

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 532
HOUSE BILL 581

AN ACT TO GIVE THE CITY OF WILMINGTON THE AUTHORITY TO
INCREASE THE PENSIONS BEING RECEIVED UNDER THE FIREMEN'S
PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 26 of the Private Laws of 1937, as amended, is amended to add new subdivisions (7) and (8) at the end to read:

"(7) The Council of the City of Wilmington may, by ordinance, direct the Pension Board to increase the pensions being received by pensioners and surviving spouses under the terms of the Pension Fund to take into account in full or in part cost-of-living increases since retirement. Provided that the cost of such increases shall, before action is taken by the Council, be determined by a qualified actuary, and that said cost be paid for on an actuarially sound basis.

(8) A Member's pension from this Pension Fund, payable in the form of a single life annuity and expressed as an annual pension, shall not exceed the lesser of ninety thousand dollars (\$90,000), or one hundred percent (100%) of his average compensation for the three consecutive limitation years, a 'year' being the 12-month period beginning July 1st and ending June 30th, during which he was an active Member and had the greatest aggregate compensation from the City, except that such limitation shall not apply where the aggregate pension payable to the Member under this Pension Fund and under all other defined benefit plans of the City do not exceed ten thousand dollars (\$10,000) during the current limitation year or any prior limitation year, and the Member has not at any time participated in a defined contribution plan maintained by the City. The dollar limitation provided in this paragraph shall be adjusted effective as of January 1st of each calendar year for cost-of-living increases in accordance with the regulations promulgated under Section 415 of the Internal Revenue Code of 1954, and the adjusted dollar limitation shall apply to the limitation year ending with or within that calendar year.

For purposes of this paragraph, 'compensation' shall mean the total wages, salary, and other remuneration paid by the City to a Member for personal services actually rendered in the course of employment as described in Treasury Regulation Section 1.415-2(d).

The following adjustments shall be made in the limitations set forth in this subdivision:

- a. If payments begin before age 62, the dollar limitation shall be adjusted, in accordance with regulations prescribed by the

Secretary of the Treasury or his delegate, to be the equivalent of the dollar limitation set forth in this paragraph on the basis of reasonable actuarial assumptions with the interest rate assumption being five percent (5%). Provided, that such adjustment shall not produce a dollar limitation of less than seventy-five thousand dollars (\$75,000) for any benefits beginning at or after age 55; or, if the pension begins before age 55, such adjustment shall not produce a dollar limitation of less than the equivalent of a benefit of seventy-five thousand dollars (\$75,000) beginning at age 55.

- b. If payments begin after age 65, the dollar limitation shall be adjusted, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, to be the equivalent of the dollar limitation set forth in this paragraph on the basis of reasonable actuarial assumptions, with the interest rate assumption being five percent (5%).
- c. If a pension is payable in a form other than a single life annuity, the pension shall be converted to a single life annuity for purposes of applying the limits of this paragraph. The amount of the single life annuity determined for this purpose shall be the actuarial equivalent of such pension, and shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate on the basis of reasonable actuarial assumptions, with the interest rate assumption being five percent (5%).

If a Member has less than 10 years of service, the limitation otherwise applicable under this paragraph shall be computed by multiplying the limitation by a fraction, the numerator of which is the Member's years of service and the denominator of which is 10.

If a Member of the Pension Fund is also a Member under a defined contribution plan sponsored by the City, the 'annual additions' to his Individual Account under such defined contribution plan will be reduced to the extent necessary to prevent the sum of the 'defined benefit plan fraction' and the 'defined contribution plan fraction', computed as of the close of the limitation year, from exceeding 1.0.

For purposes of determining this limitation, the 'defined benefit plan fraction' is a fraction, the numerator of which is the Member's projected Normal Retirement Benefit under this Pension Fund payable in the form of a straight life annuity and expressed as an annual pension (determined as of the close of the limitation year), and the denominator of which is the lesser of (i) the product of 1.25 times the dollar limitation in effect under Section 415(b)(1)(A) of the Internal Revenue Code of 1954 for such year, or (ii) the product of 1.4 times one hundred percent (100%) of his average compensation for the three consecutive limitation years during which he was an active Member in the Pension Fund and had the greatest compensation from the City.

For purposes of determining this limitation, the 'defined contribution plan fraction' is a fraction, the numerator of which is the sum of the 'annual additions' to the Member's Individual Account under the defined contribution plan for the current limitation year and for all prior limitation years, and the denominator of which is the sum of the lesser of the following amounts determined for the current limitation year and for all prior limitation years: (i) the product of 1.25 times the dollar limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code of 1954 for such year, or (ii) the product of 1.4 times twenty-five percent (25%) of compensation for such year. The words 'annual additions' are defined in Section 415(c)(2) of the Internal Revenue Code of 1954.

Notwithstanding anything in this section to the contrary:

- d. If for the last limitation year beginning prior to January 1, 1983, the sum of the 'defined benefit plan fraction' and the 'defined contribution plan fraction' shall exceed 1.0, the numerator of the 'defined contribution plan fraction' shall be decreased to the extent necessary to reduce the sum of said fractions to 1.0.
- e. In lieu of using the 'defined contribution plan fraction', if the Pension Fund has been in effect for one or more limitation years ending prior to January 1, 1983, the Pension Board may in computing the denominator of said 'defined contribution plan fraction' elect to apply a 'transition fraction' for each limitation year ending after December 31, 1982; and in such event, the amount to be taken into account as the denominator of the 'defined contribution plan fraction' for all limitation years ending before January 1, 1983, shall be an amount equal to the product of the sum of the maximum 'annual additions' allowable by law for each limitation year through the limitation year ending in 1982 multiplied by the 'transition fraction' instead of the denominator determined in accordance with the provisions of the preceding paragraph. The 'transition fraction' is a fraction, the numerator of which is the lesser of (i) fifty-one thousand eight hundred seventy-five dollars (\$51,875) or (ii) the product of 1.4 times twenty-five percent (25%) of the compensation of the Member for the limitation year ending in 1981; and the denominator of which is the lesser of (i) forty-one thousand five hundred dollars (\$41,500) or (ii) twenty-five percent (25%) of the compensation of the Member for the limitation year ending in 1981.

For purposes of applying the rules of this paragraph, the following provisions shall apply: (i) all defined benefit plans of the City shall be considered as a single plan, and all defined contribution plans of the City shall be considered as a single plan; and (ii) all entities, whether or not incorporated, required to be aggregated under the provisions of Section 414(b), (c), or (m) of the Internal Revenue Code of 1954 shall be considered to be a single employer.

If the City maintains more than one defined benefit plan, Section 415(b)(1)(B) of the Internal Revenue Code of 1954 which limits the annual benefit to which a Member is entitled to one hundred percent (100%) of his average compensation for his high three years, shall be applied separately with respect to each such plan, but in applying such limitation to the aggregate of such defined benefit plans, the high three years of compensation taken into account shall be the period of consecutive limitation years during which an individual had the greatest aggregate compensation from the City."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. None of the provisions of this act shall create a liability for the Wilmington Firemen's Pension Fund unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1985.