

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1086
Finance Committee Substitute Adopted 6/21/89

Short Title: Equalize Retirement Pay.

(Public)

Sponsors:

Referred to:

May 1, 1989

A BILL TO BE ENTITLED

AN ACT TO EQUALIZE THE STATE TAX TREATMENT OF ALL CLASSES OF RETIREMENT BENEFITS IN CONFORMITY WITH THE UNIFORM FEDERAL APPROACH TO RETIREMENT BENEFITS AND TO INCREASE STATE AND LOCAL RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. Division II of Article 4 of Chapter 105 of the General Statutes, as rewritten by Senate Bill 51, Chapter ___ of the 1989 Session Laws, is amended by adding a new section to read:

§ 105-151.20. Credit for retirement benefits.

There is allowed as a credit against the tax imposed by this Division an amount equal to six percent (6%) of the total amount received by the taxpayer during the taxable year as retirement benefits from one or more retirement plans, up to a maximum credit of two hundred dollars (\$200.00) per taxpayer for the taxable year. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

Sec. 2. G.S. 105-134.5(b), as enacted by Senate Bill 51, Chapter ___ of the 1989 Session Laws, reads as rewritten:

"(b) Nonresidents. For nonresident individuals, the term 'North Carolina taxable income' means taxable income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as calculated under the Code, adjusted as provided in

1 G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that
2 gross income, as adjusted, that is derived from North Carolina sources and is
3 attributable to the ownership of any interest in real or tangible personal property in this
4 State or is derived from a business, trade, profession, or occupation carried on in this
5 State. For the purpose of this Division, retirement benefits received as a result of past
6 employment or self-employment in this State are income derived from a business, trade,
7 profession, or occupation carried on in this State."

8 Sec. 3. G.S. 135-5(b10) reads as rewritten:

9 "(b10) Service Retirement Allowance of Members Retiring on or after July 1,
10 ~~1988-1988, but before July 1, 1989.~~ – Upon retirement from service in accordance with
11 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall
12 receive the following service retirement allowance:

13 (1) A member who is a law enforcement officer or an eligible former law
14 enforcement officer shall receive a service retirement allowance
15 computed as follows:

16 a. If the member's service retirement date occurs on or after his
17 55th birthday, and completion of five years of creditable service
18 as a law enforcement officer, or after the completion of 30 years
19 of creditable service, the allowance shall be equal to one and
20 sixty hundredths percent (1.60%) of his average final
21 compensation, multiplied by the number of years of his
22 creditable service.

23 b. This allowance shall also be governed by the provisions of G.S.
24 135-5(b9)(1)b.

25 (2) A member who is not a law enforcement officer or an eligible former
26 law enforcement officer shall receive a service retirement allowance
27 computed as follows:

28 a. If the member's service retirement date occurs on or after his
29 65th birthday upon the completion of five years of creditable
30 service or after the completion of 30 years of creditable service
31 or on or after his 60th birthday upon the completion of 25 years
32 of creditable service, such allowance shall be equal to one and
33 sixty hundredths percent (1.60%) of his average final
34 compensation, multiplied by the number of years of his
35 creditable service.

36 b. This allowance shall also be governed by the provisions of G.S.
37 135-5(b9)(2)b., c. and d."

38 Sec. 4. G.S. 135-5 is amended by adding a new subsection to read:

39 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
40 1989. – Upon retirement from service in accordance with subsection (a) above, on or
41 after July 1, 1989, a member shall receive the following service retirement allowance:

42 (1) A member who is a law enforcement office or an eligible former law
43 enforcement officer shall receive a service retirement allowance
44 computed as follows:

- 1 a. If the member's service retirement date occurs on or after his
2 55th birthday, and completion of five years of creditable service
3 as a law enforcement officer, or after the completion of 30 years
4 of creditable service, the allowance shall be equal to one and
5 sixty-three hundredths percent (1.63%) of his average final
6 compensation, multiplied by the number of years of his
7 creditable service.
- 8 b. This allowance shall also be governed by the provisions of G.S.
9 135-5(b9)(1)b.

