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SENATE BILL 886
Pensions & Retirement and Aging Committee Substitute Adopted 6/24/16
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Short Title: Retirement Amendments.

(Public)

Sponsors:

Referred to:

May 23, 2016

A BILL TO BE ENTITLED

AN ACT TO HONOR CAPTAIN BRADLEY LONG AND ALL FUTURE FIREFIGHTERS AND RESCUE SQUAD WORKERS KILLED IN THE LINE OF DUTY BY AMENDING THE NC FIREFIGHTERS' AND RESCUE SQUAD WORKERS' PENSION FUND TO PROVIDE A SURVIVORSHIP BENEFIT FOR MEMBERS KILLED IN THE LINE OF DUTY; TO CONSOLIDATE PUBLIC RECORDS LAWS RELATING TO RETIREMENT; AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-86-2 is amended by adding a new subdivision to read:

"(9a) "Killed in the line of duty" has the same meaning as in G.S. 143-166.2(c)."

SECTION 1.(b) G.S. 58-86-55 is amended by adding a new subsection to read:

"(d1) Benefits shall be paid in the following manner when a member is killed in the line of duty and the requirements of Article 12A of Chapter 143 of the General Statutes are met:

(1) If the member had been receiving a monthly pension fund benefit prior to being killed in the line of duty, there shall be paid to the member's principal beneficiary, if only one principal beneficiary is eligible, an amount of one hundred seventy dollars (\$170.00) per month beginning the month following the member's month of death, payable until the beneficiary's death.

(2) If the member had been receiving a monthly pension fund benefit prior to being killed in the line of duty and the beneficiary is not payable as described in subdivision (1) of this subsection, a lump sum payment equal to the difference between the amount paid into the member's separate account by or on behalf of the member and the amount received by the member as a pensioner will be paid to the eligible beneficiaries, or if there are no eligible beneficiaries, shall be paid to the member's estate.

(3) If the member had not yet begun receiving a monthly benefit prior to being killed in the line of duty, there shall be paid to the member's principal beneficiary, if only one principal beneficiary is eligible, an amount of one hundred seventy dollars (\$170.00) per month beginning the month following the month the member would have attained age 55, or if the member had already attained age 55, beginning the month following the member's month of death, payable until the beneficiary's death.

(4) If the member had not begun receiving a monthly benefit prior to being killed in the line of duty and the beneficiary is not payable as described in subdivision (3) of this section, a lump sum payment equal to the member's contributions



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1 will be paid to the eligible beneficiaries, or if there are no eligible beneficiaries,
2 a return of the contributions shall be paid to the member's estate.
3 A beneficiary under this subsection shall not be required to make the monthly payment of ten
4 dollars (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40 after the member has been killed
5 in the line of duty."

6 **SECTION 1.(c)** G.S. 58-86-60 reads as rewritten:

