

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2145

Short Title: No Exemptions/Adjust Retiree Formula.

(Public)

Sponsors: Representatives Fitch; Stamey, Fletcher, H. Hunter, Barnes, Barbee, Blue, and Fussell.

Referred to: Public Employees.

May 29, 1990

A BILL TO BE ENTITLED

1 AN ACT TO REPEAL THE STATE INCOME TAX EXEMPTIONS FOR FEDERAL,
2 STATE, LOCAL, AND PRIVATE RETIREMENT BENEFITS AND TO
3 INCREASE THE RETIREMENT FORMULA FOR MEMBERS AND
4 BENEFICIARIES OF THE TEACHERS' AND STATE EMPLOYEES'
5 RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT
6 SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, AND THE LOCAL
7 GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 105-134.6(b) reads as rewritten:

11 "(b) Deductions. The following deductions from taxable income shall
12 be made in calculating North Carolina taxable income, to the extent each item is
13 included in gross income:

- 14 (1) Interest upon the obligations of (i) the United States or its possessions,
15 (ii) this State or a political subdivision of this State, or (iii) a nonprofit
16 educational institution organized or chartered under the laws of this
17 State.
- 18 (2) Interest upon obligations and gain from the disposition of obligations
19 to the extent the interest or gain is exempt from tax under the laws of
20 this State.
- 21 (3) Benefits received under Title II of the Social Security Act and amounts
22 received from retirement annuities or pensions paid under the
23 provisions of the Railroad Retirement Act of 1937.

- 1 (4) Any amount not to exceed one thousand five hundred dollars (\$1,500)
2 received by the taxpayer during the taxable year as compensation for
3 the performance of duties as a member of the North Carolina
4 organized militia, the national guard as defined in G.S. 127A-3.
- 5 (5) Refunds of State, local, and foreign income taxes included in the
6 taxpayer's gross income.
- 7 ~~(6) a. An amount, not to exceed four thousand dollars (\$4,000), equal to
8 the sum of the amount calculated in subparagraph b. plus the amount
9 calculated in subparagraph c.~~
- 10 ~~b. The amount calculated in this subparagraph is the amount
11 received during the taxable year from one or more state, local,
12 or federal government retirement plans.~~
- 13 ~~c. The amount calculated in this subparagraph is the amount
14 received during the taxable year from one or more retirement
15 plans other than state, local, or federal government retirement
16 plans, not to exceed a total of two thousand dollars (\$2,000) in
17 any taxable year.~~
- 18 ~~d. In the case of a married couple filing a joint return where both
19 spouses received retirement benefits during the taxable year, the
20 maximum dollar amounts provided in this subdivision for
21 various types of retirement benefits apply separately to each
22 spouse's benefits.~~
- 23 (7) The amount of inheritance tax attributable to an item of income in
24 respect of a decedent required to be included in gross income under the
25 Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-
26 134.7. The amount of inheritance tax attributable to an item of income
27 in respect of a decedent is (i) the amount by which the inheritance tax
28 paid under Article 1 of this Chapter on property transferred to a
29 beneficiary by a decedent exceeds the amount of inheritance tax that
30 would have been payable by the beneficiary if the item of income in
31 respect of a decedent had not been included in the property transferred
32 to the beneficiary by the decedent, (ii) multiplied by a fraction, the
33 numerator of which is the amount required to be included in gross
34 income for the taxable year under the Code, adjusted as provided in
35 G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of
36 which is the total amount of income in respect of a decedent
37 transferred to the beneficiary by the decedent. For an estate or trust,
38 the deduction allowed by this subdivision shall be computed by
39 excluding from the gross income of the estate or trust the portion, if
40 any, of the items of income in respect of a decedent that are properly
41 paid, credited, or to be distributed to the beneficiaries during the
42 taxable year.

43 The Secretary of Revenue may provide to a beneficiary of an item
44 of income in respect of a decedent any information contained on an

1 inheritance tax return that the beneficiary needs to compute the
2 deduction allowed by this subdivision."

