

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 565
Committee Substitute Favorable 6/15/17

Short Title: Charlotte Firefighters' Retirement Changes. (Local)

Sponsors:

Referred to:

April 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREFIGHTERS'
3 RETIREMENT SYSTEM.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Subdivision (9) of Section 2 of Chapter 926 of the 1947 Session
6 Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
7 Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100,
8 S.L. 2001-22, S.L. 2002-43, and S.L. 2006-117 reads as rewritten:

9 "(9) 'Compensation' means the remuneration reportable on Form W-2 earned by a
10 Member for services performed as an employee of the Charlotte Fire
11 Department prior to any reductions pursuant to sections 125, 401(k), 402(k),
12 402(e)(3), 414(h)(2), 403(b), 408(k)(6), and 457 of the Internal Revenue
13 Code. Compensation shall include payments for unused sick and vacation
14 ~~days, hours,~~ longevity payments, bonus payments, and merit increases. For
15 the purpose of calculating a Member's Final Average Salary, (i) payments
16 for unused sick and vacation ~~days hours~~ shall be included as Compensation
17 to the extent that the vacation and sick ~~days hours~~ for which payments are
18 made could have accrued during two Plan Years of the Member's last five
19 years of Membership Service, for a Member with a 52-hour average
20 workweek, the following maximums shall be applicable: 720 hours of
21 vacation (12-hour accrual rate), 288 hours of sick (12-hour accrual rate), 24
22 hours of Garcia Time, for a 40-hour workweek (standard 8:00 AM to 5:00
23 PM) Member, the following maximums shall be applicable: 320 hours of
24 vacation (eight-hour accrual rate), 192 hours of sick (eight-hour accrual
25 rate), these amounts as resolved by the Charlotte City Council in the
26 Personnel Rules and City Council Resolutions and (ii) payments for
27 longevity shall be included as Compensation to the extent such payments
28 were made during two Plan Years of the Member's last five years of
29 Membership Service. Effective July 1, 2002, for purposes of applying the
30 limitations described in Section 51 of this Act, compensation paid or made
31 available during such limitation years shall also include elective amounts
32 that are not includible in the gross income of the Member by reason of
33 section 132(f)(4) of the Internal Revenue Code.

34 In addition to the other applicable limitations set forth in this Act, and
35 notwithstanding any other provision of this Act to the contrary, for Plan
36 Years beginning on or after ~~January 1, 2002,~~ July 1, 2017, the annual



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1 Compensation of each Member taken into account under the Act shall not
2 exceed ~~two hundred thousand dollars (\$200,000), the annual compensation~~
3 ~~limit under section 401(a)(17) of the Internal Revenue Code, as amended by~~
4 ~~section 611(e) of the Economic Growth and Tax Relief Reconciliation Act~~
5 ~~of 2001.~~ one hundred sixty thousand dollars (\$160,000). Annual
6 compensation means compensation during the Plan Year or such other
7 12-month period over which Compensation is otherwise determined (the
8 'determination period'). If a determination period consists of fewer than 12
9 months, the annual compensation limit will be multiplied by a fraction, the
10 numerator of which is the number of months in the determination period,
11 and the denominator of which is 12. For purposes of determining benefit
12 accruals in a plan year, beginning after ~~December 31, 2001,~~ June 30, 2017,
13 the compensation limit for any prior determination period shall be ~~two~~
14 ~~hundred thousand dollars (\$200,000).~~ The two hundred thousand dollars
15 (\$200,000) limit on annual compensation shall be adjusted for cost of living
16 increases in accordance with section 401(a)(17)(B) of the Code. one hundred
17 sixty thousand dollars (\$160,000)."

18 **SECTION 2.** Section 1 of Chapter 830 of the 1991 Session Laws, as amended by
19 Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100,
20 and S.L. 2001-22 which rewrote Chapter 926 of the 1947 Session Laws, as amended, reads as
21 rewritten:

22 "Section 1. Chapter 926, 1947 Session Laws, as amended, is rewritten to read:

23 ...

24 "**Sec. 19. Disability Retirement in the Line of Duty.**

25 (a) An 'Application for Disability Retirement in the Line of Duty' shall be filed by the
26 Member or his department head with the Administrator, provided that the Member has applied
27 for and been granted workers' compensation benefits on account of this disability.