7 **"§ 58-86-60. Payments in lump sums.**

8 The board shall direct payment in lump sums from the fund in the following cases:

- 9 (1) To any firefighter or rescue squad worker upon the attaining of the age of 55
10 years, who, for any reason, is not qualified to receive the monthly retirement
11 pension and who was enrolled as a member of the fund, an amount equal to the
12 amount paid into the fund by him. This provision shall not be construed to
13 preclude any active firefighter or rescue squad worker from completing the
14 requisite number of years of active service after attaining the age of 55 years
15 necessary to entitle the firefighter or rescue squad worker to the pension.
16 (2) If any firefighter or rescue squad worker ~~dies~~dies, except if the individual is
17 killed in the line of duty, before attaining the age at which a pension is payable
18 to the firefighter or rescue squad worker under the provisions of this Article,
19 there shall be paid ~~to his or her surviving spouse, or if there be no surviving~~
20 ~~spouse, to the person responsible for his or her child or children, or if there be~~
21 ~~no surviving spouse or children, then to his or her heirs at law as may be~~
22 ~~determined by the board or to his or her estate, if it is administered and there are~~
23 ~~no heirs, to the person or persons designated by the member, or if the member~~
24 ~~has not designated a beneficiary, to the surviving spouse of the deceased~~
25 ~~member, or if not survived by a designated beneficiary or spouse, to the~~
26 ~~deceased member's legal representative~~, an amount equal to the amount paid
27 into the member's separate account by or on behalf of the said firefighter or
28 rescue squad worker.
29 (3) If any firefighter or rescue squad worker ~~dies~~dies, except if the individual is
30 killed in the line of duty, after beginning to receive the pension payable to the
31 firefighter or rescue squad worker by this Article, and before receiving an
32 amount equal to the amount paid into the fund by him or her, there shall be paid
33 ~~to his or her surviving spouse, or if there be no surviving spouse, then to the~~
34 ~~person responsible for his or her child or children, or if there be no surviving~~
35 ~~spouse or children, then to his or her heirs at law as may be determined by the~~
36 ~~board or to his or her estate, if it is administered and there are no heirs, to the~~
37 ~~person or persons designated by the member, or if the member has not~~
38 ~~designated a beneficiary, to the surviving spouse of the deceased retired~~
39 ~~member, or if not survived by a designated beneficiary or spouse, to the~~
40 ~~deceased retired member's legal representative~~, an amount equal to the
41 difference between the amount paid into the member's separate account by or
42 on behalf of the said firefighter or rescue squad worker and the amount received
43 by him or her as a pensioner.
44 (4) Any member who withdraws from the fund shall, upon proper application, be
45 paid all moneys without accumulated earnings on the payments after the time
46 they were made. A member may not purchase time under G.S. 58-86-45 for
47 which he or she has received a refund."

48 **SECTION 1.(d)** This section becomes effective July 1, 2018, and applies to benefits
49 paid when a member is killed in the line of duty on or after that date.

50 **SECTION 2.(a)** The February 5, 2008, Attorney General's advisory opinion entitled
51 "Advisory Opinion: Confidentiality of Retirement Benefit Information; Session Law 2007-508"

1 concluded that information about retirement benefits was intended to be included among those
2 records required to be maintained for public inspection by each department, agency, institution,
3 commission, and bureau of the State and that as a result the Retirement Systems Division of the
4 Department of the State Treasurer makes that information available for public inspection and
5 examination. The General Assembly finds that the interests of clarity require statutory language
6 providing guidance to the Retirement Systems Division in determining and maintaining
7 consistency as to what information should be made available about the retirement accounts of
8 State and local employees.

9 **SECTION 2.(b)** Article 1 of Chapter 135 of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 135-6.1. Member retirement record files held by the Retirement System.**

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

- 13 (1) Employment-related information. – As defined in G.S. 126-22(b)(3).
- 14 (2) Personal information. – As defined in G.S. 126-22(b)(3).
- 15 (3) Retirement file. – Any employment-related, retirement-related, or personal
16 information of members in a State-administered retirement plan gathered by the
17 Retirement Systems Division of the Department of State Treasurer.
- 18 (4) Retirement-related information. – Information including membership and
19 service details, benefit payment information, and other information the
20 Retirement Systems Division of the Department of State Treasurer deems
21 necessary to administer a retirement plan.

22 (b) Member retirement files are not subject to inspection and examination as authorized by
23 G.S. 132-6 except as provided in G.S. 135-6(p), G.S. 128-28(q), and subsections (c), (d), and (e)
24 of this section.

25 (c) The following information regarding members and individuals in receipt of a recurring
26 monthly benefit, if held by the Retirement System, is public and subject to subsection (d) of this
27 section:

- 28 (1) Name.
- 29 (2) Age.
- 30 (3) Date of membership in the applicable Retirement System, first service earned
31 date, date of first enrollment, date of first employment, and date of retirement.
- 32 (4) The terms of any contract by which the member is employed whether written or
33 oral, past and current, to the extent that the Retirement System has the written
34 contract or a record of the oral contract in its possession.
- 35 (5) Current or most recently held position or title.
- 36 (6) Compensation and other relevant remuneration history and benefits paid.
- 37 (7) Date, general description, and type of each change and the corresponding
38 employing agency.
- 39 (8) The office or station to which the member is currently assigned, if any.
- 40 (9) The record of benefit payments made by one of the Retirement Systems or
41 Disability Benefits Programs administered by the Department of State
42 Treasurer to a member or to the survivor, beneficiary, or alternate payee of a
43 member.
- 44 (10) Purchases of educational leave.

