

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

3

SENATE BILL 1086
Finance Committee Substitute Adopted 6/21/89
Third Edition Engrossed 7/10/89

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 applies only with respect to retirement benefits received while the taxpayer was a resident of this State or received as a result of former employment or self-employment in this State. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the two hundred dollar (\$200.00) maximum applies separately to each spouse's benefits for a potential total credit of four hundred dollars (\$400.00) for the couple. 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."

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

3 "(b) Nonresidents. For nonresident individuals, the term 'North Carolina taxable
4 income' means taxable income as calculated under the Code, adjusted as provided in
5 G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which
6 is the taxpayer's gross income as calculated under the Code, adjusted as provided in
7 G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that
8 gross income, as adjusted, that is derived from North Carolina sources and is
9 attributable to the ownership of any interest in real or tangible personal property in this
10 State or is derived from a business, trade, profession, or occupation carried on in this
11 State. For the purpose of this Division, retirement benefits received as a result of past
12 employment or self-employment in this State are income derived from a business, trade,
13 profession, or occupation carried on in this State."

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

15 "(b10) Service Retirement Allowance of Members Retiring on or after July 1,
16 ~~1988-1988, but before July 1, 1989.~~ – Upon retirement from service in accordance with
17 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall
18 receive the following service retirement allowance:

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

22 a. If the member's service retirement date occurs on or after his
23 55th birthday, and completion of five years of creditable service
24 as a law enforcement officer, or after the completion of 30 years
25 of creditable service, the allowance shall be equal to one and
26 sixty hundredths percent (1.60%) of his average final
27 compensation, multiplied by the number of years of his
28 creditable service.

29 b. This allowance shall also be governed by the provisions of G.S.
30 135-5(b9)(1)b.

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

34 a. If the member's service retirement date occurs on or after his
35 65th birthday upon the completion of five years of creditable
36 service or after the completion of 30 years of creditable service
37 or on or after his 60th birthday upon the completion of 25 years
38 of creditable service, such 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)(2)b., c. and d."

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

1 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
2 1989. – Upon retirement from service in accordance with subsection (a) above, on or
3 after July 1, 1989, a member shall receive the following service retirement allowance:

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

7 a. If the member's service retirement date occurs on or after his
8 55th birthday, and completion of five years of creditable service
9 as a law enforcement officer, or after the completion of 30 years
10 of creditable service, the allowance shall be equal to one and
11 sixty-three hundredths percent (1.63%) of his average final
12 compensation, multiplied by the number of years of his
13 creditable service.

14 b. This allowance shall also be governed by the provisions of G.S.
15 135-5(b9)(1)b.

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

19 a. If the member's service retirement date occurs on or after his
20 65th birthday upon the completion of five years of creditable
21 service or after the completion of 30 years of creditable service
22 or on or after his 60th birthday upon the completion of 25 years
23 of creditable service, the allowance shall be equal to one and
24 sixty-three hundredths percent (1.63%) of his average final
25 compensation, multiplied by the number of years of creditable
26 service.

27 b. This allowance shall also be governed by the provisions of G.S.
28 135-5(b9)(2)b. c. and d."

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

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

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

38 "(b10) Service Retirement Allowance of Members Retiring on or after July 1,
39 1988-1988, but before July 1, 1989. – Upon retirement from service in accordance with
40 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall
41 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 hundredths percent (1.60%) of his average final
6 compensation, multiplied by the number of years of his
7 creditable service.
- 8 b. Such 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, such allowance shall be equal to one and
18 sixty-hundredths percent (1.60%) of his average final
19 compensation, multiplied by the number of years of his
20 creditable service.
- 21 b. Such allowance shall also be governed by the provisions of G.S.
22 128-27(b7)(2a), (2b) and (3)."

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

24 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
25 1989. – Upon retirement from service in accordance with subsection (a) above, on or
26 after July 1, 1989, a member shall receive the following service retirement allowance:

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

1 or on or after his 60th birthday upon the completion of 25 years
2 of creditable service, the allowance shall be equal to one and
3 sixty-three hundredths percent (1.63%) of his average final
4 compensation, multiplied by the number of years of creditable
5 service.

6 b. This allowance shall also be governed by the provisions of G.S.
7 128-27(b7)(2a) and (3)."

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

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

16 Sec. 9. The State's employer contribution rate budgeted for the University
17 Employees' Optional Retirement Program is increased from eight and seventeen
18 hundredths percent (8.17%), as contained in the Expansion Budget Appropriations Act
19 for Current Operations for the 1989-91 Biennium, to eight and twenty-seven hundredths
20 percent (8.27%), beginning July 1, 1989.

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

22 "**§ 118-49. Exemptions of pensions from attachment; rights nonassignable.**

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

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

29 "**§ 120-4.29. Exemption from taxes, garnishment, attachment.**

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

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

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

1 **"§ 128-31. Exemptions from execution.**

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

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

16 **"§ 135-9. Exemption from taxes, garnishment, attachment, etc.**

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

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

31 **"§ 135-95. Exemption from taxes, garnishment, attachment.**

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

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

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

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

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

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

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

8 "**§ 147-9.4. Deferred Compensation Plan.**

9 Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision
10 of law relating to salaries or salary schedules of State employees, the chief executive
11 officer of an employer, on behalf of the employer, may from time to time enter into a
12 contract with an employee under which the employee irrevocably elects to defer receipt
13 of a portion of his scheduled salary in the future, but only if, as a result of such contract,
14 the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-
15 426.24 or pursuant to some other plan established before 1 January 1983, and is not
16 constructively received by the employee in the year in which it was earned, for State
17 and federal income tax purposes. In addition, the income so deferred shall be invested
18 in the manner provided in the applicable Plan; however, the employee may revoke his
19 election to participate and may amend the amount of compensation to be deferred by
20 signing and filing with the Board a written revocation or amendment on a form and in
21 the manner approved by the Board. Any such revocation or amendment shall be
22 effective prospectively only and shall cause no change in the allocation of amounts
23 invested prior to the filing date of such revocation or amendment.

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

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

41 Sec. 20. G.S. 161-50.5(e) is repealed.

42 Sec. 21. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the
43 1969 Session Laws are repealed.

1 Sec. 22. Sections 3 through 9 of this act shall become effective July 1, 1989.
2 The remainder of this act is effective for taxable years beginning on or after January 1,
3 1989.