

2022
NORTH CAROLINA



SHERIFFS'
SUPPLEMENTAL
PENSION
FUND

ANNUAL REPORT



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2022 Annual Report

Sheriffs' Supplemental Pension Program

I am pleased to present to North Carolina's retired and active sheriffs, the General Assembly, and the people of North Carolina this **2022 Annual Report** of the North Carolina Sheriffs' Supplemental Pension Fund Act.

The Sheriffs' Supplemental Pension Fund has provided a retirement supplement to more than 215 retired North Carolina Sheriffs since its inception in 1985. My department supports the Fund and is aware of the financial challenges it has faced in the past. We are proud to have worked with the North Carolina General Assembly, the North Carolina Sheriffs' Association, the Sheriffs' Education and Training Standards Commission, and the Sheriffs' Standards Division to secure stable funding for this important program.

A Sheriff holds a special position and a constitutional office in law enforcement in North Carolina. The duties of the Sheriff are varied, sometimes dangerous, and as stated by the General Assembly in General Statute 17E-1, "unique among all of the law enforcement offices in North Carolina." In addition to law enforcement duties, the Sheriff is responsible for court security, jail administration and civil matters. The General Assembly has recognized the rarity of this role by providing this supplement to existing benefits for North Carolina's eligible retired Sheriffs.

The provision of a supplemental retirement for our law enforcement officers is good public policy for North Carolina. It encourages the best possible candidates to seek the Office of Sheriff, which ultimately brings talented, public-minded leaders to the role. They then work to recruit and train dedicated deputies to build trust with their communities and to keep people safe across our state.

Josh Stein
Attorney General

In 1985, the North Carolina General Assembly established the Sheriffs' Supplemental Pension Fund Act of 1985 (NCGS Chapter 143, Article 12H.) As its name implies, the Fund was created to supplement local government retirement benefits, thereby, attracting highly qualified individuals to the Office of Sheriff. Additionally, the Fund was created to fully recognize the position of Sheriff as a Constitutional officer - elected by the people - and responsible for enforcing the laws of North Carolina as an officer of the court.

The Sheriffs' Supplemental Pension Fund is administered by the Attorney General, specifically the North Carolina Department of Justice Sheriffs' Standards Division. The Fund provides benefits to all eligible county Sheriffs who are retired from the Local Governmental Employees' Retirement System (LGERS).

ELIGIBILITY

In order to be eligible for benefits from the Fund, retired sheriffs must:

- * retired from the Local Governmental Employees' Retirement System
- * be at least 55 years of age; or, have 30 years of creditable service regardless of age
- * have completed at least 10 years of service as sheriff (*Note: Effective 7/1/2017, retired Sheriffs may use accumulated sick leave for creditable service for the Sheriffs' Supplemental Pension Fund, provided the same leave is not also used for retirement in LGERS.*)

Retired sheriffs are eligible to receive benefits from the Fund the month immediately following retirement, provided the above requirements have been met.

BENEFITS

The maximum monthly payment a retired sheriff may receive is \$1,500.00 per month. Effective January 1, 2018, benefits for eligible retired sheriffs are calculated in one of two ways. Specifically, retired Sheriffs are entitled to receive a payment equal to 75% of their salary at retirement, when added to their Local Governmental Employees' Retirement System (LGERS) benefit. Retired sheriffs who are also receiving a Special Separation Allowance (SSA) pursuant to North Carolina General Statute 143-166.42 may receive a payment equal to 100% of their salary at retirement, when added to their SSA and LGERS benefits.

Benefits from the Sheriffs' Supplemental Pension Fund are disbursed on a monthly basis, on or shortly before the last business day of each month. If, for any reason, there are insufficient assets to pay pension benefits or other charges, all benefits shall be reduced proportionately, and no claim shall accrue regarding any amount by which a payment has been reduced.

When a pensioner dies, benefits for the remainder of that calendar year are paid to his or her surviving spouse or to the estate. Sheriffs' Supplemental Pension Fund benefits cease at the end of that year.

