

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1391*

Short Title: Charlotte Firemen's Retirement System. (Local)

Sponsors: Senator Clodfelter.

Referred to: Pensions & Retirement and Aging.

June 13, 2002

A BILL TO BE ENTITLED
AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREMEN'S
RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Subdivision (9) of Section 2 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22, reads as rewritten:

"(9) 'Compensation' means the remuneration reportable on Form W-2 earned by a Member for services performed as an employee of the Charlotte Fire Department prior to any reductions pursuant to sections 125, 401(k), 402(k), 402(e)(3), 414(h)(2), and 457 of the Internal Revenue Code. Compensation shall include payments for unused sick and vacation days, longevity payments, bonus payments, and merit increases. For the purpose of calculating a Member's Final Average Salary, (i) payments for unused sick and vacation days shall be included as Compensation to the extent that the vacation and sick days for which payments are made could have accrued during two Plan Years of the Member's last five years of Membership Service, and (ii) payments for longevity shall be included as Compensation to the extent such payments were made during two Plan Years of the Member's last five years of Membership Service. Effective July 1, 2002, for purposes of applying the limitations described in Section 51 of this Act, compensation paid or made available during such limitation years shall also include elective amounts that are not includible in the gross estate of the Member by reason of section 132(f)(4) of the Internal Revenue Code.

In addition to the other applicable limitations set forth in this Act, and notwithstanding any other provision of this Act to the contrary, for

1 Plan Years beginning on or after January 1, 1996, the annual
2 Compensation of each Member taken into account under the Act shall
3 not exceed the OBRA '93 annual compensation limit. The OBRA '93
4 annual compensation limit is one hundred fifty thousand dollars
5 (\$150,000), as adjusted by the Commissioner for increases in the cost
6 of living in accordance with section 401(a)(17)(B) of the Internal
7 Revenue Code. The cost of living adjustment in effect for a calendar
8 year applies to any period not exceeding 12 months over which
9 Compensation is determined ('the determination period') beginning in
10 each calendar year. If a determination period consists of fewer than 12
11 months, the OBRA '93 annual compensation limit will be multiplied
12 by a fraction, the numerator of which is the number of months in the
13 determination period, and the denominator of which is 12. If
14 Compensation for any prior determination period is taken into account
15 in determining a Member's benefits accruing in the current Plan Year,
16 the Compensation for that prior determination period is subject to the
17 OBRA '93 annual compensation limit in effect for that prior
18 determination period. For this purpose, for determination periods
19 beginning before the first day of the first Plan Year beginning on or
20 after January 1, 1996, the OBRA '93 annual compensation limit is one
21 hundred fifty thousand dollars (\$150,000). January 1, 2002, the annual
22 Compensation of each Member taken into account under the Act shall
23 not exceed two hundred thousand dollars (\$200,000), the annual
24 compensation limit under section 401(a)(17) of the Internal Revenue
25 Code, as amended by section 611(c) of the Economic Growth and Tax
26 Relief Reconciliation Act of 2001. Annual compensation means
27 compensation during the Plan Year or such other 12-month period
28 over which Compensation is otherwise determined (the 'determination
29 period'). If a determination period consists of fewer than 12 months,
30 the annual compensation limit will be multiplied by a fraction, the
31 numerator of which is the number of months in the determination
32 period, and the denominator of which is 12. For purposes of
33 determining benefit accruals in a plan year, beginning after December
34 31, 2001, the compensation limit for any prior determination period
35 shall be two hundred thousand dollars (\$200,000). The two hundred
36 thousand dollars (\$200,000) limit on annual compensation shall be
37 adjusted for cost-of-living increases in accordance with section
38 401(a)(17)(B) of the Code."

39 **SECTION 2.** Section 7 of Chapter 926 of the 1947 Session Laws, as
40 rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
41 Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L.
42 1999-100, and S.L. 2001-22, reads as rewritten:

43 "Sec. 7. **Purchase of Membership Service ~~Credit for Prior Active Military Duty.~~**
44 **Credit.**