45 (d) Subject only to rules and policies for the safekeeping of member retirement files
46 adopted by the Board of Trustees, every person having custody of the retirement file information
47 outlined in subsection (b) of this section shall permit the information to be inspected and examined
48 and copies thereof made by any person during regular business hours. Any person who is denied
49 access to any retirement file for the purpose of inspecting, examining, or copying the file has a
50 right to compel compliance with the provisions of this section by application to a court of
51 competent jurisdiction for a writ of mandamus or other appropriate relief.

1 (e) The Retirement Systems Division of the Department of State Treasurer may disclose
2 the name and mailing address of former State employees, former public school employees, or
3 former community college employees to domiciled, nonprofit organizations representing 10,000
4 or more retired State government, local government, or public school employees.

5 (f) All information other than the information listed in subsection (c) of this section
6 contained in a retirement file is confidential and not open for inspection and examination except to
7 the following persons:

8 (1) The member, or the member's authorized agent, who may examine his or her
9 own retirement file, except for any information concerning a medical disability,
10 mental or physical, that a prudent physician would not divulge to a patient. A
11 member's medical record may be disclosed to a licensed physician in writing by
12 the member.

13 (2) A member of the General Assembly who may inspect and examine records
14 under the authority of G.S. 120-19.

15 (3) A party by authority of a proper court order may inspect and examine a
16 particular confidential portion of a member's retirement file.

17 (g) Any public official or employee who knowingly and willfully permits any person to
18 have access to or custody or possession of any portion of a retirement file designated as
19 confidential by this section, unless the person is one specifically authorized by this section to have
20 access thereto for inspection and examination, is guilty of a Class 3 misdemeanor and upon
21 conviction shall only be fined in the discretion of the court but not in excess of five hundred
22 dollars (\$500.00).

23 (h) Any person not specifically authorized by this section to have access to a retirement
24 file designated as confidential by this section, who knowingly and willfully examines, removes, or
25 copies any portion of a confidential retirement file, is guilty of a Class 3 misdemeanor and upon
26 conviction shall be fined in the discretion of the court but not in excess of five hundred dollars
27 (\$500.00)."

28 **SECTION 2.(c)** Article 3 of Chapter 128 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 128-33.1. Public records held by the Retirement System.**

31 (a) The following definitions apply in this section:

32 (1) Employment-related information. – As defined in G.S. 126-22(b)(3).

33 (2) Personal information. – As defined in G.S. 126-22(b)(3).

34 (3) Retirement file. – Any employment-related, retirement-related, or personal
35 information of members in a State-administered retirement plan gathered by the
36 Retirement Systems Division of the Department of State Treasurer.

37 (4) Retirement-related information. – Information including membership and
38 service details, benefit payment information, and other information the
39 Retirement Systems Division of the Department of State Treasurer deems
40 necessary to administer a retirement plan.

41 (b) Member retirement files are not subject to inspection and examination as authorized by
42 G.S. 132-6 except as provided in G.S. 135-6(p), G.S. 128-28(q), and subsections (c), (d), and (e)
43 of this section.

44 (c) The following information regarding members and individuals in receipt of a recurring
45 monthly benefit, if held by the Retirement System, is public subject to subsection (d) of this
46 section:

47 (1) Name.

48 (2) Age.

49 (3) Date of membership in the applicable Retirement System, first service earned
50 date, date of first enrollment, date of first employment, and date of retirement.

1 (4) The terms of any contract by which the member is employed whether written or
2 oral, past and current, to the extent that the Retirement System has the written
3 contract or a record of the oral contract in its possession.

4 (5) Current or most recently held position or title.

5 (6) Compensation and other relevant remuneration history and benefits paid.

6 (7) Date, general description, and type of each change and the corresponding
7 employing agency.

8 (8) The office or station to which the member is currently assigned, if any.

9 (9) The record of benefit payments made by one of the Retirement Systems or
10 Disability Benefits Programs administered by the Department of State
11 Treasurer to a member or to the survivor, beneficiary, or alternate payee of a
12 member.

