

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 2145
Committee Substitute Without Prejudice 7/6/90

Short Title: No Exemptions/Adjust Retiree Formula.

(Public)

Sponsors:

Referred to:

May 29, 1990

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATE INCOME TAX EXEMPTIONS FOR FEDERAL, STATE, LOCAL, AND PRIVATE RETIREMENT BENEFITS AND TO INCREASE THE RETIREMENT FORMULA FOR MEMBERS AND BENEFICIARIES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Effective for taxable years beginning on or after January 1, 1990, G.S. 105-134.6(b) reads as rewritten:

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

- (1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.
- (2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.

- 1 (3) Benefits received under Title II of the Social Security Act and amounts
2 received from retirement annuities or pensions paid under the
3 provisions of the Railroad Retirement Act of 1937.
- 4 (4) Any amount not to exceed one thousand five hundred dollars (\$1,500)
5 received by the taxpayer during the taxable year as compensation for
6 the performance of duties as a member of the North Carolina
7 organized militia, the national guard as defined in G.S. 127A-3.
- 8 (5) Refunds of State, local, and foreign income taxes included in the
9 taxpayer's gross income.
- 10 (6) a. An amount, not to exceed ~~four~~two thousand dollars (~~\$4,000~~),
11 (\$2,000), equal to the sum of the amount calculated in subparagraph b.
12 plus the amount calculated in subparagraph c.
- 13 b. The amount calculated in this subparagraph is the amount
14 received during the taxable year from one or more state, local,
15 or federal government retirement plans.
- 16 c. The amount calculated in this subparagraph is the amount
17 received during the taxable year from one or more retirement
18 plans other than state, local, or federal government retirement
19 plans, not to exceed a total of ~~two~~one thousand dollars (~~\$2,000~~)
20 (\$1,000) in any taxable year.
- 21 d. In the case of a married couple filing a joint return where both
22 spouses received retirement benefits during the taxable year, the
23 maximum dollar amounts provided in this subdivision for
24 various types of retirement benefits apply separately to each
25 spouse's benefits.
- 26 (7) The amount of inheritance tax attributable to an item of income in
27 respect of a decedent required to be included in gross income under the
28 Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-
29 134.7. The amount of inheritance tax attributable to an item of income
30 in respect of a decedent is (i) the amount by which the inheritance tax
31 paid under Article 1 of this Chapter on property transferred to a
32 beneficiary by a decedent exceeds the amount of inheritance tax that
33 would have been payable by the beneficiary if the item of income in
34 respect of a decedent had not been included in the property transferred
35 to the beneficiary by the decedent, (ii) multiplied by a fraction, the
36 numerator of which is the amount required to be included in gross
37 income for the taxable year under the Code, adjusted as provided in
38 G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of
39 which is the total amount of income in respect of a decedent
40 transferred to the beneficiary by the decedent. For an estate or trust,
41 the deduction allowed by this subdivision shall be computed by
42 excluding from the gross income of the estate or trust the portion, if
43 any, of the items of income in respect of a decedent that are properly

1 paid, credited, or to be distributed to the beneficiaries during the
2 taxable year.

3 The Secretary of Revenue may provide to a beneficiary of an item
4 of income in respect of a decedent any information contained on an
5 inheritance tax return that the beneficiary needs to compute the
6 deduction allowed by this subdivision."

7 Sec. 2. Effective for taxable years beginning on or after January 1, 1991,
8 G.S. 105-134.6(b)(6) is repealed.

9 ♦ Sec. 3. Effective for taxable years beginning on or after January 1, 1991,
10 G.S. 105-134.1 reads as rewritten:

11 **"§ 105-134.1. Definitions.**

12 The following definitions apply in this Division:

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

1 definite domicile elsewhere and abandoned any domicile in this State.
2 The fact of marriage does not raise any presumption as to domicile or
3 residence.