FUNDING

Funding from cost of court actions is set out in North Carolina General Statute 7A-304(a)(3a). In the past, the statute required that seventy-five (75) cents of each cost of court action be deposited to the credit of the Sheriffs' Supplemental Pension Fund for the purpose of paying monthly benefits to those eligible retired Sheriffs, as well as to pay the cost of administering the Fund. However, effective September 1, 2005, that amount was increased to one dollar and twenty-five cents (\$1.25) of each cost of court action. The clerks of court remit to the Office of the State Treasurer the total cost of court actions on a monthly basis. The Office of the State Treasurer, in turn, makes monthly deposits of that amount due to be credited toward the Fund in a separate account which accrues interest throughout each calendar year. That cost of court action amount remains in effect today. In addition to those deposits, interest and any unobligated funds are accrued for the Fund. Payments are calculated in January of each year. Prior to 2018, monthly SSPF payments were calculated on a "per share amount" which was based on funds available for that year divided by the combined years of service for those retired sheriffs who were eligible to receive benefits on January 1st. Monthly benefits were then paid to each participant based on the "per share amount" and his or her years of service, though not to exceed \$1,500.00 per month or 75% of the member's salary at retirement.

However, legislation which became effective January 1, 2018, provided full funding (as described in **Benefits** section above) for the Sheriffs' Supplemental Pension Fund. This legislation requires that in any year in which the monies in the Fund are insufficient to pay the full benefits owed to eligible retired sheriffs, the North Carolina Department of Justice will bill each county on a pro-rata basis (based on county population) for the amount of the additional funds needed to pay the benefits owed from the Fund. This legislation allows that counties may use their portion of the civil process service fees that is not required by statute to be used to ensure the timely service of process within the county, or any other funds of the county, to pay the county's contribution to the Fund.

Ten percent (10%) of the Fund's annual revenue earned is used by the Department of Justice to administer this program.

2022 ACTIVITY AND DISBURSEMENTS

At the beginning of 2022, the Sheriffs' Supplemental Pension Fund's (SSPF) cash balance totaled \$686,485.62. This balance was comprised of Clerk of Court deposits and interest collected in 2021, contributions from county finance offices and monies accrued. As previously noted, the Department of Justice annually invoices the State's county finance offices for anticipated "shortfall" in funds. As a result, the 100 County Finance Offices in North Carolina contributed a cumulative total of \$1,204,057.12 to the Fund in 2022.

On January 1, 2022, 101 retired Sheriffs were eligible participants in the program; and by December 31, 104 retired sheriffs and eight (8) beneficiaries were eligible participants [*note: Of these 112 retired sheriffs, four (4) received no SSPF benefits because their other retirement benefits exceed the maximum earnings allowed by the Fund, resulting in 108 retired sheriffs receiving SSPF benefits.*] Actual disbursements to retired sheriffs and beneficiaries in 2022 totaled \$1,561,780.09.

Of the 90 Pensioners who were not eligible to receive a Special Separation Allowance (SSA), 47 received the "cap" benefit of \$1500.00 per month, 42 pensioners received a benefit under the fund equal to 75% of their salary at retirement when combined with their Local Government Employees Retirement System (LGERS) benefit, and one (1) retired sheriff received no SSPF benefit because his LGERS benefit alone exceeded the 75% cap. Of the 22 Pensioners who were eligible to receive a Special Separation Allowance, 12 pensioners received the "cap" benefit of \$1500.00 per month, seven (7) pensioners received a benefit under the fund equal to 100% of their salary at retirement when combined with their LGERS and SSA benefits, and three (3) retired sheriffs received no SSPF benefit because their combined LGERS and SSA benefits exceeded 100% of their salary at retirement.



Sadly, 2022 saw the passing of these veteran Sheriffs: Retired Gates County Sheriff Elmo Benton on March 9, 2022; Retired Lee County Sheriff William "Billy" Bryant on November 9, 2022; Retired Cumberland County Sheriff Moose Butler on March 20, 2022; Retired Person County Sheriff Ernest Dixon on August 21, 2022; Retired Swain County Sheriff William David

Lewis on May 24, 2022; Retired Stanly County Sheriff Ralph McSwain on March 24, 2022; Retired Bertie County Sheriff James Wallace Perry on March 5, 2022; and Retired Northampton County Sheriff Wardie Vincent on February 16, 2022. Cumulatively, these Sheriffs served a total of 140 years in Office. We honor and appreciate their years of service and commitment to the citizens of North Carolina.