13 (10) Purchases of educational leave.

14 (d) Subject only to rules and policies for the safekeeping of member retirement files
15 adopted by the Board of Trustees, every person having custody of the retirement file information
16 outlined in subsection (b) of this section shall permit the information to be inspected and examined
17 and copies thereof made by any person during regular business hours. Any person who is denied
18 access to any retirement file for the purpose of inspecting, examining, or copying the file has a
19 right to compel compliance with the provisions of this section by application to a court of
20 competent jurisdiction for a writ of mandamus or other appropriate relief.

21 (e) The Retirement Systems Division of the Department of State Treasurer may disclose
22 the name and mailing address of former State employees, former public school employees, or
23 former community college employees to domiciled, nonprofit organizations representing 10,000
24 or more retired State government, local government, or public school employees.

25 (f) All information other than the information listed in subsection (c) of this section
26 contained in a retirement file is confidential and not open for inspection and examination except to
27 the following persons:

28 (1) The member, or the member's authorized agent, who may examine his or her
29 own retirement file, except for any information concerning a medical disability,
30 mental or physical, that a prudent physician would not divulge to a patient. A
31 member's medical record may be disclosed to a licensed physician in writing by
32 the member.

33 (2) A member of the General Assembly who may inspect and examine records
34 under the authority of G.S. 120-19.

35 (3) A party by authority of a proper court order may inspect and examine a
36 particular confidential portion of a member's retirement file.

37 (g) Any public official or employee who knowingly and willfully permits any person to
38 have access to or custody or possession of any portion of a retirement file designated as
39 confidential by this section, unless the person is one specifically authorized by this section to have
40 access thereto for inspection and examination, is guilty of a Class 3 misdemeanor and upon
41 conviction shall only be fined in the discretion of the court but not in excess of five hundred
42 dollars (\$500.00).

43 (h) Any person not specifically authorized by this section to have access to a retirement
44 file designated as confidential by this section, who knowingly and willfully examines, removes, or
45 copies any portion of a confidential retirement file, is guilty of a Class 3 misdemeanor and upon
46 conviction shall be fined in the discretion of the court but not in excess of five hundred dollars
47 (\$500.00)."

48 **SECTION 2.(d)** G.S. 126-22 reads as rewritten:

49 **"§ 126-22. Personnel files not subject to inspection under § 132-6.**

50 (a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees
51 shall not be subject to inspection and examination as authorized by G.S. 132-6.

1 (b) For purposes of this Article the following definitions apply:

2 (1) "Employee" means any current State employee, former State employee, or
3 applicant for State employment.

4 (2) "Employer" means any State department, university, division, bureau,
5 commission, council, or other agency subject to Article 7 of this Chapter.

6 (3) "Personnel file" means any employment-related or personal information
7 gathered by an ~~employer, the Retirement Systems Division of the Department~~
8 ~~of State Treasurer, employer~~ or by the Office of State Human Resources.
9 Employment-related information contained in a personnel file includes
10 information related to an individual's application, selection, promotion,
11 demotion, transfer, leave, salary, contract for employment, benefits, suspension,
12 performance evaluation, disciplinary actions, and termination. Personal
13 information contained in a personnel file includes an individual's home address,
14 social security number, medical history, personal financial data, marital status,
15 dependents, and beneficiaries.

16 (4) "Record" means the personnel information that each employer is required to
17 maintain in accordance with G.S. 126-23.

18 (c) Personnel files of former State employees who have been separated from State
19 employment for 10 or more years may be open to inspection and examination except for papers
20 and documents relating to demotions and to disciplinary actions resulting in the dismissal of the
21 ~~employee and personnel files maintained by the Retirement Systems Division of the Department~~
22 ~~of State Treasurer.~~employee. Retirement files maintained by the Retirement Systems Division of
23 the Department of State Treasurer shall be made public pursuant to G.S. 128-33.1 and
24 G.S. 135-6.1.

