

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE DRS35549-LL-215A\* (05/15)

Short Title: Retirement Investment Accountability. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENHANCE THE ACCOUNTABILITY AND TRANSPARENCY OF THE  
3 STATE RETIREMENT SYSTEMS' INVESTMENT PROGRAMS BY PROVIDING FOR  
4 AUDITED FINANCIAL STATEMENTS, PERFORMANCE REVIEWS, EXPANDED  
5 AND MODERNIZED REPORTING, A SUNSET ON THE CONFIDENTIALITY OF  
6 PROPRIETARY INFORMATION, RESOURCE FLEXIBILITY FOR THE  
7 INVESTMENT MANAGEMENT DIVISION, AND OTHER MEASURES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) Article 6 of Chapter 147 of the General Statutes is amended by  
10 adding a new section to read:

11 "**§ 147-69.9. Third-party audit of Retirement Systems investment programs.**

12 (a) In addition to all other audits and reports required by law, the State Treasurer shall  
13 prepare and issue, as of the end of each fiscal year, a set of financial statements regarding the  
14 investment programs for the Retirement Systems enumerated in G.S. 147-69.2(b)(8). These  
15 financial statements shall be audited by a commercial independent third-party audit firm  
16 selected and engaged by the State Auditor based upon selection criteria developed by the State  
17 Auditor in consultation with the State Treasurer. The audit firm's report and the financial  
18 statements shall be provided to the General Assembly within six months after the close of the  
19 reporting period.

20 (b) Supplementary information accompanying the financial statements required by  
21 subsection (a) of this section shall include a discussion of the Retirement Systems' risk and  
22 returns compared to benchmarks, total management fees and incentives paid, and comparisons  
23 to peer cost benchmarks.

24 (c) Any associated costs of the audit required by this section shall be subject to the  
25 provisions of G.S. 147-69.3(f) and do not require appropriations to either the State Auditor or  
26 the State Treasurer in the Current Operations Appropriations Act."

27 SECTION 1.(b) This section becomes effective for audits and reports relating to  
28 the 2014-2015 fiscal year. For the 2014-2015 fiscal year, the requirements stated by subsection  
29 (a) of this section shall be met by an independent review of the Retirement Systems' pro forma  
30 financial statements. For the 2015-2016 fiscal year and thereafter, the audit requirement stated  
31 by this section shall take the form of an independent opinion concerning the Retirement  
32 Systems' initial financial statements. In order to allow for an opinion to be offered for the  
33 2015-2016 fiscal year, the State Auditor shall select an audit firm no later than January 1, 2015,  
34 and by June 30, 2015, the Treasurer shall separately account for any Retirement Systems  
35 investment portfolios that are commingled with the Treasurer's other investment programs.



1           SECTION 2. Article 6 of Chapter 147 of the General Statutes is amended by  
2 adding a new section to read:

3 **"§ 147-69.10. Performance review of Retirement Systems investment programs.**

4           At least once every four years, the State Treasurer shall engage a commercial independent  
5 expert firm pursuant to G.S. 147-69.3(g) to evaluate the governance, operations, and  
6 investment practices of the State Treasurer in order to develop recommendations for  
7 improvement. The report of the expert firm shall be provided to the General Assembly when  
8 complete."

9           SECTION 3.(a) Article 6 of Chapter 147 of the General Statutes is amended by  
10 adding a new section to read:

11 **"§ 147-69.11. Reporting of Retirement Systems investments.**

12           (a) Definitions. – The following definitions apply in this section:

- 13           (1) External investment manager. – The State Treasurer's counterparty or its  
14 affiliate given authority or discretion to make investment decisions  
15 concerning the investments that are not managed internally by the State  
16 Treasurer's staff.
- 17           (2) Incentive fees. – Any incentive compensation to an investment manager or  
18 investment vehicle that the Retirement Systems incur directly or experience  
19 indirectly as a reduction in distributions.
- 20           (3) Investment vehicle. – A limited partnership, limited liability company, trust,  
21 or other legal entity through which the State Treasurer invests.
- 22           (4) Management Fees. – Compensation other than incentive fees paid to the  
23 investment manager or investment vehicle to compensate it for its  
24 management of funds that the Retirement Systems incur directly or  
25 experience indirectly as a reduction in distributions.