10 (2) A member who is not a law enforcement officer or an eligible former
11 law enforcement officer shall receive a service retirement allowance
12 computed as follows:

- 13 a. If the member's service retirement date occurs on or after his
14 65th birthday upon the completion of five years of creditable
15 service or after the completion of 30 years of creditable service
16 or on or after his 60th birthday upon the completion of 25 years
17 of creditable service, the allowance shall be equal to one and
18 sixty-three hundredths percent (1.63%) of his average final
19 compensation, multiplied by the number of years of creditable
20 service.
- 21 b. This allowance shall also be governed by the provisions of G.S.
22 135-5(b9)(2)b. c. and d."

23 Sec. 5. G.S. 135-5 is amended by adding a new subsection to read:

24 "(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989.
25 From and after July 1, 1989, the retirement allowance to or on account of beneficiaries
26 on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths
27 percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be
28 calculated on the basis of the allowance payable and in effect on June 30, 1989, so as
29 not to be compounded on any other increase payable under subsection (o) of this section
30 or otherwise granted by act of the 1989 Session of the General Assembly."

31 Sec. 6. G.S. 128-27(b10) reads as rewritten:

32 "(b10) Service Retirement Allowance of Members Retiring on or after July 1,
33 ~~1988-1988, but before July 1, 1989.~~ – Upon retirement from service in accordance with
34 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall
35 receive the following service retirement allowance:

- 36 (1) A member who is a law enforcement officer or an eligible former law
37 enforcement officer shall receive a service retirement allowance
38 computed as follows:
- 39 a. If the member's service retirement date occurs on or after his
40 55th birthday, and completion of five years of creditable service
41 as a law enforcement officer, or after the completion of 30 years
42 of creditable service, the allowance shall be equal to one and
43 sixty hundredths percent (1.60%) of his average final

- 1 compensation, multiplied by the number of years of his
2 creditable service.
- 3 b. Such allowance shall also be governed by the provisions of G.S.
4 128-27(b8)(2).
- 5 (2) A member who is not a law enforcement officer or an eligible former
6 law enforcement officer shall receive a service retirement allowance
7 computed as follows:
- 8 a. If the member's service retirement date occurs on or after his
9 65th birthday upon the completion of five years of creditable
10 service or after the completion of 30 years of creditable service,
11 or on or after his 60th birthday upon the completion of 25 years
12 of creditable service, such allowance shall be equal to one and
13 sixty-hundredths percent (1.60%) of his average final
14 compensation, multiplied by the number of years of his
15 creditable service.
- 16 b. Such allowance shall also be governed by the provisions of G.S.
17 128-27(b7)(2a), (2b) and (3)."

18 Sec. 7. G.S. 128-27 is amended by adding a new section to read:

19 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
20 1989. – Upon retirement from service in accordance with subsection (a) above, on or
21 after July 1, 1989, a member shall receive the following service retirement allowance:

- 22 (1) A member who is a law enforcement officer or an eligible former law
23 enforcement officer shall receive a service retirement allowance
24 computed as follows:
- 25 a. If the member's service retirement date occurs on or after his
26 55th birthday, and completion of five years of creditable service
27 as a law enforcement officer, or after the completion of 30 years
28 of creditable service, the allowance shall be equal to one and
29 sixty-three hundredths percent (1.63%) of his average final
30 compensation, multiplied by the number of years of his
31 creditable service.
- 32 b. This allowance shall also be governed by the provisions of G.S.
33 128-27(b8)(2).
- 34 (2) A member who is not a law enforcement officer or an eligible former
35 law enforcement officer shall receive a service retirement allowance
36 computed as follows:
- 37 a. If the member's service retirement date occurs on or after his
38 65th birthday upon the completion of five years of creditable
39 service or after the completion of 30 years of creditable service
40 or on or after his 60th birthday upon the completion of 25 years
41 of creditable service, the allowance shall be equal to one and
42 sixty-three hundredths percent (1.63%) of his average final
43 compensation, multiplied by the number of years of creditable
44 service.

1 b. This allowance shall also be governed by the provisions of G.S.
2 128-27(b7)(2a) and (3)."

3 Sec. 8. G.S. 128-27 is amended by adding a new subsection to read:

4 "(ff) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989.
5 From and after July 1, 1989, the retirement allowance to or on account of beneficiaries
6 on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths
7 percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be
8 calculated on the basis of the allowance payable and in effect on June 30, 1989, so as
9 not to be compounded on any other increase payable under subsection (k) of this section
10 or otherwise granted by act of the 1989 Session of the General Assembly."

11 Sec. 9. (a) There is appropriated from the General Fund to a Reserve for
12 Employee Retirement Benefits in Lieu of Tax Exemptions the sum of eight million
13 dollars (\$8,000,000) for the 1989-90 fiscal year and the sum of eight million four
14 hundred thousand dollars (\$8,400,000) for the 1990-91 fiscal year to fund the
15 employer's normal cost of twenty-one hundredths percent (0.21%) of payroll for
16 implementing the provisions of this act as they apply to the Teachers' and State
17 Employees' Retirement System.

18 (b) There is appropriated from the Highway Fund to a Reserve for Employee
19 Retirement Benefits in Lieu of Tax Exemptions the sum of seven hundred thousand
20 dollars (\$700,000) for the 1989-90 fiscal year and the sum of seven hundred ten
21 thousand dollars (\$710,000) for the 1990-91 fiscal year to fund the employer's normal
22 cost of twenty-one hundredths percent (0.21%) of payroll for implementing the
23 provisions of this act as they apply to the Teachers' and State Employees' Retirement
24 System.

25 (c) All other costs to the Teachers' and State Employees' Retirement System and
26 to the Local Governmental Employees' Retirement System for the provisions of this act
27 shall be funded from unencumbered actuarial gains in the Systems as of December 31,
28 1987, by adjusting employer contribution rates for normal and applicable accrued
29 liability costs so that the total employer contribution rate does not increase, except as
30 previously provided by this section, and so that there is not an increase in the scheduled
31 amortization periods for liquidation of unfunded liabilities in the Systems.

32 Sec. 10. G.S. 118-49 reads as rewritten:

33 "**§ 118-49. Exemptions of pensions from attachment; rights nonassignable.**

34 Except for the applications of the provisions of G.S. 110-136, and in connection with
35 a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not
36 subject to attachment, garnishments or judgments against the fireman or rescue squad
37 worker entitled to them, nor are any rights in the fund or the pensions or benefits
38 assignable nor are the pensions subject to any State or municipal tax. assignable."

39 Sec. 11. G.S. 120-4.29 reads as rewritten:

40 "**§ 120-4.29. Exemption from taxes, garnishment, attachment.**

41 Except for the applications of the provisions of G. S. 110-136, and in connection
42 with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
43 pension, annuity, or retirement allowance, to the return of contributions, or to the receipt
44 of the pension, annuity or retirement allowance itself, any optional benefit or any other

1 right accrued or accruing to any person under the provisions of this Article, and the
2 moneys in the various funds created by this Article, ~~are exempt from any State or~~
3 ~~municipal tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other
4 process whatsoever, and shall be unassignable except as this Article specifically
5 provides. Notwithstanding any provisions to the contrary, any overpayment of benefits
6 to a member in a State-administered retirement system or Disability Salary Continuation
7 Plan may be offset against any retirement allowance, return of contributions or any
8 other right accruing under this Chapter to the same person, the person's estate, or
9 designated beneficiary."

10 Sec. 12. G.S. 127A-40(e) is repealed.

11 Sec. 13. G.S. 128-31 reads as rewritten:

12 **"§ 128-31. Exemptions from execution.**

13 Except for the applications of the provisions of G.S. 110-136, and in connection with
14 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
15 pension, an annuity, or a retirement allowance, to the return of contributions, the
16 pension, annuity or retirement allowance itself, any optional benefit or any other right
17 accrued or accruing to any person under the provisions of this Article, and the moneys
18 in the various funds created by this Article, ~~are hereby exempt from any state or municipal~~
19 ~~tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other process
20 whatsoever, and shall be unassignable except as in this Article specifically otherwise
21 provided. Notwithstanding any provisions to the contrary, any overpayment of benefits
22 to a member in a State-administered retirement system or Disability Salary Continuation
23 Plan may be offset against any retirement allowance, return of contributions or any
24 other right accruing under this Chapter to the same person, the person's estate, or
25 designated beneficiary."