25 (d) ~~Notwithstanding any provision of this section to the contrary, the Retirement Systems~~
26 ~~Division of the Department of State Treasurer may disclose the name and mailing address of~~
27 ~~former State employees to domiciled, nonprofit organizations representing 10,000 or more retired~~
28 ~~State government, local government, or public school employees."~~

29 **SECTION 2.(e)** G.S. 115C-321(b1) is repealed.

30 **SECTION 2.(f)** G.S. 115D-29(c) is repealed.

31 **SECTION 2.(g)** G.S. 153A-98(c3) is repealed.

32 **SECTION 2.(h)** G.S. 160A-168(c3) is repealed.

33 **SECTION 3.(a)** G.S. 135-10.1 reads as rewritten:

34 **"§ 135-10.1. Failure to respond.**

35 If a member fails to respond within 120 days after preliminary option figures and the Form 6-E
36 or Form 7-E are ~~mailed, transmitted to the member,~~ or if a member fails to respond within 120
37 days after the effective date of retirement, whichever is later, the Form 6 or Form 7 shall be null
38 and void; the retirement system shall not be liable for any benefits due on account of the voided
39 application, and a new application must be filed establishing a subsequent effective date of
40 retirement. If an applicant for disability retirement fails to furnish requested additional medical
41 information within 90 days following such request, the application shall be declared null and void
42 under the same conditions outlined above, unless the applicant is eligible for early or service
43 retirement in which case the application shall be processed accordingly, using the same effective
44 date as would have been used had the application for disability retirement been approved. The
45 Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may
46 extend the 120-day limitation provided for in this section when a member has suffered
47 incapacitation such that a reasonable person would not have expected the member to be able to
48 complete the required paperwork within the regular deadline, or when an omission by the
49 Retirement Systems Division prevents the member from having sufficient time to meet the regular
50 deadline."

51 **SECTION 3.(b)** G.S. 128-32.1 reads as rewritten:

1 **"§ 128-32.1. Failure to respond.**

2 If a member fails to respond within 120 days after preliminary option figures and the Form 6-E
3 or Form 7-E are ~~mailed, transmitted to the member,~~ or if a member fails to respond within 120
4 days after the effective date of retirement, whichever is later, the Form 6 or Form 7 shall be null
5 and void; the retirement system shall not be liable for any benefits due on account of the voided
6 application, and a new application must be filed establishing a subsequent effective date of
7 retirement. If an applicant for disability retirement fails to furnish requested additional medical
8 information within 90 days following such request, the application shall be declared null and void
9 under the same conditions outlined above, unless the applicant is eligible for early or service
10 retirement in which case the application shall be processed accordingly, using the same effective
11 date as would have been used had the application for disability retirement been approved. The
12 Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may
13 extend the 120-day limitation provided for in this section when a member has suffered
14 incapacitation such that a reasonable person would not have expected the member to be able to
15 complete the required paperwork within the regular deadline, or when an omission by the
16 Retirement Systems Division prevents the member from having sufficient time to meet the regular
17 deadline."

18 **SECTION 4.** G.S. 147-79(a) reads as rewritten:

19 "(a) The amount of funds deposited by the State Treasurer in an official depository shall be
20 adequately secured by deposit insurance, surety bonds, letters of credit issued by a Federal Home
21 Loan Bank, or investment securities of such nature, in such amounts, and in such manner, as may
22 be prescribed by rule or regulation of the State Treasurer with the approval of the Governor and
23 Council of State. No security is required for the protection of funds remitted to and received by a
24 bank or trust company designated by the State Treasurer under G.S. 142-1 and acting as paying
25 agent for the payment of the principal of or interest on bonds or notes of the State."

26 **SECTION 5.** The Board of Trustees of the Local Governmental Employees'
27 Retirement System shall develop a "State Contribution Rate Stabilization Policy" for the North
28 Carolina Firefighters' and Rescue Squad Workers' Pension Fund and report it to the Office of State
29 Budget and Management and the Fiscal Research Division on or before March 1, 2017.

30 **SECTION 6.** If any provision of this act or its application is held invalid, the
31 invalidity does not affect other provisions or applications of this act that can be given effect
32 without the invalid provisions or application, and to this end the provisions of this act are
33 severable.

34 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes law.