26           (b) In addition to all other reports required by law, the State Treasurer shall prepare and  
27 make public a report on the fees and performance of external investment managers engaged for  
28 the Retirement Systems enumerated in G.S. 147-69.2(b)(8) as of the end of each fiscal year. A  
29 copy of each report shall be submitted within nine months following the end of the fiscal year  
30 to the State Auditor, the Joint Legislative Commission on Governmental Operations, the Chairs  
31 of the House of Representatives Appropriations Subcommittee and Senate Appropriations  
32 Committee, the Chairs of the House of Representatives and Senate Finance Committees, and  
33 the Fiscal Research Division.

34           (c) The State Treasurer's report shall include all of the following that are applicable,  
35 reported separately for each investment:

- 36           (1) The name, commitment amount, statutory classification, inception year, and,  
37 as applicable, either a statement that the investment is managed internally by  
38 the staff of the State Treasurer or the names of the external investment  
39 manager and the investment vehicle for that investment.
- 40           (2) The value of the State Treasurer's investment as of the fiscal year end.
- 41           (3) For each investment made pursuant to subdivisions (1) through (6) of  
42 G.S. 147-69.2(b) or sub-subdivisions a. and c. of G.S. 147-69.2(b)(8), the  
43 periodic net annualized time-weighted rate of return for that fiscal year and,  
44 since inception, reported net of fees.
- 45           (4) For each investment other than those described in subdivision (3) of this  
46 subsection, the net annualized internal rate of return and investment multiple  
47 for that fiscal year and, since inception, reported net of fees.
- 48           (5) For each investment other than those described in subdivision (3) of this  
49 subsection, the total cash contributions or other investments made and the  
50 total distribution received with respect to that investment for that fiscal year  
51 and since inception.

- 1           (6)   The dollar amount of the management fees and incentive fees incurred by  
2           the State Treasurer and paid to the external investment manager.  
3           (7)   For any fund-of-fund investment vehicles, the aggregate management fees  
4           and incentive fees for the underlying investment managers or investment  
5           vehicles used by the external investment manager.  
6           (8)   If any placement agent fees relating to the investment were directly or  
7           indirectly borne by the Retirement Systems, a list of the amount and type of  
8           those fees.

9           Portfolios of investments managed internally by the staff of the State Treasurer shall be  
10          reported on a portfolio-by-portfolio basis."

11           **SECTION 3.(b)** Chapter 132 of the General Statutes is amended by adding a new  
12 section to read:

13          "§ 132-1.14. Public records for Treasurer's investment programs.

14           (a)   Definitions. – The following definitions apply in this section:

- 15           (1)   External investment manager. – The State Treasurer's counterparty or its  
16           affiliate given authority or discretion to make investment decisions  
17           concerning Treasurer investments that are not managed internally by the  
18           State Treasurer's staff.  
19           (2)   Incentive fees. – Any incentive compensation to an investment manager or  
20           investment vehicle that the Retirement Systems incur directly or experience  
21           indirectly as a reduction in distributions.  
22           (3)   Investment vehicle. – A limited partnership, limited liability company, trust,  
23           or other legal entity through which the State Treasurer invests.  
24           (4)   Management Fees. – Compensation other than incentive fees paid to the  
25           investment manager or investment vehicle to compensate it for its  
26           management of funds that the Retirement Systems incur directly or  
27           experience indirectly as a reduction in distributions.  
28           (5)   Person. – An individual, corporation, business trust, partnership, association,  
29           joint venture, or any other legal or commercial entity.  
30           (6)   Treasurer investment. – An investment for one or more of the investment  
31           programs established, managed, or operated by the State Treasurer pursuant  
32           to G.S. 147-69.3.

33           (b)   Notwithstanding any other provision of this section or any other provision of law,  
34          all of the following information is a public record for each Treasurer investment:

- 35           (1)   The name, commitment amount, statutory classification, inception year, and,  
36           if applicable, the names of the external investment manager and the  
37           investment vehicle for that investment.  
38           (2)   The value of the State Treasurer's investment as of the fiscal year end.  
39           (3)   For each investment made pursuant to subdivisions (1) through (6) of  
40           G.S. 147-69.2(b) or sub-subdivisions a. and c. of G.S. 147-69.2(b)(8), the  
41           periodic net annualized time-weighted rate of return for that fiscal year and,  
42           since inception, reported net of fees.  
43           (4)   For each investment other than those described in subdivision (3) of this  
44           subsection, the net annualized internal rate of return and investment multiple  
45           for that fiscal year and, since inception, reported net of fees.  
46           (5)   For each investment other than those described in subdivision (3) of this  
47           subsection, the total cash contributions or other investments made and the  
48           total distribution received with respect to that investment for that fiscal year  
49           and since inception.  
50           (6)   The dollar amount of the management fees and incentive fees incurred by  
51           the State Treasurer to the external investment manager.