1 (a) Military Service. – Effective July 1, 1999, Membership Service Credit for
2 prior active military duty may be purchased upon the completion of five years of
3 Membership Service Credit by any Member who served on active duty in the Armed
4 Forces of the United States of America prior to his employment with the Charlotte Fire
5 Department. Such Membership Credit shall be purchased by the Member before
6 termination of membership or retirement. The amount of Membership Service Credit
7 that may be purchased by a Member will be equal to the actual active military duty by
8 the Member not to exceed five years and shall be credited upon the payment of the
9 required contributions as determined by the Administrator, provided that the
10 Membership Service to be so credited shall not be credited in any other retirement
11 system, except the national guard or any reserve component of the Armed Forces of the
12 United States. The required contributions shall be an amount equal to the annualized
13 Compensation rate the Member earned when he first entered membership in the
14 Retirement System, multiplied by the sum of the Member and the City of Charlotte
15 contribution rates in effect at the time when he first entered membership in the
16 Retirement System, increased by five percent (5%) compounded per annum from the
17 date of membership to the date of the payment of the required contributions and
18 multiplied by the number of years and days of Membership Service to be credited.
19 Membership Service Credit purchased pursuant to this section cannot be used to meet
20 the minimum service requirements for a nonduty disability retirement benefit or an early
21 service retirement benefit, but may be used to meet the minimum service requirements
22 for a service retirement benefit and to compute the amount of any retirement benefit.

23 (b) Local, State, and Federal Government Service. – Membership Service Credit
24 for prior public employment may be purchased upon completion of five years of
25 Membership Service Credit by any Member who was employed by any state,
26 governmental subdivision of any state, or the federal government prior to his current
27 employment with the Charlotte Fire Department. Such Membership Service Credit shall
28 be purchased by the Member before termination of membership or retirement. A
29 Member may purchase one year of Membership Service Credit for every two years of
30 prior government service. The maximum amount of Membership Service Credit that
31 may be purchased is five years. The purchased Membership Service Credit shall be
32 credited upon the payment of the required contributions, provided that the Membership
33 Service to be so credited shall not be credited in any other retirement system. The
34 required contributions shall be the full actuarial cost as determined by the System's
35 actuary. Membership Service Credit purchased pursuant to this section cannot be used
36 to meet the minimum service requirements for a nonduty disability retirement benefit or
37 an early service retirement benefit, but may be used to meet the minimum service
38 requirements for a service retirement benefit and to compute the amount of any
39 retirement benefit.

40 (c) Withdrawn Service. – Any Member who withdrew his contributions in
41 accordance with the provisions of this Act and who subsequently returns to service, may
42 upon completion of five years of Membership Service Credit, purchase the withdrawn
43 service. Such Membership Service Credit shall be purchased by the Member before
44 termination of membership or retirement. The maximum amount of Membership

1 Service Credit that may be purchased by a Member is equal to the prior years of service
2 with the Charlotte Fire Department and shall be credited upon the payment of the
3 required contributions, provided that the Membership Service Credit to be so credited
4 shall not be credited in any other retirement system. The required contributions shall be
5 the full actuarial cost as determined by the System's actuary. Membership Service
6 Credit purchased pursuant to this section cannot be used to meet the minimum service
7 requirements for a nonduty disability retirement benefit or an early service retirement,
8 but may be used to meet the minimum service requirements for a service retirement
9 benefit and to compute the amount of any retirement benefit."

10 **SECTION 3.** Section 13.1 of Chapter 926 of the 1947 Session Laws, as
11 rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
12 Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L.
13 1999-100, and S.L. 2001-22, reads as rewritten:

14 "Sec. 13.1. **Direct Rollover of Eligible Rollover Distributions.** (a) This Section
15 applies to distributions made on or after January 1, 1993. Notwithstanding any provision
16 of the plan to the contrary that would otherwise limit a distributee's election under this
17 Section, a distributee may elect, at the time and in the manner prescribed by the plan
18 administrator, to have any portion of an eligible rollover distribution paid directly to an
19 eligible retirement plan specified by the distributee in a direct rollover.

20 (b) Definitions.

21 (1) Eligible rollover distribution. An eligible rollover distribution is any
22 distribution of all or any portion of the balance to the credit of the
23 distributee, except that an eligible rollover distribution does not
24 include: any distribution that is one of a series of substantially equal
25 periodic payments (not less frequently than annually) made for the life
26 (or life expectancy) of the distributee or the joint lives (or joint life
27 expectancies) of the distributee and the distributee's designated
28 beneficiary, or for a specified period of 10 years or more; any
29 distribution to the extent such distribution is required under section
30 401(a)(9) of the Code; and any hardship distribution described in
31 section 401(k)(2)(B)(i)(IV); and the portion of any distribution that is
32 not includable in gross income (determined without regard to the
33 exclusion for net unrealized appreciation with respect to employer
34 securities).section 401(k)(2)(B)(i)(IV). A portion of a distribution shall
35 not fail to be an eligible rollover distribution merely because a portion
36 consists of after-tax employee contributions that are not includible in
37 gross income. However, such portion may be transferred only to an
38 individual retirement account or annuity described in section 408(a) or
39 (b) of the Code, or to a qualified defined contribution plan described in
40 section 401(a) or 403(a) of the Code that agrees to separately account
41 for amounts so transferred, including separately accounting for the
42 portion of such distribution which is includible in gross income and
43 the portion of such distribution which is not so includible.

