

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1209

Short Title: Retirement Investment Accountability. (Public)

Sponsors: Representatives Dollar, Collins, S. Ross, and Glazier (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: State Personnel, if favorable, Appropriations.

May 28, 2014

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

SECTION 1.(b) This section becomes effective for audits and reports relating to the 2014-2015 fiscal year. For the 2014-2015 fiscal year, the requirements stated by subsection (a) of this section shall be met by an independent review of the Retirement Systems' pro forma financial statements. For the 2015-2016 fiscal year and thereafter, the audit requirement stated by this section shall take the form of an independent opinion concerning the Retirement Systems' initial financial statements. In order to allow for an opinion to be offered for the 2015-2016 fiscal year, the State Auditor shall select an audit firm no later than January 1, 2015,



1 and by June 30, 2015, the Treasurer shall separately account for any Retirement Systems
2 investment portfolios that are commingled with the Treasurer's other investment programs.

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

5 **"§ 147-69.10. Performance review of Retirement Systems investment programs.**

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

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

13 **"§ 147-69.11. Reporting of Retirement Systems investments.**

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 the investments that are not managed internally by the State
18 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 (b) In addition to all other reports required by law, the State Treasurer shall prepare and
29 make public a report on the fees and performance of external investment managers engaged for
30 the Retirement Systems enumerated in G.S. 147-69.2(b)(8) as of the end of each fiscal year. A
31 copy of each report shall be submitted within nine months following the end of the fiscal year
32 to the State Auditor, the Joint Legislative Commission on Governmental Operations, the Chairs
33 of the House of Representatives Appropriations Subcommittee and Senate Appropriations
34 Committee, the Chairs of the House of Representatives and Senate Finance Committees, and
35 the Fiscal Research Division.

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

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

1 total distribution received with respect to that investment for that fiscal year
2 and since inception.

3 (6) The dollar amount of the management fees and incentive fees incurred by
4 the State Treasurer and paid to the external investment manager.

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

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

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

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

15 **"§ 132-1.14. Public records for Treasurer's investment programs.**

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

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

21 (2) Incentive fees. – Any incentive compensation to an investment manager or
22 investment vehicle that the Retirement Systems incur directly or experience
23 indirectly as a reduction in distributions.

24 (3) Investment vehicle. – A limited partnership, limited liability company, trust,
25 or other legal entity through which the State Treasurer invests.

26 (4) Management Fees. – Compensation other than incentive fees paid to the
27 investment manager or investment vehicle to compensate it for its
28 management of funds that the Retirement Systems incur directly or
29 experience indirectly as a reduction in distributions.

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

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

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

37 (1) The name, commitment amount, statutory classification, inception year, and,
38 if applicable, the names of the external investment manager and the
39 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 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 (c) In order to prevent other investment traders from utilizing knowledge of potential or
10 pending Treasurer investment trades for personal gain, all records relating to trades made
11 directly by the staff of the State Treasurer pursuant to G.S. 147-69.2(b)(6b) or the second
12 paragraph of G.S. 147-69.2(b)(8) are not public record until 90 days after the transaction has
13 closed.

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

- 17 (1) Information regarding the portfolio positions in which the investment
18 vehicle invests.
19 (2) Capital call and distribution notices to investors of the investment vehicle.
20 (3) Information concerning other investors in the investment vehicle.
21 (4) The investment's private placement memorandum and other offering and
22 marketing material, if marked confidential.
23 (5) The investment's contractual documents, to the extent stated in any clause
24 that places a duty of confidentiality upon the State Treasurer.
25 (6) Any other information that constitutes a "trade secret" as defined in
26 G.S. 66-152(3) and that was disclosed or furnished by an actual or potential
27 external investment manager in connection with an actual or potential
28 Treasurer investment.

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

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

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

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

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

1 investments authorized under G.S. 147-69.1 and G.S. 147-69.2, incurring only costs that are
2 appropriate and reasonable."

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

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

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

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

20 ...

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

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

25 "**§ 147-69.12. Placement agents.**

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

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

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

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

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

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

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

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

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

1 "(i) The State Treasurer shall report at least twice a year to the General Assembly,
2 through the Finance Committees of the House of Representatives and the Senate, on the
3 investment programs created under this section. The Treasurer shall present the reports to a
4 joint meeting of the Finance Committees. The chairs of the Finance Committees may receive
5 the reports and call the meetings. The Finance Committees may meet during the interim as
6 necessary to hear the reports from the State Treasurer. The State Treasurer's report and
7 presentation to the Finance Committees shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (6a) In addition to the limitations and requirements with respect to the
48 investments of the Retirement Systems set forth in this subsection, the State
49 Treasurer shall select investments of the assets of the Retirement Systems
50 such that investments made pursuant to subdivisions (b)(1) through (6) of

1 this section shall at all times equal or exceed twenty percent (20%) of the
2 market value of all invested assets of the Retirement Systems.

3 (6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may
4 be made directly by the State ~~Treasurer~~Treasurer, through investment
5 companies registered under the Investment Company Act of 1940,
6 individual, common, or collective trust funds of banks and trust companies,
7 group trusts and limited partnerships, limited liability companies or other
8 limited liability investment vehicles that invest primarily in investments
9 authorized by subdivisions (1) through (6) of this subsection, or through
10 contractual arrangements in which the investment manager has full and
11 complete discretion and authority to invest assets specified in such
12 arrangements in investments authorized by subdivisions (b)(1) through (6) of
13 this section, provided for each indirect investment, the investment manager
14 has assets under management of at least one hundred million dollars
15 (\$100,000,000).

16"

17 **SECTION 9.** Section 1 of this act becomes effective July 1, 2014, and applies as
18 provided in Section 1(b) of this act. Section 3 of this act becomes effective July 1, 2014, and
19 the reporting requirements required by that section apply to the reports for the 2013-2014 fiscal
20 year. Section 6 of this act becomes effective July 1, 2014, for the Retirement Systems
21 enumerated in G.S. 147-69.2(b)(8) and becomes effective July 1, 2015, for the other investment
22 programs created pursuant to G.S. 147-69.3. The remainder of this act becomes effective July
23 1, 2014.