

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1551

Short Title: Charter School Benefits.

(Public)

Sponsors: Senator Gulley.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

1 AN ACT TO GIVE CHARTER SCHOOLS THE SAME HIGHWAY USE TAX
2 EXEMPTION AND MOTOR FUEL TAX EXEMPTION AS PUBLIC SCHOOLS,
3 TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE
4 NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT
5 SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES'
6 MAJOR MEDICAL COMPREHENSIVE PLAN, OR BOTH, AND TO ESTABLISH
7 A MEDIATION PROCESS BETWEEN CHARTER SCHOOLS AND LOCAL
8 BOARDS OF EDUCATION.
9

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 105-228.90(b) reads as rewritten:

12 "(b) Definitions. – The following definitions apply in this Article:

13 (1) Reserved.

14 (2) Charter school board. – A nonprofit corporation that has a charter under
15 G.S. 115D-238.29D to operate a charter school.

16 ~~(4)~~(3) City. – A city as defined by G.S. 160A-1(2). The term also includes an
17 urban service district defined by the governing board of a consolidated
18 city-county, as defined by G.S. 160B-2(1).

1 ~~(4a)~~(4) Code. – The Internal Revenue Code as enacted as of January 1, 1997,
2 including any provisions enacted as of that date which become effective
3 either before or after that date.

4 ~~(1b)~~(5) County. – Any one of the counties listed in G.S. 153A-10. The term also
5 includes a consolidated city-county as defined by G.S. 160B-2(1).

6 ~~(2)~~(6) Reserved.

7 ~~(3)~~(7) Electronic Funds Transfer. – A transfer of funds initiated by using an
8 electronic terminal, a telephone, a computer, or magnetic tape to instruct
9 or authorize a financial institution or its agent to credit or debit an
10 account.

11 ~~(4)~~(8) Reserved.

12 ~~(5)~~(9) Person. – An individual, a fiduciary, a firm, an association, a
13 partnership, a limited liability company, a corporation, a unit of
14 government, or another group acting as a unit. The term includes an
15 officer or employee of a corporation, a member, a manager, or an
16 employee of a limited liability company, and a member or employee of
17 a partnership who, as officer, employee, member, or manager, is under a
18 duty to perform an act in meeting the requirements of Subchapter I, V,
19 or VIII of this Chapter or of Article 3 of Chapter 119 of the General
20 Statutes.

21 ~~(6)~~(10) Secretary. – The Secretary of Revenue.

22 ~~(7)~~(11) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter or an
23 inspection tax levied under Article 3 of Chapter 119 of the General
24 Statutes. Unless the context clearly requires otherwise, the terms "tax"
25 and "additional tax" include penalties and interest as well as the
26 principal amount.

27 ~~(8)~~(12) Taxpayer. – A person subject to the tax or reporting requirements of
28 Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of
29 the General Statutes."

30 Section 2. G.S. 105-187.6(a) reads as rewritten:

31 "(a) Full Exemptions. – The tax imposed by this Article does not apply when a
32 certificate of title is issued as the result of a transfer of a motor vehicle:

33 (1) To the insurer of the motor vehicle under G.S. 20-109.1 because the
34 vehicle is a salvage vehicle.

35 (2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle
36 retailer for the purpose of resale.

37 (3) To the same owner to reflect a change or correction in the owner's
38 name.

39 (4) By will or intestacy.

40 (5) By a gift between a husband and wife, a parent and child, or a
41 stepparent and a stepchild.

42 (6) By a distribution of marital property as a result of a divorce.

- 1 (7) To a handicapped person from the Department of Health and Human
2 Services after the vehicle has been equipped by the Department for use
3 by the handicapped.
- 4 (8) To a local board of education or a charter school board for use in the
5 driver education program of a public school or a charter school when
6 the motor vehicle is transferred:
- 7 a. By a retailer and is to be transferred back to the retailer within
8 300 days after the transfer to the ~~local~~ board.
- 9 b. By a local board of ~~education~~ education or a charter school
10 board."

11 Section 3. G.S. 105-449.88 reads as rewritten:

12 **"§ 105-449.88. Exemptions from the excise tax.**

13 The excise tax on motor fuel does not apply to the following:

- 14 (1) Motor fuel removed, by transport truck or another means of transfer
15 outside the terminal transfer system, from a terminal for export, if the
16 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
17 destination state.
- 18 (2) Motor fuel sold to the federal government.
- 19 (3) Motor fuel sold to the State for its use.
- 20 (4) Motor fuel sold to a local board of education for use in the public school
21 system.
- 22 (5) Motor fuel sold to a charter school board for use for charter school
23 purposes."

24 Section 4. G.S. 115C-238.29B(b) is amended by adding the following new
25 subdivision to read:

26 "(14) A statement as to whether the school will elect to join the North
27 Carolina Teachers' and State Employees' Retirement System under G.S.
28 138-5.3, the Teachers' and State Employees' Comprehensive Major
29 Medical Plan under G.S. 135-40.3A, or both."

