.11, entitled "Improper receipt of  
38 decedent's retirement allowance or disability benefit"; and G.S. 135-17, entitled "Facility of  
39 payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of  
40 this Article."

41 **SECTION 4.(a)** G.S. 128-28(l) reads as rewritten:

42 "(l) Medical Board. – The Board of Trustees shall designate a Medical Board to be  
43 composed of not less than three nor more than five physicians not eligible to participate in the  
44 Retirement System. The Board of Trustees may structure appointment requirements and term  
45 durations for those medical board members. If required, other physicians may be employed to  
46 report on special cases. The Medical Board shall arrange for and pass upon all medical  
47 examinations required under the provisions of this Chapter, and shall investigate all essential  
48 statements and certificates by or on behalf of a member in connection with an application for  
49 disability retirement, and shall report in writing to the Board of Trustees its conclusion and  
50 recommendations upon all the matters referred to it."

51 **SECTION 4.(b)** G.S. 135-6(k) reads as rewritten:

1       "(k) Medical Board. – The Board of Trustees shall designate a medical board to be  
2 composed of not less than three nor more than five physicians not eligible to participate in the  
3 Retirement System. The Board of Trustees may structure appointment requirements and term  
4  durations for those medical board members. If required, other physicians may be employed to  
5 report on special cases. The medical board shall arrange for and pass upon all medical  
6 examinations required under the provisions of this Chapter, and shall investigate all essential  
7 statements and certificates by or on behalf of a member in connection with an application for  
8 disability retirement, and shall report in writing to the Board of Trustees its conclusion and  
9 recommendations upon all the matters referred to it."

10               **SECTION 5.** Section 3(a) of this act becomes effective December 1, 2012, and  
11 applies to acts committed on or after that date. The remainder of this act becomes effective  
12 July 1, 2012.