3 ♦ Sec. 2. G.S. 105-134.1 reads as rewritten:

4 **"§ 105-134.1. Definitions.**

5 The following definitions apply in this Division:

- 6 (1) Code. The Internal Revenue Code as enacted as of January 1, 1989,
7 including any provisions enacted as of that date which become
8 effective either before or after that date, but not including sections
9 63(c)(4) and 151(d)(3).
- 10 (2) Department. The Department of Revenue.
- 11 (3) Educational institution. An educational institution that normally
12 maintains a regular faculty and curriculum and normally has a
13 regularly organized body of students in attendance at the place where
14 its educational activities are carried on.
- 15 (4) Fiscal year. Defined in section 441(e) of the Code.
- 16 (5) Gross income. Defined in section 61 of the Code.
- 17 (6) Head of household. Defined in section 2(b) of the Code.
- 18 (7) Individual. A natural person.
- 19 (8) Married individual. An individual who is married and is considered
20 married as provided in section 7703 of the Code.
- 21 (9) Nonresident individual. An individual who is not a resident of this
22 State.
- 23 (10) North Carolina taxable income. Defined in G.S. 105-134.5.
- 24 (11) Person. An individual, a fiduciary, a partnership, or a corporation.
25 The term includes an officer or employee of a corporation or a member
26 or employee of a partnership who, as officer, employee, or member, is
27 under a duty to perform an act in meeting the requirements of this
28 Division.
- 29 (12) Resident. An individual who is domiciled in this State at any time
30 during the taxable year or who resides in this State during the taxable
31 year for other than a temporary or transitory purpose. In the absence
32 of convincing proof to the contrary, an individual who is present
33 within the State for more than 183 days during the taxable year is
34 presumed to be a resident, but the absence of an individual from the
35 State for more than 183 days raises no presumption that the individual
36 is not a resident. A resident who removes from the State during a
37 taxable year is considered a resident until he has both established a
38 definite domicile elsewhere and abandoned any domicile in this State.
39 The fact of marriage does not raise any presumption as to domicile or
40 residence.
- 41 ~~(13) Retirement benefits. Amounts paid to a former employee or the~~
42 ~~beneficiary of a former employee under a written retirement plan~~
43 ~~established by the employer to provide payments to an employee or the~~
44 ~~beneficiary of an employee after the end of the employee's~~

1 employment with the employer where the right to receive the
2 payments is based upon the employment relationship. With respect to
3 a self-employed individual or the beneficiary of a self-employed
4 individual, the term means amounts paid to the individual or
5 beneficiary of the individual under a written retirement plan
6 established by the individual to provide payments to the individual or
7 the beneficiary of the individual after the end of the self-employment.
8 In addition, the term includes amounts received from an individual
9 retirement account described in section 408 of the Code or from an
10 individual retirement annuity described in section 408 of the Code.
11 For the purpose of this subdivision, the term 'employee' includes a
12 volunteer worker.

13 (14) S Corporation. Defined in G.S. 105-131(b).

14 (15) Secretary. The Secretary of Revenue.

15 (16) Taxable income. Defined in section 63 of the Code.

16 (17) Taxable year. Defined in section 441(b) of the Code.

17 (18) Taxpayer. An individual subject to the tax imposed by this Division.

18 (19) This State. The State of North Carolina."

19 Sec. 3. ♦G.S. 135-5(b11) reads as rewritten:

20 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
21 ~~1989-1989, but before July 1, 1990.~~ – Upon retirement from service in accordance with
22 subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall
23 receive the following service retirement allowance:

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

27 a. If the member's service retirement date occurs on or after his
28 55th birthday, and completion of five years of creditable service
29 as a law enforcement officer, or after the completion of 30 years
30 of creditable service, the allowance shall be equal to one and
31 sixty-three hundredths percent (1.63%) of his average final
32 compensation, multiplied by the number of years of his
33 creditable service.

34 b. This allowance shall also be governed by the provisions of G.S.
35 135-5(b9)(1)b.

