

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

4

HOUSE BILL 1311
Committee Substitute Favorable 7/6/89
Third Edition Engrossed 8/2/89
Fourth Edition Engrossed 8/3/89

Short Title: Retirement Tax Changes.

(Public)

Sponsors:

Referred to:

April 12, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PARTIAL INCOME TAX EXEMPTIONS FOR RETIREES
3 AND TO INCREASE STATE AND LOCAL RETIREMENT BENEFITS.

4 The General Assembly of North Carolina enacts:

5 PART I.

6 RETIREMENT TAX EXEMPTIONS.

7 Section 1.1. (a) Effective for taxable years beginning on or after January 1,
8 1989, G.S. 105-134.6(b), as enacted by Senate Bill 51, Chapter ___ of the 1989 Session
9 Laws, is amended by adding a new subdivision to read:

10 "(6) Amounts received during the taxable year as retirement benefits from
11 one or more state, local, or federal government retirement plans, not to
12 exceed a total of four thousand dollars (\$4,000) in any taxable year. In
13 the case of a married couple filing a joint return where both spouses
14 received state, local, or federal government retirement benefits during
15 the taxable year, the four thousand dollar (\$4,000) maximum applies
16 separately to each spouse's benefits for a potential total deduction of
17 eight thousand dollars (\$8,000) for the couple."

18 (b) Effective for taxable years beginning on or after January 1, 1990, G.S. 105-
19 134.6(b)(6), as added by subsection (a) of this section, reads as rewritten:

20 "~~(6) Amounts received during the taxable year as retirement benefits from~~
21 ~~one or more state, local, or federal government retirement plans, not to~~

1 exceed a total of four thousand dollars (\$4,000) in any taxable year. In
2 the case of a married couple filing a joint return where both spouses
3 received state, local, or federal government retirement benefits during
4 the taxable year, the four thousand dollar (\$4,000) maximum applies
5 separately to each spouse's benefits for a potential total deduction of
6 eight thousand dollars (\$8,000) for the couple.

7 a. An amount, not to exceed four thousand dollars (\$4,000), equal
8 to the amount calculated in subparagraph b. of this subdivision
9 plus the amount calculated in subparagraph c. of this
10 subdivision.

11 b. The amount calculated in this subparagraph is the amount
12 received during the taxable year as retirement benefits from one
13 or more state, local, or federal government retirement plans, not
14 to exceed a total of four thousand dollars (\$4,000) in any
15 taxable year.

16 c. The amount calculated in this subparagraph is the amount
17 received during the taxable year as retirement benefits from one
18 or more retirement plans, not to exceed the following maximum
19 amounts:

20 1. For taxable years beginning before January 1, 1991, one
21 thousand dollars (\$1,000).

22 2. For taxable years beginning on or after January 1, 1991,
23 and before January 1, 1992, two thousand dollars
24 (\$2,000).

25 3. For taxable years beginning on or after January 1, 1992,
26 and before January 1, 1993, three thousand dollars
27 (\$3,000).

28 4. For taxable years beginning on or after January 1, 1993,
29 four thousand dollars (\$4,000).

30 d. In the case of a married couple filing a joint return where both
31 spouses received retirement benefits during the taxable year, the
32 maximum dollar amounts provided in this subdivision for
33 different types of retirement benefits apply separately to each
34 spouse's benefits, as appropriate."

35 (c) Effective for taxable years beginning on or after January 1, 1993, G.S. 105-
36 134.6(b)(6), as rewritten by subsection (b) of this section, reads as rewritten:

37 "(6) ~~a. An amount, not to exceed four thousand dollars (\$4,000), equal to~~
38 ~~the amount calculated in subparagraph b. of this subdivision plus the~~
39 ~~amount calculated in subparagraph c. of this subdivision.~~

40 ~~b. The amount calculated in this subparagraph is the amount~~
41 ~~received during the taxable year as retirement benefits from one~~
42 ~~or more state, local, or federal government retirement plans, not~~
43 ~~to exceed a total of four thousand dollars (\$4,000) in any~~
44 ~~taxable year.~~

- 1 e. ~~The amount calculated in this subparagraph is the amount~~
 2 ~~received during the taxable year as retirement benefits from one~~
 3 ~~or more retirement plans, not to exceed the following maximum~~
 4 ~~amounts:~~
- 5 1. ~~For taxable years beginning before January 1, 1991, one~~
 6 ~~thousand dollars (\$1,000).~~
 - 7 2. ~~For taxable years beginning on or after January 1, 1991,~~
 8 ~~and before January 1, 1992, two thousand dollars~~
 9 ~~(\$2,000).~~
 - 10 3. ~~For taxable years beginning on or after January 1, 1992,~~
 11 ~~and before January 1, 1993, three thousand dollars~~
 12 ~~(\$3,000).~~
 - 13 4. ~~For taxable years beginning on or after January 1, 1993,~~
 14 ~~four thousand dollars (\$4,000).~~
- 15 d. ~~In the case of a married couple filing a joint return where both~~
 16 ~~spouses received retirement benefits during the taxable year, the~~
 17 ~~maximum dollar amounts provided in this subdivision for~~
 18 ~~different types of retirement benefits apply separately to each~~
 19 ~~spouse's benefits, as appropriate.~~