28 (b) An 'Application for Disability Retirement in the Line of Duty' shall be administered
29 pursuant to the Disability Regulations adopted by the Board of Trustees from time to time and
30 approved by the City Council of Charlotte and administered in a uniform and
31 nondiscriminatory manner. The Administrator shall request the Board of Trustees to conduct a
32 hearing on the Application for Disability Retirement in the Line of Duty pursuant to the
33 provisions of the Disability Regulations. The Member or any person filing on the Member's
34 behalf or the Administrator may appeal from any order of the Board to the Superior Court of
35 Mecklenburg County, within 10 days of the order. The appeal to the Superior Court shall be
36 upon the record of the proceeding before the Board at the hearing.

37 (c) Effective July 1, 1999, upon retirement pursuant to the provisions of this section, a
38 Member shall receive a monthly benefit equal to the greater of seventy-eight percent (78%) of
39 Final Average Salary or two and six-tenths percent (2.6%) of Final Average Salary multiplied
40 by his Membership Service Credit, not to exceed the Final Average Salary limits imposed by
41 section 415 of the Internal Revenue Code, as amended, but not less than nine hundred two
42 dollars and seventy-five cents (\$902.75) per month. Effective July 1, 1988, prior to his
43 retirement pursuant to the provisions of this Section, but not thereafter, a Member may elect to
44 receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his
45 monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the
46 provisions of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in
47 subsection (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this
48 Section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward
49 one year in age, with interest at six percent (6%). Benefits payable under this Section shall be
50 effective on the date of approval by the Board of Trustees or upon exhaustion of workers'
51 compensation benefits, whichever is later. Also, disability retirement benefits payable under

1 this Section may be adjusted by the disability retirement regulations adopted pursuant to the
2 requirements contained in subsection (b) of this Section. A Retiree receiving disability
3 retirement benefits shall revert to a service retirement as specified in Section 15 and shall
4 receive the greater of such disability retirement benefits or his Accrued Benefit as determined
5 as of the last date of active employment with the Charlotte Fire Department at such time as the
6 Retiree's attained age and Membership Service Credit meet the requirements for a service
7 retirement.

8 ...

9 "Sec. 25. **City of Charlotte Contributions.** (a) The City of Charlotte shall contribute to
10 the Charlotte Firefighters' Retirement System an amount equal to the Member's Compensation
11 multiplied by twelve and sixty-five hundredths percent (12.65%) for each and every payroll of
12 such ~~Member~~Member and for any vacant positions at the rate of pay approved in the Budget
13 multiplied by twelve and sixty-five hundredths percent (12.65%).

14 (b) Should any Member of this Retirement System enter the Armed Forces of the
15 United States of America, the City of Charlotte shall contribute to the Charlotte Firefighters'
16 Retirement System for each and every payroll an amount equal to the Compensation such
17 Member would have earned based upon the last pay grade with the Fire Department multiplied
18 by the contribution rate established pursuant to subsection (a) of this section for a period not to
19 exceed the lesser of the Member's actual period of active military duty or five years.

20 (c) Should any Member of the Retirement System enter the Armed Forces of the United
21 States of America, upon approval by the City Council, the City of Charlotte by and on behalf of
22 such Member may contribute an amount equal to, but not to exceed, the Compensation such
23 Member would have earned based upon the last pay grade with the Fire Department multiplied
24 by the contribution rate established pursuant to Section 24 of this act. Any contributions by and
25 on behalf of such Member shall inure to the benefit of such Member as though made by such
26 Member under the provisions of this act unless otherwise specified in this act.

27 (c1) Should any Member of the Retirement System contribute an amount pursuant to
28 Section 4 for the purpose of receiving Membership Service Credit for any period of benefits
29 under the federal Family Medical Leave Act, the City of Charlotte shall contribute to the
30 Charlotte Firefighters' Retirement System an amount equal to the Compensation that Member
31 would have earned multiplied by the contribution rate established in Section 24 of this act.

32 (d) In addition thereto, the City Council may, within its discretion and upon the
33 recommendation of the Board of Trustees, appropriate funds necessary to provide a cost of
34 living increase to the Retirees of the System.