36 (2) A member who is not a law enforcement officer or an eligible former
37 law 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 65th birthday upon the completion of five years of creditable
41 service or after the completion of 30 years of creditable service
42 or on or after his 60th birthday upon the completion of 25 years
43 of creditable service, the allowance shall be equal to one and
44 sixty-three hundredths percent (1.63%) of his average final

1 compensation, multiplied by the number of years of creditable
2 service.

- 3 b. This allowance shall also be governed by the provisions of G.S.
4 135-5(b9)(2)b. c. and d."

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

6 "(b12) Service Retirement Allowance of Members Retiring on or after July 1,
7 1990. – Upon retirement from service in accordance with subsection (a) above, on or
8 after July 1, 1990, a member shall receive the following service retirement allowance:

- 9 (1) A member who is a law enforcement officer or an eligible former law
10 enforcement officer shall receive a service retirement allowance
11 computed as follows:

- 12 a. If the member's service retirement date occurs on or after his
13 55th birthday, and completion of five years of creditable service
14 as a law enforcement officer, or after the completion of 30 years
15 of creditable service, the allowance shall be equal to one and
16 seventy-two hundredths percent (1.72%) of his average final
17 compensation, multiplied by the number of years of his
18 creditable service.

- 19 b. This allowance shall also be governed by the provisions of G.S.
20 135-5(b9)(1)b.

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

- 24 a. If the member's service retirement date occurs on or after his
25 65th birthday upon the completion of five years of creditable
26 service or after the completion of 30 years of creditable service
27 or on or after his 60th birthday upon the completion of 25 years
28 of creditable service, the allowance shall be equal to one and
29 seventy-two hundredths percent (1.72%) of his average final
30 compensation, multiplied by the number of years of creditable
31 service.

- 32 b. This allowance shall also be governed by the provisions of G.S.
33 135-5(b9)(2)b. c. and d."

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

35 "(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.
36 From and after July 1, 1990, the retirement allowance to or on account of beneficiaries
37 on the retirement rolls as of June 1, 1990, shall be increased by five and five-tenths
38 percent (5.5%) of the allowance payable on June 1, 1990. This allowance shall be
39 calculated on the basis of the allowance payable and in effect on June 30, 1990, so as
40 not to be compounded on any other increase granted by act of the 1989 Session of the
41 General Assembly (1990 Regular Session)."

42 Sec. 6. G.S. 135-58(a) reads as rewritten:

43 "(a) Any member who retires under the provisions of subsection (a) or subsection
44 (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth

1 birthday or has completed 24 years or more of creditable service shall receive an annual
2 retirement allowance, payable monthly, which shall commence on the effective date of
3 his retirement and shall be continued on the first day of each month thereafter during his
4 lifetime, the amount of which shall be computed as the sum of (1), (2) and (3)
5 following, provided that in no event shall the annual allowance payable to any member
6 be greater than an amount which, when added to the allowance, if any, to which he is
7 entitled under the Teachers' and State Employees' Retirement System, the Legislative
8 Retirement System or the North Carolina Local Governmental Employees' Retirement
9 System (prior in any case to any reduction for early retirement or for an optional mode
10 of payment) would total three fourths of his final compensation:

- 11 (1) Four percent (4%) of his final compensation, multiplied by the
12 number of years of his creditable service rendered as a justice of the
13 Supreme Court or judge of the Court of Appeals;
- 14 (2) Three and one-half percent (3 1/2%) of his final compensation,
15 multiplied by the number of years of his creditable service rendered as
16 a judge of the superior court or as administrative officer of the courts;
- 17 (3) Three percent (3%) of his final compensation, multiplied by the
18 number of years of his creditable service rendered as a judge of the
19 district court, district attorney, or clerk of superior court."