4 (13) ~~Retirement benefits. — Amounts paid to a former employee or the~~
5 ~~beneficiary of a former employee under a written retirement plan~~
6 ~~established by the employer to provide payments to an employee or the~~
7 ~~beneficiary of an employee after the end of the employee's~~
8 ~~employment with the employer where the right to receive the~~
9 ~~payments is based upon the employment relationship. With respect to~~
10 ~~a self-employed individual or the beneficiary of a self-employed~~
11 ~~individual, the term means amounts paid to the individual or~~
12 ~~beneficiary of the individual under a written retirement plan~~
13 ~~established by the individual to provide payments to the individual or~~
14 ~~the beneficiary of the individual after the end of the self-employment.~~
15 ~~In addition, the term includes amounts received from an individual~~
16 ~~retirement account described in section 408 of the Code or from an~~
17 ~~individual retirement annuity described in section 408 of the Code.~~
18 ~~For the purpose of this subdivision, the term 'employee' includes a~~
19 ~~volunteer worker.~~

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

21 (15) Secretary. The Secretary of Revenue.

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

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

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

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

26 Sec. 4. ♦G.S. 135-5(b11) reads as rewritten:

27 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
28 ~~1989-1989, but before July 1, 1990.~~ — Upon retirement from service in accordance with
29 subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall
30 receive the following service retirement allowance:

31 (1) A member who is a law enforcement officer or an eligible former law
32 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 55th birthday, and completion of five years of creditable service
36 as a law enforcement officer, or after the completion of 30 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 his
40 creditable service.

41 b. This allowance shall also be governed by the provisions of G.S.
42 135-5(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, the allowance shall be equal to one and
9 sixty-three hundredths percent (1.63%) of his average final
10 compensation, multiplied by the number of years of creditable
11 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. 5. G.S. 135-5 is amended by adding a new subsection to read:

15 "(b12) Service Retirement Allowance of Members Retiring on or after July 1,
16 1990. – Upon retirement from service in accordance with subsection (a) above, on or
17 after July 1, 1990, 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 seventy-two hundredths percent (1.72%) 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 seventy-two hundredths percent (1.72%) 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. 6. G.S. 135-5 is amended by adding a new subsection to read:

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

8 Sec. 7. G.S. 135-58(a) reads as rewritten:

9 "(a) Any member who retires under the provisions of subsection (a) or subsection
10 (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth
11 birthday or has completed 24 years or more of creditable service shall receive an annual
12 retirement allowance, payable monthly, which shall commence on the effective date of
13 his retirement and shall be continued on the first day of each month thereafter during his
14 lifetime, the amount of which shall be computed as the sum of (1), (2) and (3)
15 following, provided that in no event shall the annual allowance payable to any member
16 be greater than an amount which, when added to the allowance, if any, to which he is
17 entitled under the Teachers' and State Employees' Retirement System, the Legislative
18 Retirement System or the North Carolina Local Governmental Employees' Retirement
19 System (prior in any case to any reduction for early retirement or for an optional mode
20 of payment) would total three fourths of his final compensation:

- 21 (1) Four percent (4%) of his final compensation, multiplied by the
22 number of years of his creditable service rendered as a justice of the
23 Supreme Court or judge of the Court of Appeals;
- 24 (2) Three and one-half percent (3 1/2%) of his final compensation,
25 multiplied by the number of years of his creditable service rendered as
26 a judge of the superior court or as administrative officer of the courts;
- 27 (3) Three percent (3%) of his final compensation, multiplied by the
28 number of years of his creditable service rendered as a judge of the
29 district court, district attorney, or clerk of superior court."

30 Sec. 8. G.S. 135-58 is amended by adding a new subsection to read:

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

- 43 (1) Four and three-tenths percent (4.3%) of his final
44 compensation, multiplied by the number of years of his creditable

1 service rendered as a justice of the Supreme Court or judge of the
2 Court of Appeals;

3 (2) Three and eight-tenths percent (3.8%) of his final
4 compensation, multiplied by the number of years of his creditable
5 service rendered as a judge of the superior court or as administrative
6 officer of the courts;

7 (3) Three and two-tenths percent (3.2%) of his final
8 compensation, multiplied by the number of years of his creditable
9 service rendered as a judge of the district court, district attorney, or
10 clerk of superior court."