FREQUENTLY ASKED QUESTIONS

What is the effect of "full-time" re-employment on benefits from the Fund?

The statute clearly states that benefits from this Fund "will cease upon the full-time re-employment of a pensioner with an employer participating in the Local Government Retirement System..." The statute is unclear, however, as to the definition of "full-time" employment and how much re-employment would constitute the suspension of benefits from the Sheriffs' Supplemental Pension Fund. It is Legal Counsel's opinion that the same guidelines followed by the Local Governmental Employees Retirement System with regards to hours worked and wages paid should also apply to the administration of the Sheriffs' Supplemental Pension Fund. Consequently, upon suspension of benefits by the Local Governmental Employees Retirement System due to a pensioner's re-employment, benefits from the Sheriffs' Supplemental Pension Fund would also be suspended.

Would a Sheriff who retired prior to age 55 be eligible for benefits once he/she reached that age?

It is Legal Counsel's opinion that a Sheriff who retires prior to age 55 would be eligible for benefits from the Sheriffs' Supplemental Pension Fund once he/she reaches age 55 provided that he/she can meet the other eligibility requirements outlined in N.C.G.S.. 143-166.84 with regards to retirement and years of service. Eligibility would begin on the month immediately following his/her 55th birthday.

A sheriff would also be eligible for benefits from the Fund if he/she has thirty (30) years of service credited by the retirement system, regardless of whether that sheriff has reached the age of fifty-five (55).

Can monthly benefits be split or disbursed to more than one party at the pensioner's request?

The statute is very clear in its intent that benefits from this Fund be paid to the pensioner. However, it became necessary to adopt a policy regarding this matter in three (3) very distinct cases: Separation and/or divorce; or, Voluntary garnishment; or, Guardianship/ Power of Attorney. Cases in these categories will be reviewed on an individual basis by legal counsel. Requests such as these must be made in writing and supporting documentation, i.e., copy of

property settlement orders, power of attorney orders, etc., must accompany the written request. A written opinion will be issued by legal counsel and the Sheriffs' Standards Division will act in accordance with that opinion.

Can sick leave be added to the actual years of service as a sheriff in order to make a retired sheriff qualify for benefits from the Fund?

Effective 7/1/2017, § G.S. 143-166.84 (c) allows retired Sheriffs to use accumulated sick leave for creditable service for the Sheriffs' Supplemental Pension Fund, provided the same leave is **not** also used for retirement in LGERS.

When and how should application be made for benefits from this fund?

A request for an application packet may be made to the Sheriffs' Standards Division in writing or by phone. The necessary information will then be mailed to you for your completion and return to the Division. Along with your completed application, we must receive certified copies of each oath of office as a sheriff and documentation of your salary the month immediately preceding retirement. We will also need to receive documentation of your monthly LGERS benefit, as well as your county SSA (when applicable). In order to ensure each retired sheriff receives benefits as soon as he/she is eligible, completed applications should be submitted to the Division at least 30 days prior to the effective date of retirement.

How can I estimate what my benefits from this Fund would be?

The Sheriffs' Standards Division is happy to assist you in determining your eligibility and estimating your benefits from the Fund. Requests may be made either in writing (mail or email) or by phone. Please visit the NC Department of State Treasurer website at <http://www.nctreasurer.com/DSTHome/RetirementSystems/> and complete the Retirement Estimator for Local Government Employees. Then provide this information along with your estimated salary at retirement and SSA benefit (when applicable) to:

Sirena Jones, Deputy Director
Sheriffs' Standards Division
9001 Mail Service Center
Raleigh, N. C. 27699-9001
scjones@ncdoj.gov
Phone: (919) 779-8213

What about State and Federal income tax?

Benefits from the Fund for pensioners who did not have 10 years of service as a Sheriff as of August 12, 1989 are subject to North Carolina income tax. Those who were vested as of August 12, 1989 are exempt from state tax withholding.