26 Sec. 14. G.S. 135-9 reads as rewritten:

27 **"§ 135-9. Exemption from ~~taxes, garnishment, attachment, etc.~~**

28 Except for the applications of the provisions of G.S. 110-136, and in connection with
29 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
30 pension, or annuity, or a retirement allowance, to the return of contributions, the
31 pension, annuity or retirement allowance itself, any optional benefit or any other right
32 accrued or accruing to any person under the provisions of this Chapter, and the moneys
33 in the various funds created by this Chapter, ~~are hereby exempt from any State or municipal~~
34 ~~tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other process
35 whatsoever, and shall be unassignable except as in this Chapter specifically otherwise
36 provided. Notwithstanding any provisions to the contrary, any overpayment of benefits
37 to a member in a State-administered retirement system or the former Disability Salary
38 Continuation Plan or the Disability Income Plan of North Carolina may be offset against
39 any retirement allowance, return of contributions or any other right accruing under this
40 Chapter to the same person, the person's estate, or designated beneficiary."

41 Sec. 15. G.S. 135-95 reads as rewritten:

42 **"§ 135-95. Exemption from ~~taxes, garnishment, attachment.~~**

43 Except for the applications of the provisions of G.S. 110-136, and in connection with
44 a court-ordered equitable distribution under G.S. 50-20, the right of a member in the

1 Supplemental Retirement Income Plan to the benefits provided under this Article is
2 nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits payable under this~~
3 ~~Article are hereby exempt from any State and local government taxes. and garnishment.~~"

4 Sec. 16. G.S. 143-166.30(g) reads as rewritten:

5 "(g) Exemption from ~~Taxes,~~—Garnishment and Attachment. – The right of a
6 participant in the Supplemental Retirement Income Plan to the benefits provided under
7 this Article is nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits~~
8 ~~payable under this Article are hereby exempt from any State and local government taxes. and~~
9 ~~garnishment.~~"

10 Sec. 17. G.S. 143-166.60(h) reads as rewritten:

11 "(h) Exemption from ~~Taxes,~~—Garnishment and Attachment. – The right of a
12 participant in the Separate Insurance Benefits Plan to the benefits provided under this
13 Article is nonforfeitable and exempt from levy, sale, and ~~garnishment, and the benefits~~
14 ~~payable under this Article are exempt from any State and local government taxes.~~
15 ~~garnishment.~~"

16 Sec. 18. G.S. 143-166.85(e) is repealed.

17 Sec. 19. G.S. 147-9.4 reads as rewritten:

18 **"§ 147-9.4. Deferred Compensation Plan.**

19 Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision
20 of law relating to salaries or salary schedules of State employees, the chief executive
21 officer of an employer, on behalf of the employer, may from time to time enter into a
22 contract with an employee under which the employee irrevocably elects to defer receipt
23 of a portion of his scheduled salary in the future, but only if, as a result of such contract,
24 the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-
25 426.24 or pursuant to some other plan established before 1 January 1983, and is not
26 constructively received by the employee in the year in which it was earned, for State
27 and federal income tax purposes. In addition, the income so deferred shall be invested
28 in the manner provided in the applicable Plan; however, the employee may revoke his
29 election to participate and may amend the amount of compensation to be deferred by
30 signing and filing with the Board a written revocation or amendment on a form and in
31 the manner approved by the Board. Any such revocation or amendment shall be
32 effective prospectively only and shall cause no change in the allocation of amounts
33 invested prior to the filing date of such revocation or amendment.

34 An employee who has agreed to the deferral of income pursuant to the Plan shall
35 have the right to receive the income so deferred only in accordance with the provisions
36 of the Plan. Funds so deferred shall not be in lieu of any amount earned by the employee
37 before his election to defer compensation became effective. The agreement to defer
38 income referred to herein shall be effective under such necessary regulations and
39 procedures as are adopted by the Board, and on forms prepared or approved by it.
40 Notwithstanding any other provisions of law, the amount by which the salary of an
41 employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in
42 computing and making payroll deductions for social security and retirement system
43 purposes, if any, and in computing and providing matching funds for retirement system
44 purposes, if any.

1 Except for the applications of the provisions of G.S. 110-136, and in connection with
2 a court-ordered equitable distribution under G.S. 50-20, the right of an employee, who
3 elects to defer income pursuant to the North Carolina Public Employee Deferred
4 Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the
5 Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment,
6 except as provided by this section, ~~and exempt from all State and local taxation.~~ section.”
7 Sec. 20. G.S. 161-50.5(e) is repealed.
8 Sec. 21. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the
9 1969 Session Laws are repealed.
10 Sec. 22. Sections 3 through 9 of this act shall become effective July 1, 1989.
11 The remainder of this act is effective for taxable years beginning on or after January 1,
12 1989.