20 Sec. 7. G.S. 135-58 is amended by adding a new subsection to read:

21 "(a1) Any member who retires under the provisions of subsection (a) or subsection
22 (c) of G.S. 135-57 on or after July 1, 1990, after he either has attained his 65th birthday
23 or has completed 24 years or more of creditable service shall receive an annual
24 retirement allowance, payable monthly, which shall commence on the effective date of
25 his retirement and shall be continued on the first day of each month thereafter during his
26 lifetime, the amount of which shall be computed as the sum of (1), (2) and (3)
27 following, provided that in no event shall the annual allowance payable to any member
28 be greater than an amount which, when added to the allowance, if any, to which he is
29 entitled under the Teachers' and State Employees' Retirement System, the Legislative
30 Retirement System or the North Carolina Local Governmental Employees' Retirement
31 System (prior in any case to any reduction for early retirement or for an optional mode
32 of payment) would total three fourths of his final compensation:

- 33 (1) Four and three-tenths percent (4.3%) of his final
34 compensation, multiplied by the number of years of his creditable
35 service rendered as a justice of the Supreme Court or judge of the
36 Court of Appeals;
- 37 (2) Three and eight-tenths percent (3.8%) of his final
38 compensation, multiplied by the number of years of his creditable
39 service rendered as a judge of the superior court or as administrative
40 officer of the courts;
- 41 (3) Three and two-tenths percent (3.2%) of his final
42 compensation, multiplied by the number of years of his creditable
43 service rendered as a judge of the district court, district attorney, or
44 clerk of superior court."

1 Sec. 8. G.S. 135-65 is amended by adding a new subsection to read:

2 "(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.
3 From and after July 1, 1990, the retirement allowance to or on account of beneficiaries
4 on the retirement rolls as of June 1, 1990, shall be increased by seven and five-tenths
5 percent (7.5%) of the allowance payable on June 1, 1990. This allowance shall be
6 calculated on the basis of the allowance payable and in effect on June 30, 1990, so as
7 not to be compounded on any other increase granted by act of the 1989 Session of the
8 General Assembly (1990 Regular Session)."

9 Sec. 9. G.S. 120-4.21 reads as rewritten:

10 **"§ 120-4.21. Service retirement benefits.**

11 (a) Eligibility; Application. – Any member in service may retire with full
12 benefits who has reached 65 years of age with five years of creditable service. Any
13 member in service may retire with reduced benefits who has reached the age of 60 years
14 with five years of creditable service. The member shall make written application to the
15 Board of Trustees to retire on a service retirement allowance on the first day of the
16 particular calendar month he designates. The designated date shall be no less than one
17 day nor more than 90 days from the filing of the application. During this period of
18 notification, a member may separate from service without forfeiting his retirement
19 benefits.

20 (b) Computation. – Upon retirement from service in accordance with subsection
21 (a) of this ~~section~~, section before July 1, 1990, a member shall receive a service
22 retirement allowance computed as follows:

23 (1) For a member whose retirement date occurs on or after his 65th
24 birthday and upon completion of five years of creditable service, four
25 percent (4%) of his 'highest annual salary,' multiplied by the number
26 of years of creditable service.

27 (2) For a member whose retirement date occurs on or after his 60th and
28 before his 65th birthday and upon completion of five years of
29 creditable service, computation as in subdivision (1) of this subsection,
30 reduced by one-fourth of one percent (1/4 of 1%) for each month his
31 retirement date precedes his 65th birthday.

32 **(b1) Computation.** – Upon retirement from service in accordance with subsection
33 (a) of this section on or after July 1, 1990, a member shall receive a service retirement
34 allowance computed as follows:

35 (1) For a member whose retirement date occurs on or after his
36 65th birthday and upon completion of five years of creditable
37 service, four and three-tenths percent (4.3%) of his 'highest annual
38 salary,' multiplied by the number of years of creditable service.

39 (2) For a member whose retirement date occurs on or after his
40 60th and before his 65th birthday and upon completion of five years
41 of creditable service, computation as in subdivision (1) of this
42 subsection, reduced by one-fourth of one percent (1/4 of 1%) for
43 each month his retirement date precedes his 65th birthday.

1 (c) Limitations. – In no event shall any member receive a service retirement
2 allowance greater than seventy-five percent (75%) of his 'highest annual salary' nor
3 shall he receive any service retirement allowance whatever while employed in a position
4 that makes him a contributing member of any of the following retirement systems: The
5 Teachers' and State Employees' Retirement System, the North Carolina Local
6 Governmental Employees' Retirement System, the Law-Enforcement Officers'
7 Retirement System, the Uniform Judicial Retirement System of North Carolina, the
8 Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of
9 Court Retirement System of North Carolina. If he should become a member of any of
10 these systems, payment of his service retirement allowance shall be suspended until he
11 withdraws from membership in that system."