The following options are available to handle this state tax:

- * Pensioners may specify state withholding from their Supplemental benefit.
- * Pensioners may specify an "additional withholding" amount to be withheld from their LGERS checks to compensate for the income tax due because of the benefits received from the Supplemental Pension Fund.
- * When not opting for Items (1) or (2), pensioners are responsible for filing quarterly payments to the State due as a result of the benefits received under the Fund. When application is made, the appropriate tax forms for both state and federal withholding will be provided which will enable the applicant to claim his/her preference regarding tax withholding. It is suggested that any questions concerning tax matters be directed to an accountant or the Internal Revenue Service as the staff in the Sheriffs' Standards Division is not properly equipped or qualified to evaluate needs and make recommendations.

If a Sheriff leaves office but continues to work in a position where contributions are made to LGERS (example: deputy sheriff), what salary is used to compute benefits from the Fund at retirement?

A review of our past retirees' files and information from the Local Governmental Employees Retirement System confirms that the last annual salary as a sheriff would be the figure used, and no salary earned after leaving the office of Sheriff is included.

ARTICLE 12H ***Sheriffs' Supplemental Pension Fund Act of 1985.***

Updated effective January 1, 2018

§ 143-166.80. Short title and purpose.

(a) This Article shall be known and may be cited as the "Sheriffs' Supplemental Pension Fund Act of 1985".

(b) The purpose of this Article is to create a pension fund to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of sheriff and to fully recognize that sheriffs are

constitutional officials elected by the people and are also officers of the court enforcing the laws of the State of North Carolina. (1985, c. 729, s. 1.)

§ 143-166.81. Scope.

(a) This Article provides supplemental pension benefits for all county sheriffs who are retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan as herein described.

(b) The North Carolina Department of Justice shall administer the provisions of this Article.

(c) The provisions of this Article shall be subject to future legislative change or revision, and no person is deemed to have acquired any vested right to a pension payment provided by this Article. (1985, c. 729, s. 1.)

§ 143-166.82. Assets.

(a) On and after July 1, 1985, each Clerk of Superior Court shall remit to the Department of Justice the monthly receipts collected pursuant to G.S. 7A-304 (a)(3a) to be deposited to the credit of the Sheriffs' Supplemental Pension Fund, hereinafter referred to as the Fund, to be used in making monthly pension payments to eligible retired sheriffs under the provisions of this Article and to pay the cost of administering the provisions of this Article.

(a1) The Department of Justice shall, at the beginning of each calendar year, calculate the amount of funds, in addition to those funds from subsection (a) of this section and from G.S. 143-166.83(f), needed for that year to pay the pension benefits under this Article and shall bill each county for that amount on a pro rata basis based on the most recent population estimates by the Office of State Budget and Management for each county. The amount so billed shall be paid by each county no later than March 1st of that year to the Department of Justice and shall be deposited into the Fund. For funding this contribution to the Fund, counties may use the portion of the civil process service fee per G.S. 7A-311(a)(1) that is not required by statute to be used to ensure the timely service of process within the county, may use other funds, or both.

(b) The State Treasurer shall be the custodian of the Sheriffs' Supplemental Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1985, c. 729, s. 1; 2017-176, s. 6(a).)

§ 143-166.83. Disbursements.

(a) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 54, effective January 1, 1993.

(b) Immediately following January 1, 1993, and the first of January of each succeeding calendar year thereafter, the Department of Justice shall divide an amount equal to ninety percent (90%) of the assets of the Fund at the end of the preceding calendar year and shall add to that amount any assets remaining pursuant to subsection (f) of this section and the amounts pursuant to G.S. 143-166.82(a1) and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) Ten percent (10%) of the Fund's assets as of January 1, 1993, and at the beginning of each calendar year thereafter, may be used by the Department of Justice in

administering the provisions of this Article. This ten percent (10%) is to be derived from the Fund's assets prior to the addition of assets remaining pursuant to subsection (f) of this section.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay pension benefits owed under this Article or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced.

(f) Any assets remaining after reserving an amount equal to the disbursements required under subsections (b) and (c) of this section shall be accrued and included in disbursements for pensioners in succeeding years. (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 900, s. 54(a); 2017-176, s. 6(b).)