- 1 (2) Eligible retirement plan. An eligible retirement plan is an individual
2 retirement account described in section 408(a) of the Code, an
3 individual retirement annuity described in section 408(b) of the Code,
4 an annuity plan described in section 403(a) of the Code, or a qualified
5 trust described in section 401(a) of the Code, that accepts the
6 distributee's eligible rollover distribution. ~~However, in the case of an~~
7 ~~eligible rollover distribution to the surviving spouse, an eligible~~
8 ~~retirement plan is an individual retirement account or individual~~
9 ~~retirement annuity.~~ With respect to distributions made after December
10 31, 2001, an eligible retirement plan shall also mean (i) an annuity
11 contract described in section 403(b) of the Code and (ii) an eligible
12 plan under section 457(b) of the Code which is maintained by a state,
13 political subdivision of a state, or any agency or instrumentality of a
14 state or political subdivision of a state and which agrees to separately
15 account for amounts transferred into such plan from this plan. The
16 definition of eligible retirement plan shall also apply in the case of a
17 distribution to a surviving spouse, or to a spouse or former spouse who
18 is the alternate payee under a qualified domestic relations order, as
19 defined in section 414(p) of the Code.
- 20 (3) Distributee. A distributee includes an employee or former employee.
21 In addition, the employee's or former employee's surviving spouse and
22 the employee's or former employee's spouse or former spouse who is
23 the alternate payee under a qualified domestic relations order, as
24 defined in section 414(p) of the Code, are distributees with regard to
25 the interest of the spouse or former spouse.
- 26 (4) Direct rollover. A direct rollover is a payment by the plan to the
27 eligible retirement plan specified by the distributee."

28 **SECTION 4.** Chapter 926 of the 1947 Session Laws, as rewritten by Section
29 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995
30 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22,
31 is amended by adding a new section to read:

32 **"Sec. 13.2. Acceptance of Rollovers and Transfers From Other Plans.**

33 (a) Effective January 1, 2002, and subject to the provisions of federal law, the
34 Retirement System may accept an eligible rollover distribution, as defined in Section
35 13.1, or a direct trustee-to-trustee transfer of funds from an eligible retirement plan, as
36 defined in Section 13.1, for the purchase of Membership Service Credit pursuant to
37 Section 7. The amount of the rollover distribution or trustee-to-trustee transfer accepted
38 by the Retirement System shall not exceed the cost of service to be purchased.

39 (b) In order to authorize the rollover or transfer of funds described in this section,
40 a Member shall provide or cause to be provided to the Retirement System information
41 sufficient for the Retirement System to reasonably conclude that the contribution is a
42 valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If
43 the Retirement System later determines that a contribution was an invalid rollover or
44 trustee-to-trustee transfer or otherwise not permitted under federal tax law, the

1 Retirement System may take any action appropriate or required by the Internal Revenue
2 Code or regulations issued there under, including a return of the invalid contribution and
3 cancellation of any credit purchased with the returned amounts.

4 (c) The Retirement System shall construe and administer this section in a manner
5 such that the Retirement System plan will be considered a qualified plan under section
6 401(a) of the Internal Revenue Code."