12 Sec. 10. G.S. 120-4.22A is amended by adding a new subsection to read:

13 "(f) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.
14 From and after July 1, 1990, the retirement allowance to or on account of beneficiaries
15 on the retirement rolls as of June 1, 1990, shall be increased by seven and five-tenths
16 percent (7.5%) of the allowance payable on June 1, 1990. This allowance shall be
17 calculated on the basis of the allowance payable and in effect on June 30, 1990, so as
18 not to be compounded on any other increase granted by act of the 1989 Session of the
19 General Assembly (1990 Regular Session)."

20 Sec. 11. G.S. 128-27(b11) reads as rewritten:

21 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
22 ~~1989-1989~~, but before July 1, 1990. – Upon retirement from service in accordance with
23 subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall
24 receive the following service retirement allowance:

25 (1) A member who is a law enforcement officer or an eligible former law
26 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 55th birthday, and completion of five years of creditable service
30 as a law enforcement officer, or after the completion of 30 years
31 of creditable service, the allowance shall be equal to one and
32 sixty-three hundredths percent (1.63%) of his average final
33 compensation, multiplied by the number of years of his
34 creditable service.

35 b. This allowance shall also be governed by the provisions of G.S.
36 128-27(b8)(2).

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

40 a. If the member's service retirement date occurs on or after his
41 65th birthday upon the completion of five years of creditable
42 service or after the completion of 30 years of creditable service
43 or on or after his 60th birthday upon the completion of 25 years
44 of creditable service, the allowance shall be equal to one and

1 sixty-three hundredths percent (1.63%) of his average final
2 compensation, multiplied by the number of years of creditable
3 service.

4 b. This allowance shall also be governed by the provisions of G.S.
5 128-27(b7)(2a) and (3)."

6 Sec. 12. G.S. 128-27 is amended by adding a new subsection to read:

7 "(b12) Service Retirement Allowance of Members Retiring on or after July 1,
8 1990. – Upon retirement from service in accordance with subsection (a) above, on or
9 after July 1, 1990, a member shall receive the following service retirement allowance:

10 (1) A member who is a law enforcement officer or an eligible former law
11 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 55th birthday, and completion of five years of creditable service
15 as a law enforcement officer, or after the completion of 30 years
16 of creditable service, the allowance shall be equal to one and
17 seventy-two hundredths percent (1.72%) of his average final
18 compensation, multiplied by the number of years of his
19 creditable service.

20 b. This allowance shall also be governed by the provisions of G.S.
21 128-27(b8)(2).

22 (2) A member who is not a law enforcement officer or an eligible former
23 law 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 65th birthday upon the completion of five years of creditable
27 service or after the completion of 30 years of creditable service
28 or on or after his 60th birthday upon the completion of 25 years
29 of creditable service, the allowance shall be equal to one and
30 seventy-two hundredths percent (1.72%) of his average final
31 compensation, multiplied by the number of years of creditable
32 service.

33 b. This allowance shall also be governed by the provisions of G.S.
34 128-27(b7)(2a) and (3)."

35 Sec. 13. G.S. 128-27 is amended by adding a new subsection to read:

36 "(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990.
37 From and after July 1, 1990, the retirement allowance to or on account of beneficiaries
38 on the retirement rolls as of June 1, 1990, shall be increased by five and five-tenths
39 percent (5.5%) of the allowance payable on June 1, 1990. This allowance shall be
40 calculated on the basis of the allowance payable and in effect on June 30, 1990, so as
41 not to be compounded on any other increase granted by act of the 1989 Session of the
42 General Assembly (1990 Regular Session)."

1 Sec. 14. Sections 1 and 2 of this act shall become effective for taxable years
2 beginning on or after January 1, 1990. The remainder of this act shall become effective
3 July 1, 1990.