§ 143-166.84. Eligibility.

(a) Each county sheriff who has retired from the Local Governmental Employees' Retirement System, and who has attained the age of 55 years or attained 30 years of creditable service regardless of age, and who has completed at least 10 years of eligible service as sheriff, is entitled to receive a monthly pension under this Article.

(a1) Each county sheriff who withdrew any service standing to his credit in the Local Governmental Employees' Retirement System prior to July 1, 1986, and who has attained the age of 55 or attained 30 creditable years of service regardless of age, and who has completed at least 10 years of eligible service as sheriff, is entitled to receive a monthly pension under this Article provided the sheriff is not eligible to receive any retirement benefit from any State or locally sponsored plan.

(a2) Each county sheriff who has been approved for disability benefits from the Local Governmental Employees' Retirement System is eligible to receive benefits from the Fund based on years of creditable service as sheriff, regardless of age, provided the retiree has at least 10 years of eligible service as sheriff.

(b) Each eligible retired sheriff as defined in subsections (a), (a1), and (a2) of this section relating to age and service shall be entitled to receive a monthly pension under this Article beginning with the month immediately following the effective date of retirement.

(c) For the purposes of this Article, the term "eligible service as sheriff" means membership service rendered since the person became sheriff and, if the person has sick leave standing to his or her credit accrued as a member of the Local Governmental Employees' Retirement System and, after notification to the Retirement Systems Division by the retiring sheriff and the Department of Justice, elects to have all of that sick leave applied to service under this Article instead of service in the Local Governmental Employees' Retirement System, one month of credit for each 20 days or portion thereof, but not less than one hour, and subject to all the requirements and restrictions of G.S. 128-26(e). (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 3, 5(a); 1987, c. 177, s. 3; 1989 (Reg. Sess., 1990) c. 1079, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 54(b); 2017-128, s. 5(a); 2020-29, s. 6(a), (b).)

§ 143-166.85. Benefits.

(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to an amount that, when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is equal to seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount that does not exceed (i) one thousand five hundred dollars (\$1,500) or (ii) the sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate when the benefit described in this subsection is added to the amount of the benefit the sheriff receives under G.S. 143-166.42 and the amount of the sheriff's retired allowance at retirement from the Local Governmental Employees' Retirement System or the amount the sheriff would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions.

(b) All monthly pensions payable under this Article shall be paid on the last business day of each month.

(c) At the death of the pensioner, benefits for the current calendar year will continue and be paid in monthly installments to the decedent's spouse or estate, in accordance with the provisions of Chapter 28A of the General Statutes. Benefits will cease upon the last payment being made in December of the current year.

(d) Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.

(e) Repealed by Session Laws 1989, c. 792, s. 2.9.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan. (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 4, 5(b); 1987, c. 177, s. 4; 1989, c. 792, s. 2.9; 1989 (Reg. Sess., 1990), c. 1079, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 54(c); 2005-276, s. 29.30(a); 2017-176, s. 6(c).)

(a) eligible service as sheriff, is entitled to receive a monthly pension under this Article.

(a-1) Each county sheriff who withdrew any service standing to his credit in the Local Governmental Employees' Retirement System prior to July 1, 1986, and who has attained the age of 55 or attained 30 creditable years of service regardless of age, and who has completed at least 10 years of eligible service as sheriff, is entitled to receive a monthly pension under this Article provided the sheriff is not eligible to receive any retirement benefit from any State or locally sponsored plan.

(a-2) Each county sheriff who has been approved for disability benefits from the Local Governmental Employees' Retirement System is eligible to receive

benefits from the Fund based on years of creditable service as sheriff, regardless of age, provided the retiree has at least 10 years of eligible service as sheriff.

- (b) Each eligible retired sheriff as defined in subsections (a), (a-1), and (a-2) of this section relating to age and service shall be entitled to receive a monthly pension under this Article beginning with the month immediately following the effective date of retirement. (1985, c. 729, s. 1; 1985 (Reg. Sess., 1986), c. 1030, ss. 3, 5(a); 1987, c. 177, s. 3; 1989 (Reg. Sess., 1990) c. 1079, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 54(b).)