

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1348
Finance Committee Substitute Adopted 7/18/90

Short Title: Teachers' Deferred Comp.

(Public)

Sponsors:

Referred to:

May 23, 1990

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT TEACHERS MAY PARTICIPATE IN THE PUBLIC
EMPLOYEES' DEFERRED COMPENSATION PLAN.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 147 of the General Statutes reads as
rewritten:

**"ARTICLE 2A.
"ANNUITIES AND DEFERRED COMPENSATION
FOR TEACHERS AND STATE EMPLOYEES.**

"§ 147-9.2. Definitions.

The following words when used in this Article shall have the meanings ascribed to
them in this section except when the context clearly indicates a different meaning:

(1) 'Board' shall mean the Board of Trustees of the North Carolina Public
Employee Deferred Compensation Plan established pursuant to
Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.

(1a) 'Chief executive officer' shall mean the person or group of persons
responsible for the administration of any ~~department or agency of the
State of North Carolina, or of a wholly owned institution or instrumentality
thereof,~~ employer, or an agent of such chief executive officer duly
authorized to enter into the contracts with teachers or State employees
referred to in G.S. 147-9.3 and 147-9.4.

- 1 (2) 'Employee' shall mean a permanent employee of the State of North
2 Carolina, or ~~if [off] of~~ any of its departments or agencies, or of any of
3 its wholly owned institutions and instrumentalities.
- 4 (3) 'Employer' shall mean (i) the State of North Carolina, its departments
5 and agencies, and its wholly owned institutions and instrumentalities.
6 instrumentalities or (ii) a local board of education.
- 7 (4) 'Plan' shall mean the North Carolina Public Employee Deferred
8 Compensation Plan.
- 9 (5) 'Teacher' shall have the meaning provided in G.S. 135-1(25).

10 **"§ 147-9.3. Annuity contracts; salary deductions.**

11 Notwithstanding the provisions of G.S. ~~147-62, 143-3.3,~~ and notwithstanding any
12 provision of law relating to salaries or salary schedules of State employees, if the
13 employee be one described in section 403(b) (1) (A) (i) or (ii) of the United States
14 Internal Revenue Code, the chief executive officer of such employee, on behalf of the
15 employer, may enter into an annual contract with the employee which provides for a
16 reduction in salary below the total established compensation or salary schedule for a
17 term of one year. The chief executive officer shall use the funds derived from the
18 reduction in the salary of the employee to purchase a nonforfeitable annuity or
19 retirement income contract for the benefit of said employee. An employee who has
20 agreed to a salary reduction for this purpose shall not have the right to receive the
21 amount of salary reduction in cash or in any other way except the annuity or retirement
22 income contract. Funds used for the purchase of an annuity or retirement income
23 contract shall not be in lieu of any amount earned by the employee before his election
24 for a salary reduction has become effective. The agreement for salary reduction referred
25 to herein shall be effective under the necessary regulations and procedures adopted by
26 the chief executive officer and on forms prescribed by him. Notwithstanding any other
27 provision of law, the amount by which the salary of an employee is reduced pursuant to
28 this section shall not be excluded, but shall be included, in computing and making
29 payroll deductions for social security and retirement system purposes, if any, and in
30 computing and providing matching funds for retirement system purposes, if any.

31 **"§ 147-9.4. Deferred Compensation Plan.**

32 Notwithstanding the provisions of G.S. ~~147-62, 143-3.3,~~ and notwithstanding any
33 provision of law relating to salaries or salary schedules of teachers or State employees,
34 the chief executive officer of an employer, on behalf of the employer, may from time to
35 time enter into a contract with ~~an~~ a teacher or employee under which the teacher or
36 employee irrevocably elects to defer receipt of a portion of his scheduled salary in the
37 future, but only if, as a result of such contract, the income so deferred is deferred
38 pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan
39 established before ~~1 January 1983, January 1, 1983,~~ and is not constructively received by
40 the teacher or employee in the year in which it was earned, for State and federal income
41 tax purposes. In addition, the income so deferred shall be invested in the manner
42 provided in the applicable Plan; however, the teacher or employee may revoke his
43 election to participate and may amend the amount of compensation to be deferred by
44 signing and filing with the Board a written revocation or amendment on a form and in

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

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

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

24 Sec. 2. G.S. 143B-426.24 reads as rewritten:

25 "**§ 143B-426.24. Board of Trustees of the North Carolina Public Employee**
26 **Deferred Compensation Plan.**

27 (a) The Governor may, by Executive Order, establish a Board of Trustees of the
28 North Carolina Public Employee Deferred Compensation Plan, which when established
29 shall be constituted an agency of the State of North Carolina within the Department of
30 Administration. The Board shall create, establish, implement, coordinate and administer
31 a Deferred Compensation Plan for State employees. Until so established, the Board
32 heretofore established pursuant to Executive Order XII dated 12 November 1974 shall
33 continue in effect. Likewise, the Plan heretofore established shall continue until a new
34 plan is established.