7 **SECTION 5.** Section 51 of Chapter 926 of the 1947 Session Laws, as
8 rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
9 Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L.
10 1999-100, and S.L. 2001-22, reads as rewritten:

11 "Sec. 51. **Restrictions.** Notwithstanding any provision of this act to the contrary:

- 12 (1) No part of the funds contributed to the Retirement System, or the
13 income thereon, may be used for, or diverted to, purposes other than
14 for the exclusive benefit of the Participants of the Retirement System
15 as authorized by the provisions of this act, provided that in the event of
16 the termination of the Retirement System, the City shall receive any
17 surplus funds or assets after all liabilities of the Retirement System are
18 satisfied.
- 19 (2) Upon termination of the Retirement System or upon complete
20 discontinuance of contributions to the Retirement System, the rights of
21 all Participants of the Retirement System to benefits accrued to the
22 date of the termination or discontinuance, to the extent then funded,
23 are nonforfeitable.
- 24 (3) Forfeitures under the Retirement System may not be applied to
25 increase the benefits that any Participant would otherwise receive
26 under the Retirement System.
- 27 (4) Notwithstanding any provision of the Retirement System to the
28 contrary, the maximum annual benefit payable in the form of a straight
29 life annuity from the Retirement System on behalf of a Participant,
30 when combined with any benefits from another qualified benefit plan
31 maintained by the City, shall not exceed the amount permitted by
32 section 415 of the Internal Revenue Code.
- 33 (5) Any benefit payable to a Participant pursuant to Section 4 of this act
34 shall commence not later than the April 1 immediately following the
35 calendar year in which the Participant attains age 70 1/2 or, if later, the
36 April 1 immediately following the calendar year in which the
37 Participant terminates service. Additionally, the distribution of any
38 such benefit must satisfy the minimum distribution requirements set
39 forth in this paragraph and must be consistent with Treasury
40 Regulations, as of the required beginning date. The minimum
41 distribution for a calendar year equals the Participant's nonforfeitable
42 Accrued Benefit at the beginning of the year divided by the
43 Participant's life expectancy or, if applicable, the joint and last survivor
44 expectancy of the participant and his Designated Beneficiary. The

1 minimum distribution shall be computed by using the life expectancy
2 multiples under Treasury Regulation 1.72-9. The minimum
3 distribution for a calendar year subsequent to the first calendar year for
4 which a minimum distribution is required may be computed by
5 redetermining the applicable life expectancy. However, there shall be
6 no redetermination of the joint life and last survivor expectancy of the
7 Participant and a nonspouse Designated Beneficiary in a manner which
8 takes into account any adjustment to a life expectancy other than the
9 Participant's life expectancy. A distribution to the Participant in the
10 form of a life annuity, joint and survivor annuity, or an annuity over a
11 fixed period will satisfy the minimum distribution requirements of this
12 paragraph if the method of distribution provides non-increasing
13 payments or otherwise satisfies Treasury Regulations. If the
14 Participant dies after the payment of his benefit has commenced, the
15 death benefit provided by this act shall be paid over a period which
16 does not exceed the payment period which had commenced. If a
17 Participant dies prior to the time the payment of his benefit
18 commences, the death benefit provided by this act shall be paid over a
19 period not exceeding: (i) five years after the date of the Participant's
20 death; or (ii) if the Beneficiary is a Designated Beneficiary, over the
21 Designated Beneficiary's life or life expectancy. No payment of benefit
22 over a period described in (ii) shall be permitted, unless the payment of
23 such benefit to the Designated Beneficiary will commence no later
24 than one year after the date of the Participant's death, or, if later, and
25 the Designated Beneficiary is the Participant's surviving spouse, the
26 date the Participant would have attained age 70 1/2. The life
27 expectancy multiples under Treasury Regulation 1.72-9 shall be used
28 for purposes of applying this paragraph. The life expectancy of a
29 Participant's surviving spouse may be recalculated not more frequently
30 than annually, but the life expectancy of a nonspouse Designated
31 Beneficiary may not be recalculated after the commencement of
32 payment of benefits to the Designated Beneficiary. Any amount paid
33 to a Participant's child, which becomes payable to the Participant's
34 surviving spouse upon the child's attaining the age of majority, shall be
35 treated as paid to the Participant's surviving spouse for purposes of
36 applying this paragraph.

37 With respect to distributions under the Act made for calendar years
38 beginning on or after January 1, 2001, the minimum distribution
39 requirements of section 401(a)(9) of the Internal Revenue Code will be
40 applied in accordance with the regulations under section 401(a)(9) that
41 were proposed on January 17, 2001, notwithstanding any provision of
42 the Act to the contrary. These regulations shall be followed until the
43 end of the last calendar year beginning before the effective date of

1 final regulations under section 401(a)(9) or such other date as may be
2 specified in guidance published by the Internal Revenue Service."

3 **SECTION 6.** This act applies only to the City of Charlotte.

4 **SECTION 7.** This act becomes effective July 1, 2002.