20 Amounts received as retirement benefits during the taxable year from
 21 one or more retirement plans, not to exceed a total of four thousand
 22 dollars (\$4,000) in any taxable year. In the case of a married couple
 23 filing a joint return where both spouses received retirement benefits
 24 during the taxable year, the four thousand dollar (\$4,000) maximum
 25 applies separately to each spouse's benefits for a potential total
 26 deduction of eight thousand dollars (\$8,000) for the couple."

27 Sec. 1.2. G.S. 105-134.1(13), as enacted by Senate Bill 51, Chapter ___ of
 28 the 1989 Session Laws, reads as rewritten:

29 "(13) Retirement benefits. Amounts paid to a former employee or the
 30 beneficiary of a former employee under a written retirement plan
 31 established by the employer to provide payments to an employee or
 32 the beneficiary of an employee after the end of the employee's
 33 employment with the employer where the right to receive the
 34 payments is based upon the employment relationship. With respect
 35 to a self-employed individual or the beneficiary of a self-employed
 36 individual, the term means amounts paid to the individual or
 37 beneficiary of the individual under a written retirement plan
 38 established by the individual to provide payments to the individual
 39 or the beneficiary of the individual after the end of the self-
 40 employment. In addition, the term includes amounts received from
 41 an individual retirement account described in section 408 of the
 42 Code or from an individual retirement annuity described in section
 43 408 of the Code. For the purpose of this subdivision, the term
 44 'employee' includes a volunteer worker."

PART II.

REPEAL EXISTING EXEMPTIONS.

Sec. 2.1. G.S. 118-49 reads as rewritten:

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

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 pensions provided are not subject to attachment, garnishments or judgments against the fireman or rescue squad worker entitled to them, nor are any rights in the fund or the pensions or benefits assignable nor are the pensions subject to any State or municipal tax. assignable."

Sec. 2.2. G.S. 120-4.29 reads as rewritten:

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

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

Sec. 2.3. G.S. 127A-40(e) is repealed.

Sec. 2.4. G.S. 128-31 reads as rewritten:

"§ 128-31. Exemptions from execution.

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 a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, ~~are hereby exempt from any state or municipal tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2.5. G.S. 135-9 reads as rewritten:

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

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 a person to a

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

12 Sec. 2.6. G.S. 135-95 reads as rewritten:

13 **"§ 135-95. Exemption from ~~taxes,~~ garnishment, attachment.**

14 Except for the applications of the provisions of G.S. 110-136, and in connection with
15 a court-ordered equitable distribution under G.S. 50-20, the right of a member in the
16 Supplemental Retirement Income Plan to the benefits provided under this Article is
17 nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits payable under this~~
18 ~~Article are hereby exempt from any State and local government taxes. and garnishment.~~"

19 Sec. 2.7. G.S. 143-166.30(g) reads as rewritten:

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

25 Sec. 2.8. G.S. 143-166.60(h) reads as rewritten:

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

31 Sec. 2.9. G.S. 143-166.85(e) is repealed.

32 Sec. 2.10. G.S. 147-9.4 reads as rewritten:

33 **"§ 147-9.4. Deferred Compensation Plan.**

34 Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision
35 of law relating to salaries or salary schedules of State employees, the chief executive
36 officer of an employer, on behalf of the employer, may from time to time enter into a
37 contract with an employee under which the employee irrevocably elects to defer receipt
38 of a portion of his scheduled salary in the future, but only if, as a result of such contract,
39 the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-
40 426.24 or pursuant to some other plan established before 1 January 1983, and is not
41 constructively received by the employee in the year in which it was earned, for State
42 and federal income tax purposes. In addition, the income so deferred shall be invested
43 in the manner provided in the applicable Plan; however, the employee may revoke his
44 election to participate and may amend the amount of compensation to be deferred by

1 signing and filing with the Board a written revocation or amendment on a form and in
2 the manner approved by the Board. Any such revocation or amendment shall be
3 effective prospectively only and shall cause no change in the allocation of amounts
4 invested prior to the filing date of such revocation or amendment.

5 An employee who has agreed to the deferral of income pursuant to the Plan shall
6 have the right to receive the income so deferred only in accordance with the provisions
7 of the Plan. Funds so deferred shall not be in lieu of any amount earned by the employee
8 before his election to defer compensation became effective. The agreement to defer
9 income referred to herein shall be effective under such necessary regulations and
10 procedures as are adopted by the Board, and on forms prepared or approved by it.
11 Notwithstanding any other provisions of law, the amount by which the salary of an
12 employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in
13 computing and making payroll deductions for social security and retirement system
14 purposes, if any, and in computing and providing matching funds for retirement system
15 purposes, if any.