11 Sec. 9. G.S. 135-65 is amended by adding a new subsection to read:

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

19 Sec. 10. G.S. 120-4.21 reads as rewritten:

20 **"§ 120-4.21. Service retirement benefits.**

21 (a) Eligibility; Application. – Any member in service may retire with full
22 benefits who has reached 65 years of age with five years of creditable service. Any
23 member in service may retire with reduced benefits who has reached the age of 60 years
24 with five years of creditable service. The member shall make written application to the
25 Board of Trustees to retire on a service retirement allowance on the first day of the
26 particular calendar month he designates. The designated date shall be no less than one
27 day nor more than 90 days from the filing of the application. During this period of
28 notification, a member may separate from service without forfeiting his retirement
29 benefits.

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

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

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

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

1 (1) For a member whose retirement date occurs on or after his
2 65th birthday and upon completion of five years of creditable
3 service, four and three-tenths percent (4.3%) of his 'highest annual
4 salary,' multiplied by the number of years of creditable service.

5 (2) For a member whose retirement date occurs on or after his
6 60th and before his 65th birthday and upon completion of five years
7 of creditable service, computation as in subdivision (1) of this
8 subsection, reduced by one-fourth of one percent (1/4 of 1%) for
9 each month his retirement date precedes his 65th birthday.

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

21 Sec. 11. G.S. 120-4.22A is amended by adding a new subsection to read:

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

29 Sec. 12. G.S. 128-27(b11) reads as rewritten:

30 "(b11) Service Retirement Allowance of Members Retiring on or after July 1,
31 ~~1989~~ 1989, but before July 1, 1990. – Upon retirement from service in accordance with
32 subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall
33 receive the following service retirement allowance:

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

37 a. If the member's service retirement date occurs on or after his
38 55th birthday, and completion of five years of creditable service
39 as a law enforcement officer, or after the completion of 30 years
40 of creditable service, the allowance shall be equal to one and
41 sixty-three hundredths percent (1.63%) of his average final
42 compensation, multiplied by the number of years of his
43 creditable service.

- 1 b. This allowance shall also be governed by the provisions of G.S.
2 128-27(b8)(2).
- 3 (2) A member who is not a law enforcement officer or an eligible former
4 law enforcement officer shall receive a service retirement allowance
5 computed as follows:
- 6 a. If the member's service retirement date occurs on or after his
7 65th birthday upon the completion of five years of creditable
8 service or after the completion of 30 years of creditable service
9 or on or after his 60th birthday upon the completion of 25 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 creditable
13 service.
- 14 b. This allowance shall also be governed by the provisions of G.S.
15 128-27(b7)(2a) and (3)."

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

17 "(b12) Service Retirement Allowance of Members Retiring on or after July 1,
18 1990. – Upon retirement from service in accordance with subsection (a) above, on or
19 after July 1, 1990, a member shall receive the following service retirement allowance:

- 20 (1) A member who is a law enforcement officer or an eligible former law
21 enforcement officer shall receive a service retirement allowance
22 computed as follows:
- 23 a. If the member's service retirement date occurs on or after his
24 55th birthday, and completion of five years of creditable service
25 as a law enforcement officer, or after the completion of 30 years
26 of creditable service, the allowance shall be equal to one and
27 seventy-two hundredths percent (1.72%) of his average final
28 compensation, multiplied by the number of years of his
29 creditable service.
- 30 b. This allowance shall also be governed by the provisions of G.S.
31 128-27(b8)(2).
- 32 (2) A member who is not a law enforcement officer or an eligible former
33 law 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 65th birthday upon the completion of five years of creditable
37 service or after the completion of 30 years of creditable service
38 or on or after his 60th birthday upon the completion of 25 years
39 of creditable service, the allowance shall be equal to one and
40 seventy-two hundredths percent (1.72%) of his average final
41 compensation, multiplied by the number of years of creditable
42 service.
- 43 b. This allowance shall also be governed by the provisions of G.S.
44 128-27(b7)(2a) and (3)."

1 Sec. 14. G.S. 128-27 is amended by adding a new subsection to read:

2 "(hh) 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 five and five-tenths
5 percent (5.5%) 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. 15. Section 1 of this act shall become effective for taxable years
10 beginning on or after January 1, 1990. Sections 2 and 3 of this act shall become
11 effective for the taxable years beginning on or after January 1, 1991. The remainder of
12 this act shall become effective July 1, 1990.