

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-26  
HOUSE BILL 917**

AN ACT TO MAKE THE EFFECT OF EXECUTIVE ORDER NUMBER ELEVEN APPLICABLE TO THE LEGISLATIVE AND JUDICIAL BRANCHES AND TO PROTECT STATE EMPLOYEES UNDER THAT ORDER.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Findings. – The General Assembly finds that:

- (1) North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis.
- (2) The financial crisis has resulted in large reductions in revenues projected to be available to fund the State's budget for the 2008-2009 fiscal year.
- (3) The Department of Revenue has calculated the revenues that will be available to the State for the remainder of the 2008-2009 fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and the Office of State Budget and Management have determined that expenditures for the 2008-2009 fiscal year will exceed revenues unless additional actions are taken.
- (4) Under the State Constitution, it is the duty of the Governor to ensure that the State's budget for the 2008-2009 fiscal year is balanced in a manner that carefully balances the rights of citizens and businesses to government services and the interests of State employees who provide those services.
- (5) The Governor has issued Executive Order No. 11 reducing pay and compensating employees with flexible leave.
- (6) The implementation of temporary nondisciplinary reductions in pay and flexible leave was and is necessary to balance the State's budget for the 2008-2009 fiscal year.
- (7) Many legislators and judges have voluntarily waived a portion of their pay in advance of the passage of legislation implementing Executive Order No. 11.

**SECTION 1.(b)** Definitions. – The following definitions apply in this act:

- (1) Compensation. – Base rate of compensation, not including pay for shift premiums, overtime, longevity, or other types of extraordinary pay.
- (2) Flexible leave. – A temporary period of leave from employment with pay taken before December 31, 2009.
- (3) Public employee. – Any person employed (i) by a State agency, department, or institution, (ii) by The University of North Carolina, (iii) by the North Carolina Community College System, or (iv) by a local school administrative unit. The term includes public officers.
- (4) Nondisciplinary reduction in pay. – A temporary reduction in compensation paid to a public employee that is (i) related to an executive order issued by the Governor during the 2008-2009 fiscal year and (ii) not made in connection with a demotion or any other disciplinary action.
- (5) Public agency. – Any State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; and local school administrative units.

**SECTION 2.** Compensation and Benefits. – A public employee subject to a nondisciplinary reduction in pay shall not suffer any diminution of retirement average final compensation, which shall continue to be calculated based on the undiminished compensation. The public agency shall pay both the employee and employer contributions to the Retirement



Systems Division or to the appropriate Optional Retirement Plan carrier on behalf of the public employee as to the amount that compensation was reduced.

**SECTION 3.** The nondisciplinary reduction in pay and flexible leave do not apply to those justices, judges, and officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the North Carolina Constitution. Constitutionally exempt persons are encouraged to participate in the pay reduction described in this act by donating to the State at least the amount of their compensation that would be reduced if the persons were not exempt.

**SECTION 4.(a)** The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, local school administrative units, and all State agencies within the executive branch of State government shall cooperate with the Office of State Budget and Management in the implementation of the nondisciplinary reductions in pay.

**SECTION 4.(b)** The Office of State Personnel shall, as soon as practicable, develop guidelines to be used by State agencies, departments, and institutions within the executive branch in designating the times subject employees will be subject to flexible leave. The State Board of Education shall adopt rules to be applied by local boards of education in designating the times public school employees will be subject to flexible leave. The State Board of Community Colleges shall adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be subject to flexible leave. The Board of Governors of The University of North Carolina shall adopt rules to be applied in designating the times university employees will be subject to flexible leave. The rules adopted shall avoid interruptions in services to citizens and businesses.

**SECTION 5.(a)** Employees of the legislative branch and the judicial branch are subject to reductions in pay to the same extent as if the employees were covered by the executive order. Members and officers of the General Assembly are subject to reductions in pay to the same extent as if the members and officers were covered by the executive order. Officers of the Judicial Branch whose salaries are not protected from reduction by Article IV, Section 21 of the North Carolina Constitution are subject to reductions in pay to the same extent as if the officers were covered by the executive order.

**SECTION 5.(b)** The Legislative Services Commission shall implement a flexible leave program for members and employees of the General Assembly. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

**SECTION 5.(c)** Judicial Branch. – Upon a written determination by the Chief Justice that flexible leave of judicial employees is necessary to implement the executive order, the Chief Justice shall implement a flexible leave program for employees of the Judicial Department. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

**SECTION 6.** Rule Making. – As soon as practicable, and no more than 10 calendar days from the effective date of this act, the Office of State Budget and Management, the State Personnel Commission, the State Board of Community Colleges, the State Board of Education, and The University of North Carolina shall adopt emergency rules for the implementation of the executive order and this act in accordance with G.S. 150B-21.1A, except that notwithstanding G.S. 150B-21.1A(d), those emergency rules may remain in effect until the expiration of this section. This section does not require any rule making if not otherwise required by law.

**SECTION 7.** A nondisciplinary reduction in pay as provided in the executive order as implemented by this act does not constitute a demotion under Part 3 of Article 22 of Chapter 115C of the General Statutes or under any other personnel law or policy.

**SECTION 8.** Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget.

**SECTION 9.** Effective Date. – This act is effective when it becomes law. Section 5(a) of this act shall not apply to legislators who have voluntarily waived the same proportion of their pay as would be affected by Section 5(a) of this act by execution of a voluntary waiver

of legislative pay after the issuance of Executive Order No. 11, but before this act becomes law; provided the voluntary waiver remains in effect through June 30, 2009. This act expires January 1, 2010.

In the General Assembly read three times and ratified this the 14<sup>th</sup> day of May, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 9:56 a.m. this 18<sup>th</sup> day of May, 2009