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

22 Sec. 2.11. G.S. 161-50.5(e) is repealed.

23 Sec. 2.12. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the
24 1969 Session Laws are repealed.

25 PART III.

26 RETIREMENT BENEFITS AMENDMENTS.

27 Sec. 3.1. G.S. 135-5(b10) reads as rewritten:

28 "(b10) Service Retirement Allowance of Members Retiring on or after July 1,
29 ~~1988-1988, but before July 1, 1989.~~ – Upon retirement from service in accordance with
30 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall
31 receive the following service retirement allowance:

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

35 a. If the member's service retirement date occurs on or after his
36 55th birthday, and completion of five years of creditable service
37 as a law enforcement officer, or after the completion of 30 years
38 of creditable service, the allowance shall be equal to one and
39 sixty hundredths percent (1.60%) of his average final
40 compensation, multiplied by the number of years of his
41 creditable service.

42 b. This allowance shall also be governed by the provisions of G.S.
43 135-5(b9)(1)b.

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

4 a. If the member's service retirement date occurs on or after his
5 65th birthday upon the completion of five years of creditable
6 service or after the completion of 30 years of creditable service
7 or on or after his 60th birthday upon the completion of 25 years
8 of creditable service, such allowance shall be equal to one and
9 sixty hundredths percent (1.60%) of his average final
10 compensation, multiplied by the number of years of his
11 creditable service.

12 b. This allowance shall also be governed by the provisions of G.S.
13 135-5(b9)(2)b., c. and d."

14 Sec. 3.2. G.S. 135-5 is amended by adding a new subsection to read:

15 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
16 1989. – Upon retirement from service in accordance with subsection (a) above, on or
17 after July 1, 1989, a member shall receive the following service retirement allowance:

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

21 a. If the member's service retirement date occurs on or after his
22 55th birthday, and completion of five years of creditable service
23 as a law enforcement officer, or after the completion of 30 years
24 of creditable service, the allowance shall be equal to one and
25 sixty-three hundredths percent (1.63%) of his average final
26 compensation, multiplied by the number of years of his
27 creditable service.

28 b. This allowance shall also be governed by the provisions of G.S.
29 135-5(b9)(1)b.

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

33 a. If the member's service retirement date occurs on or after his
34 65th birthday upon the completion of five years of creditable
35 service or after the completion of 30 years of creditable service
36 or on or after his 60th birthday upon the completion of 25 years
37 of creditable service, the allowance shall be equal to one and
38 sixty-three hundredths percent (1.63%) of his average final
39 compensation, multiplied by the number of years of creditable
40 service.

41 b. This allowance shall also be governed by the provisions of G.S.
42 135-5(b9)(2)b. c. and d."

43 Sec. 3.3. G.S. 135-5 is amended by adding a new subsection to read:

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

8 Sec. 3.4. G.S. 128-27(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. Such allowance shall also be governed by the provisions of G.S.
24 128-27(b8)(2).

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. Such allowance shall also be governed by the provisions of G.S.
37 128-27(b7)(2a), (2b) and (3)."

38 Sec. 3.5. G.S. 128-27 is amended by adding a new section 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 officer 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.
9 128-27(b8)(2).

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.
22 128-27(b7)(2a) and (3)."

23 Sec. 3.6. G.S. 128-27 is amended by adding a new subsection to read:

24 "(ff) 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 (k) of this section
30 or otherwise granted by act of the 1989 Session of the General Assembly."

31 Sec. 3.7. The State's employer contribution rate budgeted for the University
32 Employees' Optional Retirement Program is increased from eight and seventeen
33 hundredths percent (8.17%), as contained in the Expansion Budget Appropriations Act
34 for Current Operations for the 1989-91 biennium, to eight and twenty-seven hundredths
35 percent (8.27%), beginning September 1, 1989.

36 Sec. 3.8. It is the intention of the First Session of the 1989 General Assembly
37 that the benefit accrual rates of the Teachers' and State Employees' Retirement System
38 and the Local Governmental Employees' Retirement System be further increased as a
39 result of this act, on or after July 1, 1990, for active and retired members and
40 beneficiaries of the Systems upon the availability of unencumbered actuarial gains in
41 the Retirement Systems for the years ending on or after December 31, 1988, subsequent
42 to the application of such unencumbered actuarial gains for the provisions of G.S. 128-
43 27(k) and G.S. 135-5(o).

1 Sec. 3.9. Part III of this act shall become effective July 1, 1989. Except as
2 otherwise provided in this act, the remainder of this act is effective for taxable years
3 beginning on or after January 1, 1989. This act shall expire for taxable years beginning
4 on or after January 1, 1991, except for Part III, which shall expire July 1, 1991.