1           (7) For any fund-of-fund investment vehicles, the aggregate management fees  
2           and incentive fees for the underlying investment managers or investment  
3           vehicles used by the external investment manager.

4           (8) If any placement agent fees relating to the investment were directly or  
5           indirectly borne by the Retirement Systems, a list of the amount and type of  
6           those fees.

7           (c) In order to prevent other investment traders from utilizing knowledge of potential or  
8           pending Treasurer investment trades for personal gain, all records relating to trades made  
9           directly by the staff of the State Treasurer pursuant to G.S. 147-69.2(b)(6b) or the second  
10           paragraph of G.S. 147-69.2(b)(8) are not public record until 90 days after the transaction has  
11           closed.

12           (d) The following information shall not be public record until 10 years after the  
13           termination of an investment vehicle in which the State Treasurer has made a Treasurer  
14           investment:

15           (1) Information regarding the portfolio positions in which the investment  
16           vehicle invests.

17           (2) Capital call and distribution notices to investors of the investment vehicle.

18           (3) Information concerning other investors in the investment vehicle.

19           (4) The investment's private placement memorandum and other offering and  
20           marketing material, if marked confidential.

21           (5) The investment's contractual documents, to the extent stated in any clause  
22           that places a duty of confidentiality upon the State Treasurer.

23           (6) Any other information that constitutes a "trade secret" as defined in  
24           G.S. 66-152(3) and that was disclosed or furnished by an actual or potential  
25           external investment manager in connection with an actual or potential  
26           Treasurer investment.

27           The information described in this subsection shall be available to the General Assembly and  
28           State Auditor at any time, even if not public record. The information shall become public  
29           record beginning on the date of the 10th anniversary of the investment vehicle's termination."

30           **SECTION 4.(a)** G.S. 147-69.3(f) reads as rewritten:

31           "(f) The cost of administration, management, and operation of investment programs  
32 established pursuant to this section shall be apportioned equitably among the programs in such  
33 manner as may be prescribed by the State Treasurer, such costs to be paid from each ~~program,~~  
34 ~~and to the extent not otherwise chargeable directly to the income or assets of the specific~~  
35 ~~investment program or pooled investment vehicle, shall be deposited with the State Treasurer~~  
36 ~~as a General Fund nontax revenue program.~~ The cost of administration, management, and  
37 operation of investment programs established pursuant to this section ~~and not directly paid~~  
38 ~~from the income or assets of such program shall be covered by an appropriation to the State~~  
39 ~~Treasurer for this purpose in the Current Operations Appropriations Act shall be reported to the~~  
40 ~~General Assembly by June 15 of each year, providing the actual costs incurred for the previous~~  
41 ~~fiscal year, the estimated costs for the current fiscal year, and the estimated costs for the next~~  
42 ~~fiscal year."~~

43           **SECTION 4.(b)** G.S. 147-69.3 is amended by adding a new subsection to read:

44           "(g1) The State Treasurer is authorized to appoint employees possessing specialized skills  
45 or knowledge necessary for the proper administration of investment programs created pursuant  
46 to this section. Notwithstanding the restrictions on the establishment of new employment  
47 positions contained in G.S. 143C-6-6(a), the State Treasurer may create those positions  
48 authorized under this subsection solely in the interest of the beneficiaries of the various  
49 investments authorized under G.S. 147-69.1 and G.S. 147-69.2, incurring only costs that are  
50 appropriate and reasonable."

51           **SECTION 4.(c)** G.S. 147-69.3(i2) reads as rewritten:

"(i2) In order to promote achievement of long-term investment objectives and to retain key public employees in the Investment Division, with investment functions, the State Treasurer is authorized to establish market-oriented compensation plans, including bonuses for the Chief Investment Officer and Investment Directors salaries and performance-related bonuses, for employees possessing specialized skills or knowledge necessary for the proper administration of investment programs, who shall be exempt from the classification and compensation rules established by the Office of State Human Resources. ~~The bonuses may design and administration of those compensation plans shall be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation and the Pension Plan performance compensation.~~ The ~~salaries compensation~~ and other associated employee benefits shall be apportioned directly from the investment program. The Treasurer shall report the salaries and bonuses paid to the Joint Legislative Commission on Governmental Operations annually."

**SECTION 4.(d)** G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...

(31) Employees of the Investment Management Division of the Department of State Treasurer."

