

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 389
SENATE BILL 312

AN ACT TO PROVIDE THAT TEACHERS MAY PARTICIPATE IN THE PUBLIC
EMPLOYEES' COMPENSATION PLAN.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 147 of the General Statutes reads as
rewritten:

"ARTICLE 2A.
"Annuities and Deferred Compensation
for Teachers and State Employees.

"§ 147-9.2. Definitions.

The following words when used in this Article shall have the meanings ascribed to
them in this section except when the context clearly indicates a different meaning:

- (1) 'Board' shall mean the Board of Trustees of the North Carolina Public
Employee Deferred Compensation Plan established pursuant to
Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.
- (1a) 'Chief executive officer' shall mean the person or group of persons
responsible for the administration of any ~~department or agency of the
State of North Carolina, or of a wholly owned institution or
instrumentality thereof,~~ employer, or an agent of such chief executive
officer duly authorized to enter into the contracts with teachers or State
employees referred to in G.S. 147-9.3 and 147-9.4.
- (2) 'Employee' shall mean a permanent employee of the State of North
Carolina, or ~~if [of] of~~ any of its departments or agencies, or of any of
its wholly owned institutions and instrumentalities.
- (3) 'Employer' shall mean (i) the State of North Carolina, its departments
and agencies, and its wholly owned institutions and instrumentalities.
instrumentalities or (ii) a local board of education.
- (4) 'Plan' shall mean the North Carolina Public Employee Deferred
Compensation Plan.
- (5) 'Teacher' shall have the meaning provided in G.S. 135-1(25).

"§ 147-9.3. Annuity contracts; salary deductions.

Notwithstanding the provisions of G.S. ~~147-62, 143-3.3,~~ and notwithstanding any
provision of law relating to salaries or salary schedules of State employees, if the
employee be one described in section 403(b) (1) (A) (i) or (ii) of the United States
Internal Revenue Code, the chief executive officer of such employee, on behalf of the
employer, may enter into an annual contract with the employee which provides for a

reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

"§ 147-9.4. Deferred Compensation Plan.

Notwithstanding the provisions of G.S. ~~147-62, 143-3.3,~~ and notwithstanding any provision of law relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with ~~an~~ a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before ~~1 January 1983, January 1, 1983,~~ and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

~~An~~ A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of ~~an~~ a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for

social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of ~~an~~ a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section."

Sec. 2. G.S. 143B-426.24 reads as rewritten:

"§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for State employees. Until so established, the Board heretofore established pursuant to Executive Order XII dated ~~12 November 1974~~ November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

- (1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;
- (2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (3) One member shall be appointed by the General Assembly upon recommendation of the President of the Senate under G.S. 120- 121;
- (4) The State Treasurer, ex officio; and
- (5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and State employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(l) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would

otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein."

Sec. 3. This act is effective upon ratification and applies to deferral elections made by teachers on or after the date of ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives