

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 853  
Pensions & Retirement Committee Substitute Adopted 6/30/89

Short Title: Retirement Tax Changes.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE PARTIAL INCOME TAX EXEMPTIONS FOR RETIREES,  
TO ALLOW FEDERAL RETIREES TO CLAIM REFUNDS FOR RETIREMENT  
TAXES PAID FOR THE 1988 TAX YEAR, AND TO INCREASE STATE AND  
LOCAL RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

**PART I.**

**RETIREMENT BENEFITS AMENDMENTS.**

Section 1. G.S. 135-5(b10) reads as rewritten:

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

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

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

1           b.       This allowance shall also be governed by the provisions of G.S.  
2                   135-5(b9)(1)b.

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, such allowance shall be equal to one and  
11                  sixty hundredths percent (1.60%) 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)(2)b., c. and d."

16           Sec. 2. G.S. 135-5 is amended by adding a new subsection to read:

17           "(b11) Service Retirement Allowance of Members Retiring on or after July 1,  
18           1989. – Upon retirement from service in accordance with subsection (a) above, on or  
19           after July 1, 1989, 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                   sixty-three hundredths percent (1.63%) 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                   135-5(b9)(1)b.

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                   sixty-three hundredths percent (1.63%) 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                   135-5(b9)(2)b. c. and d."

1           Sec. 3. G.S. 135-5 is amended by adding a new subsection to read:

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

9           Sec. 4. G.S. 128-27(b10) reads as rewritten:

10          "(b10) Service Retirement Allowance of Members Retiring on or after July 1,  
11 1988-1988, but before July 1, 1989. – Upon retirement from service in accordance with  
12 subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall  
13 receive the following service retirement allowance:

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

17           a. If the member's service retirement date occurs on or after his  
18 55th birthday, and completion of five years of creditable service  
19 as a law enforcement officer, or after the completion of 30 years  
20 of creditable service, the allowance shall be equal to one and  
21 sixty hundredths percent (1.60%) of his average final  
22 compensation, multiplied by the number of years of his  
23 creditable service.

24           b. Such allowance shall also be governed by the provisions of G.S.  
25 128-27(b8)(2).

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

29           a. If the member's service retirement date occurs on or after his  
30 65th birthday upon the completion of five years of creditable  
31 service or after the completion of 30 years of creditable service,  
32 or on or after his 60th birthday upon the completion of 25 years  
33 of creditable service, such allowance shall be equal to one and  
34 sixty-hundredths percent (1.60%) of his average final  
35 compensation, multiplied by the number of years of his  
36 creditable service.

37           b. Such allowance shall also be governed by the provisions of G.S.  
38 128-27(b7)(2a), (2b) and (3)."

39          Sec. 5. G.S. 128-27 is amended by adding a new section to read:

40          "(b11) Service Retirement Allowance of Members Retiring on or after July 1,  
41 1989. – Upon retirement from service in accordance with subsection (a) above, on or  
42 after July 1, 1989, a member shall receive the following service retirement allowance:



1       ~~"(8) The amounts received in lump sum or monthly payment benefits from retirement~~  
2 ~~or pension systems of other states by former teachers or State employees of such states:~~  
3 ~~Provided, this exclusion shall apply only to individuals receiving benefits from states~~  
4 ~~which grant similar exclusions or exemptions for individual income tax purposes to~~  
5 ~~retired members of the North Carolina Retirement System for Teachers and State~~  
6 ~~Employees or which levy no income tax on individuals. Amounts received during the~~  
7 ~~taxable year as retirement benefits from one or more state, local, or federal government~~  
8 ~~retirement plans, not to exceed a total of three thousand dollars (\$3,000) in any taxable~~  
9 ~~year."~~

10       (b) Effective for taxable years beginning on or after January 1, 1991, G.S. 105-  
11 141(b)(8), as rewritten by subsection (a) of this section, reads as rewritten:

12       ~~"(8) Amounts received during the taxable year as retirement benefits from one or~~  
13 ~~more state, local, or federal government retirement plans, not to exceed a total of three~~  
14 ~~thousand dollars (\$3,000) in any taxable year. Amounts received as retirement benefits~~  
15 ~~during the taxable year from one or more retirement plans, not to exceed a total of three~~  
16 ~~thousand dollars (\$3,000) in any taxable year."~~

17       (c) Effective for taxable years beginning on or after January 1, 1989, G.S. 105-  
18 135 is amended by adding a new subdivision to read:

19       ~~"(13a) The term 'retirement benefits' means amounts paid to a former employee or~~  
20 ~~the beneficiary of a former employee under a written retirement plan established by the~~  
21 ~~employer to provide payments to an employee or the beneficiary of an employee after~~  
22 ~~the end of the employee's employment with the employer where the right to receive the~~  
23 ~~payments is based upon the employment relationship. With respect to a self-employed~~  
24 ~~individual or the beneficiary of a self-employed individual, the term means amounts~~  
25 ~~paid to the individual or beneficiary of the individual under a written retirement plan~~  
26 ~~established by the individual to provide payments to the individual or the beneficiary of~~  
27 ~~the individual after the end of the self-employment. For the purpose of this subdivision,~~  
28 ~~the term 'employee' includes a volunteer worker."~~

29       Sec. 9. (a) Effective for taxable years for which G.S. 105-141 is repealed by  
30 Senate Bill 51 or House Bill 89, Chapter \_\_\_ of the 1989 Session Laws, Section 8 of  
31 this act is repealed and G.S. 105-134.6(b), as enacted by Senate Bill 51 or House Bill  
32 89, Chapter \_\_\_ of the General Statutes, is amended by adding at the end a new  
33 subdivision to read:

34       ~~"(6) Amounts received during the taxable year as retirement benefits from one or~~  
35 ~~more state, local, or federal government retirement plans, not to exceed a total of three~~  
36 ~~thousand dollars (\$3,000) in any taxable year. In the case of a married couple filing a~~  
37 ~~joint return where both spouses received retirement benefits during the taxable year, the~~  
38 ~~three thousand dollar (\$3,000) limit applies separately to each spouse's benefits, for a~~  
39 ~~potential total deduction of six thousand dollars (\$6,000) for the couple."~~

40       (b) If Senate Bill 51 or House Bill 89 is enacted by the 1989 General Assembly,  
41 G.S. 105-134.6(b)(6), as added by subsection (a) of this section, reads as rewritten  
42 effective for taxable years beginning on or after January 1, 1991:

43       ~~"(6) Amounts received during the taxable year as retirement benefits from one or~~  
44 ~~more state, local, or federal government retirement plans, not to exceed a total of three~~

1 ~~thousand dollars (\$3,000) in any taxable year.~~ Amounts received as retirement benefits  
2 during the taxable year from one or more retirement plans, not to exceed a total of three  
3 thousand dollars (\$3,000) in any taxable year. In the case of a married couple filing a  
4 joint return where both spouses received retirement benefits during the taxable year, the  
5 three thousand dollar (\$3,000) limit applies separately to each spouse's benefits, for a  
6 potential total deduction of six thousand dollars (\$6,000) for the couple."

7           Sec. 10. (a) Effective for taxable years beginning on or after January 1, 1989,  
8 G.S. 105-136 reads as rewritten:

9 "**§ 105-136. Individuals.**

10       A tax is hereby imposed upon every resident of this State which shall be levied,  
11 collected, and paid annually, with respect to the net income of the taxpayer as herein  
12 defined, and upon the net income derived from North Carolina sources of every  
13 nonresident individual which is attributable to the ownership of any interest in real or  
14 tangible personal property in this State or which is from a business, trade, profession, or  
15 occupation carried on in this State, computed at the following rates, after deducting the  
16 exemptions provided in this Division. For the purpose of this Division, retirement  
17 benefits received as a result of past employment or self-employment in this State are  
18 income derived from a business, trade, profession, or occupation carried on in this State.

19       On the excess over the amount legally exempted, up to two thousand dollars  
20 (\$2,000), three percent (3%).

21       On the excess above two thousand dollars (\$2,000), and up to four thousand dollars  
22 (\$4,000), four percent (4%).

23       On the excess above four thousand dollars (\$4,000), and up to six thousand dollars  
24 (\$6,000), five percent (5%).

25       On the excess over six thousand dollars (\$6,000), and up to ten thousand dollars  
26 (\$10,000), six percent (6%).

27       On the excess over ten thousand dollars (\$10,000), seven percent (7%)."

28       (b) Effective for taxable years for which G.S. 105-136 is repealed by Senate Bill  
29 51 or House Bill 89, Chapter \_\_\_ of the 1989 Session Laws, subsection (a) of this  
30 section is repealed and G.S. 105-134.5(b), as enacted by Senate Bill 51 or House Bill  
31 89, Chapter \_\_\_ of the 1989 Session Laws, reads as rewritten:

32       "(b) Nonresidents. For nonresident individuals, the term 'North Carolina taxable  
33 income' means taxable income as calculated under the Code, adjusted as provided in  
34 G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which  
35 is the taxpayer's gross income as calculated under the Code, adjusted as provided in  
36 G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that  
37 gross income, as adjusted, that is derived from North Carolina sources and is  
38 attributable to the ownership of any interest in real or tangible personal property in this  
39 State or is derived from a business, trade, profession, or occupation carried on in this  
40 State. For the purpose of this Division, retirement benefits received as a result of past  
41 employment or self-employment in this State are income derived from a business, trade,  
42 profession, or occupation carried on in this State."

43       Sec. 11. G.S. 105-141(b)(13), (14), (18), and (30) are repealed.

44       Sec. 12. G.S. 118-49 reads as rewritten:

1 **"§ 118-49. Exemptions of pensions from attachment; rights nonassignable.**

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

7 Sec. 13. G.S. 120-4.29 reads as rewritten:

8 **"§ 120-4.29. Exemption from taxes, garnishment, attachment.**

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

22 Sec. 14. G.S. 127A-40(e) is repealed.

23 Sec. 15. G.S. 128-31 reads as rewritten:

24 **"§ 128-31. Exemptions from execution.**

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

38 Sec. 16. G.S. 135-9 reads as rewritten:

39 **"§ 135-9. Exemption from taxes, garnishment, attachment, etc.**

40 Except for the applications of the provisions of G.S. 110-136, and in connection with  
41 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a  
42 pension, or annuity, or a retirement allowance, to the return of contributions, the  
43 pension, annuity or retirement allowance itself, any optional benefit or any other right  
44 accrued or accruing to any person under the provisions of this Chapter, and the moneys

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

9 Sec. 17. G.S. 135-95 reads as rewritten:

10 **"§ 135-95. Exemption from taxes, garnishment, attachment.**

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

16 Sec. 18. G.S. 143-166.30(g) reads as rewritten:

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

22 Sec. 19. G.S. 143-166.60(h) reads as rewritten:

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

28 Sec. 20. G.S. 143-166.85(e) is repealed.

29 Sec. 21. G.S. 147-9.4 reads as rewritten:

30 **"§ 147-9.4. Deferred Compensation Plan.**

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

1 effective prospectively only and shall cause no change in the allocation of amounts  
2 invested prior to the filing date of such revocation or amendment.

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

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 an employee, who  
16 elects to defer income pursuant to the North Carolina Public Employee Deferred  
17 Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the  
18 Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment,  
19 except as provided by this ~~section, and exempt from all State and local taxation.~~ section."

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

21 Sec. 23. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the  
22 1969 Session Laws are repealed.

23 Sec. 24. Notwithstanding the 30-day time limitation of G.S. 105-267, a  
24 taxpayer who has paid income taxes for the 1988 taxable year on retirement benefits  
25 received from the federal government may demand a refund of the taxes pursuant to  
26 G.S. 105-267 on or before October 1, 1989. If a taxpayer makes such a demand, the  
27 taxpayer's payment of taxes on these retirement benefits for the 1988 taxable year shall  
28 be without prejudice to any claim he may have for a refund or any defense he may have  
29 to the enforcement of the collection of the taxes for that year.

30 Sec. 25. Part I of this act shall become effective July 1, 1989. Section 24 of  
31 this act is effective retroactively as of January 1, 1989. Except as otherwise provided in  
32 this act, the remainder of this act is effective for taxable years beginning on or after  
33 January 1, 1989.