**SECTION 5.** Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

**"§ 147-69.12. Placement agents.**

(a) Definitions. – The following definitions apply in this section:

(1) External investment manager. – The State Treasurer's counterparty or its affiliate given authority or discretion to make investment decisions concerning Treasurer investments that are not managed internally by the State Treasurer's staff.

(2) Person. – An individual, corporation, business trust, partnership, association, joint venture, or any other legal or commercial entity.

(3) Placement agent. – Any person or entity that is directly or indirectly hired, used, engaged, retained, compensated, or otherwise given anything having monetary value or benefit, tangible or intangible, by an external investment manager to assist in securing investment commitments or other ongoing investment management business from any Treasurer investment funds. The term "placement agent" does not include employees of an external investment manager, employees of affiliated entities that are under common control with the external investment manager, or attorneys hired by an external investment manager to negotiate contractual terms.

(4) Treasurer investment. – An investment for one or more of the investment programs established, managed, or operated by the State Treasurer pursuant to G.S. 147-69.3.

(b) A person shall not act as a placement agent in connection with any potential or actual Treasurer investment unless that person is registered as a lobbyist in accordance with Chapter 120C of the General Statutes, meeting the criteria set forth in G.S. 120C-100(a)(10)b."

**SECTION 6.(a)** G.S. 147-69.3 is amended by adding a new subsection to read:

"(h1) The State Treasurer shall adopt, publish, and regularly review investment policy statements for each investment program created pursuant to this section."

**SECTION 6.(b)** G.S. 147-69.3(i) reads as rewritten:

"(i) The State Treasurer shall report at least twice a year to the General Assembly, through the Finance Committees of the House of Representatives and the Senate, on the investment programs created under this section. The Treasurer shall present the reports to a

1 joint meeting of the Finance Committees. The chairs of the Finance Committees may receive  
2 the reports and call the meetings. The Finance Committees may meet during the interim as  
3 necessary to hear the reports from the State Treasurer. The State Treasurer's report and  
4 presentation to the Finance Committees shall include all of the following:

- 5 (1) A full and complete statement of all moneys invested by virtue of the  
6 provisions of G.S. 147-69.1 and G.S. 147-69.2.
- 7 (2) The nature and character of the investments.
- 8 (3) The revenues derived from the investments.
- 9 (4) The costs of administering, managing, and operating the investment  
10 programs, including the recapture of any investment commissions.
- 11 (5) A ~~statement~~summary of the investment policies for the revenues invested.
- 12 (6) Any other information that may be helpful in understanding the State  
13 Treasurer's investment policies and investment results.
- 14 (7) Any other information requested by the Finance Committees."

15 **SECTION 6.(c)** G.S. 150B-2(8a) reads as rewritten:

16 "(8a) "Rule" means any agency regulation, standard, or statement of general  
17 applicability that implements or interprets an enactment of the General  
18 Assembly or Congress or a regulation adopted by a federal agency or that  
19 describes the procedure or practice requirements of an agency. The term  
20 includes the establishment of a fee and the amendment or repeal of a prior  
21 rule. The term does not include the following:

- 22 a. Statements concerning only the internal management of an agency or  
23 group of agencies within the same principal office or department  
24 enumerated in G.S. 143A-11 or 143B-6, including policies and  
25 procedures manuals, if the statement does not directly or  
26 substantially affect the procedural or substantive rights or duties of a  
27 person not employed by the agency or group of agencies.
- 28 b. Budgets and budget policies and procedures issued by the Director of  
29 the Budget, by the head of a department, as defined by G.S. 143A-2  
30 or G.S. 143B-3, by an occupational licensing board, as defined by  
31 G.S. 93B-1, or by the State Board of Elections.
- 32 c. Nonbinding interpretative statements within the delegated authority  
33 of an agency that merely define, interpret, or explain the meaning of  
34 a statute or rule.
- 35 d. A form, the contents or substantive requirements of which are  
36 prescribed by rule or statute.
- 37 e. Statements of agency policy made in the context of another  
38 proceeding, including:
  - 39 1. Declaratory rulings under G.S. 150B-4.
  - 40 2. Orders establishing or fixing rates or tariffs.
- 41 f. Requirements, communicated to the public by the use of signs or  
42 symbols, concerning the use of public roads, bridges, ferries,  
43 buildings, or facilities.
- 44 g. Statements that set forth criteria or guidelines to be used by the staff  
45 of an agency in performing audits, investigations, or inspections; in  
46 settling financial disputes or negotiating financial arrangements; or in  
47 the defense, prosecution, or settlement of cases.
- 48 h. Scientific, architectural, or engineering standards, forms, or  
49 procedures, including design criteria and construction standards used  
50 to construct or maintain highways, bridges, or ferries.