35 (b) The Board shall consist of seven voting members, as follows:

- 36 (1) Three persons shall be appointed by the Governor who shall have
37 experience with taxation, finance and investments, and one of whom
38 shall be a State employee;
- 39 (2) One member shall be appointed by the General Assembly upon
40 recommendation of the Speaker of the House of Representatives under
41 G.S. 120-121;
- 42 (3) One member shall be appointed by the General Assembly upon
43 recommendation of the President of the Senate under G.S. 120- 121;
- 44 (4) The State Treasurer, ex officio; and

1 (5) The Secretary of Administration, ex officio, chairman.

2 (c) General Assembly appointments shall serve two year terms. A member shall
3 continue to serve until his successor is duly appointed but a holdover under this
4 provision does not affect the expiration date of the succeeding term. No member of the
5 Board may serve more than three consecutive two year terms.

6 (d) In case of a vacancy on the Board before the expiration of a member's term, a
7 successor shall be appointed within 30 days of the vacancy for the remainder of the
8 unexpired term by the appropriate official pursuant to subsection (b). Vacancies in
9 legislative appointments shall be filled under G.S. 120-122.

10 (e) Other than ex officio members, members appointed by the Governor shall
11 serve at his pleasure.

12 (f) Any ex officio member may designate in writing, filed with the Board, any
13 employee of his department to act at any meeting of the Board from which the member
14 is absent, to the same extent that the member could act if present in person at such
15 meeting.

16 (g) It shall be the duty of the Board when established to review all contracts,
17 agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order
18 XII to include, but not be limited to, such contracts, agreements or arrangements
19 pertaining to the administrative services and the investment of deferred funds under the
20 Plan for the purpose of recommending continuation of or changes to such contracts,
21 agreements or arrangements.

22 (h) It shall be the duty of the Board to devise a uniform Deferred Compensation
23 Plan for teachers and State employees, which shall include a reasonable number of
24 options to the teacher or employee, for the investment of deferred funds, among which
25 may be life insurance, fixed or variable annuities and retirement income contracts,
26 regulated investment trusts, pooled investment funds managed by the Board or its
27 designee, or other forms of investment approved by the Board, always in such form as
28 will assure the desired tax treatment of such funds. The Board may alter, revise and
29 modify the Plan from time to time to improve the Plan or to conform to and comply
30 with requirements of State and federal laws and regulations relating to the deferral of
31 compensation of teachers and public employees generally.

32 (i) The Board is authorized to delegate the performance of such of its
33 administrative duties as it deems appropriate including coordination, administration, and
34 marketing of the Plan to teachers and employees. Prior to entering into any contract
35 with respect to such administrative duties, it shall seek bids, hold public hearings and in
36 general take such steps as are calculated by the Board to obtain competent, efficient and
37 worthy services for the performance of such administrative duties.

38 (j) The Board may acquire investment vehicles from any company duly
39 authorized to conduct such business in this State or may establish, alter, amend and
40 modify, to the extent it deems necessary or desirable, a trust for the purpose of
41 facilitating the administration, investment and maintenance of assets acquired by the
42 investment of deferred funds. Any assets of such investment vehicles or trusts shall
43 remain solely the property and rights of the State subject only to the claims of the State's
44 general creditors.

1 (k) Members of the Board, who are not officers or employees of the State, shall
2 receive per diem and necessary travel and subsistence in accordance with the provisions
3 of G.S. 138-5, funded as provided in subsection (m) hereof.

4 (l) All clerical and other services and personnel required by the Board shall be
5 supplied by the Secretary of Administration, funded as provided in subsection (m)
6 hereof.

7 (m) Investment of deferred funds shall not be unreasonably delayed, and in no
8 case shall the investment of deferred funds be delayed more than 30 days. The Board
9 may accumulate such funds pending investment, and the interest earned on such funds
10 pending investment shall be available to and may be spent in the discretion of the Board
11 only for the reasonable and necessary expenses of the Board. The Secretary of
12 Administration is authorized to prescribe guidelines for the expenditure of such funds
13 by the Board. From time to time as the Board may direct, funds not required for such
14 expenses may be used to defray administrative expenses and fees which would
15 otherwise be required to be borne by teachers and employees who are then participating
16 in the Plan.

17 (n) A majority of the Board shall constitute a quorum for the transaction of
18 business.

19 (o) It is intended that the provisions of this Part shall be liberally construed to
20 accomplish the purposes provided for herein."

21 Sec. 3. This act is effective upon ratification and applies to deferral elections
22 made by teachers on or after the date of ratification.