30 Section 5. G.S. 115C-238.29F(e)(4) reads as rewritten:

- 31 "(4) The employees of the charter school shall be deemed employees of the
32 local school administrative unit for purposes of providing certain State-
33 funded employee benefits, including membership in the Teachers' and
34 State Employees' Retirement System and the Teachers' and State
35 Employees' Comprehensive Major Medical Plan. The State Board of
36 Education provides funds to charter schools, approves the original
37 members of the boards of directors of the charter schools, has the
38 authority to grant, supervise, and revoke charters, and demands full
39 accountability from charter schools for school finances and student
40 performance. Accordingly, it is the determination of the General
41 Assembly that charter schools are public schools and that the employees
42 of charter schools are public school ~~employees and are 'teachers' for~~
43 ~~purposes of membership in the North Carolina Teachers' and State Employees'~~

1 ~~Retirement System and State Employees' Comprehensive Major Medical~~
2 ~~Plan.~~ Employees of charter schools that elect to join under
3 G.S. 138-5.3 are 'teachers' for the purpose of membership in the North
4 Carolina Teachers' and State Employees' Retirement System.
5 Employees of charter schools that elect to join under G.S. 135-40.3A
6 are 'teachers' for the purpose of membership in the North Carolina
7 Teachers' and State Employees' Comprehensive Major Medical Plan. In
8 no event shall anything contained in this Part require the North Carolina
9 Teachers' and State Employees' Retirement System to accept employees
10 of a private employer as members or participants of the System."

11 Section 6. Article 1 of Chapter 135 of the General Statutes is amended by
12 adding the following new section:

13 "**§ 135-5.3. Optional participation for charter schools.**

14 (a) The board of directors of each charter school shall elect to join the Retirement
15 System in accordance with the laws applicable to that System. This election shall be in
16 writing, shall be made no later than September 1, 1998, and shall be filed with the
17 Retirement System and with the State Board of Education. This election is effective as of
18 the date the board makes the election for each charter school employee who is employed
19 on or before the date the board makes the election. The election is effective as of the date
20 of entry into eligible service for each charter school employee who is employed after the
21 date the board makes the election. This subsection applies only to charter schools that
22 received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

23 (b) No later than 30 days after both parties have signed the written charter under
24 G.S. 115C-238.29E, the board of directors of a charter school shall elect to join the
25 Retirement System in accordance with the laws applicable to that System. This election
26 shall be in writing and filed with the Retirement System and with the State Board of
27 Education and is effective for each charter school employee as of the date of entry into
28 eligible service. This subsection applies to charter schools that receive State Board of
29 Education approval under G.S. 115C-238.29D after 1998.

30 (c) A board's election to join the Retirement System under this section is
31 irrevocable and shall require all employees of the charter school to participate.

32 (d) No retirement benefit, death benefit, or other benefit under the Retirement
33 System shall be paid by the State of North Carolina or the Board of Trustees of the
34 Teachers' and State Employees' Retirement System with respect to any employee of a
35 charter school whose board does not elect to join the Retirement System under this
36 section or with respect to any beneficiary of that employee.

37 (e) The board of directors of each charter school shall notify each of its employees
38 as to whether the board elected to join the Retirement System under this section. This
39 notification shall be in writing and shall be provided within 30 days of the board's
40 election or at the time an initial offer for employment is made, whichever occurs last. If
41 the board did not elect to join the Retirement System, the notice shall include a statement
42 that the employee shall have no legal recourse against the board or the State for any
43 possible credit or reimbursement under the Retirement System. The employee shall

1 provide written acknowledgment of the employee's receipt of the notification under this
2 subsection."

3 Section 7. G.S. 135-4 is amended by adding the following new subsection to
4 read:

5 "(bb) Credit for Employment in Charter School. – Notwithstanding any other
6 provision of this Chapter, any member in service with five or more years of credited
7 membership service may purchase creditable service for periods of employment in a
8 charter school that did not elect to participate in the Retirement System under G.S. 135-
9 5.3. The member shall purchase this service by making a lump sum payment together
10 with interest and an administrative fee for such service, to the Retirement System of an
11 amount equal to what the member would have contributed had the board of directors of
12 the charter school elected under G.S. 135-5.3 to participate in the Retirement System."

13 Section 8. G.S. 135-40.1(6) reads as rewritten:

14 "(6) Employing Unit. – A North Carolina School System; Community
15 College; State Department, Agency or Institution; Administrative Office
16 of the Courts; or Association or Examining Board whose employees are
17 eligible for membership in a State-Supported Retirement System. An
18 employing unit also shall mean a charter school in accordance with Part
19 6A of Chapter 115C of the General Statutes ~~whose employees are deemed~~
20 ~~to be public employees and members of a State-Supported Retirement~~
21 ~~System whose board of directors elects to join the Plan under G.S. 135-~~
22 40.3A."

23 Section 9. Part 3 of Article 3 of Chapter 135 is amended by adding the
24 following new section:

25 **"§ 135-40.3A. Optional participation for charter schools.**

26 (a) The board of directors of each charter school shall elect to join the Plan in
27 accordance with the laws applicable to that Plan. This election shall be in writing, shall
28 be made no later than September 1, 1998, and shall be filed with the Executive
29 Administrator and Board of Trustees and with the State Board of Education. This
30 election is effective as of the date the board makes the election for each charter school
31 employee who is employed on or before the date the board makes the election. The
32 election is effective as of the date of entry into eligible service for each charter school
33 employee who is employed after the date the board makes the election. This subsection
34 applies only to charter schools that received State Board of Education approval under
35 G.S. 115C-238.29D in 1997 or 1998.

36 (b) No later than 30 days after both parties have signed the written charter under
37 G.S. 115C-238.29E, the board of directors of a charter school shall elect to join the Plan
38 in accordance with the laws applicable to that Plan. This election shall be in writing and
39 filed with the Executive Administrator and Board of Trustees and with the State Board of
40 Education and is effective for each charter school employee as of the date of entry into
41 eligible service. This subsection applies to charter schools that receive State Board of
42 Education approval under G.S. 115C-238.29D after 1998.

1 (c) A board's election to join the Plan under this section is irrevocable and shall
2 require all employees of the charter school to participate.

3 (d) If a charter school fails to elect to join the Plan under this section, that school's
4 employees and the dependents of those employees shall not be eligible for any benefits
5 under the Plan.

6 (e) The board of directors of each charter school shall notify each of its employees
7 as to whether the board elected to join the Plan under this section. This notification shall
8 be in writing and shall be provided within 30 days of the board's election or at the time an
9 initial offer for employment is made, whichever occurs last. If the board did not elect to
10 join the Plan, the notice shall include a statement that the employee shall have no legal
11 recourse against the board or the State for any possible benefit under the Plan. The
12 employee shall provide written acknowledgment of the employee's receipt of the
13 notification under this subsection."

14 Section 10. G.S. 115C-238.29G reads as rewritten:

15 "**§ 115C-238.29G. Causes for nonrenewal or termination; disputes.**

16 (a) The State Board of Education, or a chartering entity subject to the approval of
17 the State Board of Education, may terminate or not renew a charter upon any of the
18 following grounds:

- 19 (1) Failure to meet the requirements for student performance contained in
20 the charter;
- 21 (2) Failure to meet generally accepted standards of fiscal management;
- 22 (3) Violations of law;
- 23 (4) Material violation of any of the conditions, standards, or procedures set
24 forth in the charter;
- 25 (5) Two-thirds of the faculty and instructional support personnel at the
26 school request that the charter be terminated or not renewed; or
- 27 (6) Other good cause identified.

28 (b) The State Board of Education shall develop and implement a process to
29 address contractual and other grievances between a charter school and ~~its chartering entity~~
30 ~~or the local board of education~~ the entity to which the charter school is accountable during
31 the time of its charter.

32 (c) The State Board and the charter school are encouraged to make a good-faith
33 attempt to resolve the differences that may arise between them. ~~They~~ Furthermore, the
34 local board of the local school administrative unit in which the charter school is located
35 and the charter school are encouraged to make a good-faith attempt to resolve any
36 differences that may arise between them. The parties in dispute may agree to jointly
37 select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual
38 information, statements of positions and contentions, and efforts to negotiate an
39 agreement settling the differences. The mediator shall, at the request of either ~~the State~~
40 ~~Board or a charter school, party,~~ commence a mediation immediately or within a reasonable
41 period of time. The mediation shall be held in accordance with rules and standards of
42 conduct adopted under Chapter 7A of the General Statutes governing mediated settlement

1 conferences but modified as appropriate and suitable to the resolution of the particular
2 issues in disagreement.

3 Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation
4 proceedings shall be conducted in private. Evidence of statements made and conduct
5 occurring in a mediation are not subject to discovery and are inadmissible in any court
6 action. However, no evidence otherwise discoverable is inadmissible merely because it is
7 presented or discussed in a mediation. The mediator shall not be compelled to testify or
8 produce evidence concerning statements made and conduct occurring in a mediation in
9 any civil proceeding for any purpose, except disciplinary hearings before the State Bar or
10 any agency established to enforce standards of conduct for mediators. The mediator may
11 determine that an impasse exists and discontinue the mediation at any time. The mediator
12 shall not make any recommendations or public statement of findings or conclusions. The
13 ~~State Board and the charter school parties in dispute~~ shall share equally the mediator's
14 compensation and expenses. The mediator's compensation shall be determined according
15 to rules adopted under Chapter 7A of the General Statutes."

16 Section 11. Sections 1 through 3 of this act become effective October 1, 1998.
17 The remainder of this act becomes effective July 1, 1998.