- 1 i. Job classification standards, job qualifications, and salaries  
 2 established for positions under the jurisdiction of the State Human  
 3 Resources Commission.  
 4 j. Establishment of the interest rate that applies to tax assessments  
 5 under G.S. 105-241.21 and the variable component of the excise tax  
 6 on motor fuel under G.S. 105-449.80.  
 7 k. The State Medical Facilities Plan, if the Plan has been prepared with  
 8 public notice and hearing as provided in G.S. 131E-176(25),  
 9 reviewed by the Commission for compliance with  
 10 G.S. 131E-176(25), and approved by the Governor.  
 11 l. Standards adopted by the Office of Information Technology Services  
 12 applied to information technology as defined by G.S. 147-33.81.  
 13 m. An investment policy statement adopted pursuant to  
 14 G.S. 147-69.3(h1)."

15 **SECTION 7.** G.S. 147-69.3(j) reads as rewritten:

16 "(j) Subject to the provisions of G.S. 147-69.1(d), the State Treasurer ~~shall~~may adopt  
 17 any rules necessary to establish, operate, conduct, and carry out the provisions of all activities  
 18 related to the investment programs established pursuant to this section."

19 **SECTION 8.(a)** G.S. 128-29.1 is repealed.

20 **SECTION 8.(b)** G.S. 147-69.2(b) reads as rewritten:

21 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated  
 22 in subsection (a) of this section in excess of the amount required to meet the current needs and  
 23 demands on such funds. The State Treasurer may invest the funds as provided in this  
 24 subsection. If an investment was authorized by this subsection at the time the investment was  
 25 made or contractually committed to be made, then that investment shall continue to be  
 26 authorized by this subsection, and none of the percentage or other limitation on investments set  
 27 forth in this subsection shall be construed to require the State Treasurer to subsequently dispose  
 28 of the investment or fail to honor any contractual commitments as a result of changes in market  
 29 values, ratings, or other investment qualifications. For purposes of computing market values on  
 30 which percentage limitations on investments in this subsection are based, all investments shall  
 31 be valued as of the last date of the most recent fiscal quarter.

32 (1) Investments authorized by G.S. 147-69.1(c)(1)-(7).

33 (2) General obligations of other states of the United States.

34 (3) General obligations of cities, counties and special districts in North Carolina.

35 (4) Obligations of any company, other organization or legal entity incorporated  
 36 or otherwise created or located within or outside the United States, including  
 37 obligations that are convertible into equity securities, if the obligations bear  
 38 one of the four highest ratings of at least one nationally recognized rating  
 39 service when acquired.

40 (5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

41 (6) Asset-backed securities (whether considered debt or equity) provided they  
 42 bear ratings by nationally recognized rating services as provided in  
 43 G.S. 147-69.2(b)(4).

44 (6a) In addition to the limitations and requirements with respect to the  
 45 investments of the Retirement Systems set forth in this subsection, the State  
 46 Treasurer shall select investments of the assets of the Retirement Systems  
 47 such that investments made pursuant to subdivisions (b)(1) through (6) of  
 48 this section shall at all times equal or exceed twenty percent (20%) of the  
 49 market value of all invested assets of the Retirement Systems.

50 (6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may  
 51 be made directly by the State ~~Treasurer~~Treasurer, through investment

1 companies registered under the Investment Company Act of 1940,  
2 individual, common, or collective trust funds of banks and trust companies,  
3 group trusts and limited partnerships, limited liability companies or other  
4 limited liability investment vehicles that invest primarily in investments  
5 authorized by subdivisions (1) through (6) of this subsection, or through  
6 contractual arrangements in which the investment manager has full and  
7 complete discretion and authority to invest assets specified in such  
8 arrangements in investments authorized by subdivisions (b)(1) through (6) of  
9 this section, provided for each indirect investment, the investment manager  
10 has assets under management of at least one hundred million dollars  
11 (\$100,000,000).

12 ...."

13 **SECTION 9.** Section 1 of this act becomes effective July 1, 2014, and applies as  
14 provided in Section 1(b) of this act. Section 3 of this act becomes effective July 1, 2014, and  
15 the reporting requirements required by that section apply to the reports for the 2013-2014 fiscal  
16 year. Section 6 of this act becomes effective July 1, 2014, for the Retirement Systems  
17 enumerated in G.S. 147-69.2(b)(8) and becomes effective July 1, 2015, for the other investment  
18 programs created pursuant to G.S. 147-69.3. The remainder of this act becomes effective July  
19 1, 2014.