35 ...

36 "Sec. 29. **Board of Trustees.** (a) The Board of Trustees shall consist of ~~14~~13 Trustees, as
37 follows: (i) ~~City Manager, Manager or Deputy City Manager; or some other City department~~
38 ~~head or employee as duly designated by the City Manager;~~ (ii) City Finance Director, or a
39 deputy finance ~~director; director as duly designated by the City Finance Director;~~ (iii) City
40 Treasurer; (iv) ~~a Chairman of the Board and three Trustees to represent the public and who are~~
41 ~~residents of Mecklenburg County and who are appointed as follows: one Trustee shall be~~
42 ~~appointed by the Governor, one Trustee shall be appointed by the Speaker of the House of~~
43 ~~Representatives, and one Trustee shall be appointed by the President Pro Tempore of the Senate~~
44 ~~by the Resident Judge of the Superior Court of Mecklenburg County as follows: one Trustee~~
45 ~~shall be appointed by the Governor, one Trustee shall be appointed by the Speaker of the House~~
46 ~~of Representatives, and one Trustee shall be appointed by the President Pro Tempore of the~~
47 ~~Senate and who shall hold office for a period of three years or until their successor shall have~~
48 ~~been appointed and been qualified; (v) ~~three-five~~ Members of the Retirement System, System~~
49 ~~with one Trustee representing each of the following civil service ranks: Firefighter I, Firefighter~~
50 ~~II, Firefighter-Engineer, Fire Captain, and Battalion Fire Chief, each of whom shall be elected~~
51 ~~by a vote of the Members of the Retirement System for a term of three years, pursuant to the~~

1 Charlotte Firefighters' Retirement System Election Regulation; and (vi) ~~one Retiree~~ two
2 Retirees of the Retirement System to be elected by a majority vote of the retirees of the
3 Retirement System for a term of three years, pursuant to the Charlotte Firefighters' Retirement
4 System Election Regulation. The terms of office for elected Member Trustees and, effective
5 July 1, 1989, for appointed Trustees, shall be graduated so that no more than three Trustees'
6 terms shall expire each year. Any Member shall be eligible to succeed himself as a Trustee. The
7 Board of Trustees shall, by a majority vote of all the members, select a chairman of the Board
8 of Trustees.

9 (b) Conflict of Interest. No trustee, chairman, or other officer or employee of the
10 Charlotte Firefighters' Retirement System shall directly or indirectly become an independent
11 contractor for work done by, or on behalf of, the System, or become directly or indirectly
12 financially interested in, or receive profits from any purchase, contract, or association by or
13 with the System.

14 ...

15 "Sec. 36. **Employment of Professional Services.** (a) The Board of Trustees shall have the
16 authority to employ and/or utilize professional and secretarial services and to purchase and
17 maintain such property, equipment and supplies as are deemed necessary for the proper
18 operation of the System. All expenses, fees and/or retainers for the employment of services
19 shall be borne by the System with the singular exception of the employment of the Actuary. All
20 fees and expenses in connection with the employment of a qualified actuary to perform the
21 annual evaluation of the Retirement System's financial condition shall be paid by the City of
22 Charlotte.

23 (a1) **Actuary.** The Board of Trustees shall annually request the City to employ a
24 qualified Actuary to perform such studies and evaluations of the Charlotte Firefighters'
25 Retirement System as may be necessary and/or desirable by the Board or City in connection
26 with the administration of the System. Within the meaning of this subsection, a qualified
27 Actuary shall be an associate or fellow of the Society of Actuaries and either a member of the
28 Conference of Consulting Actuaries or a member of the American Academy of Actuaries.

29 (b) **Medical Board.** The Board of Trustees shall appoint a Medical Board to be
30 composed of one or more physicians to serve at the pleasure of the Board. The Medical Board
31 shall arrange for and evaluate all medical examinations required under provisions of this act.
32 The Medical Board shall also investigate and evaluate all medical evidence, statements, and
33 certificates submitted by and on behalf of a Member in connection with an application for
34 disability retirement. The Medical Board shall render its conclusions and recommendations in
35 writing to the Board of Trustees in accordance with the provisions of this act.

36 (c) **Legal Counsel.** ~~The City attorney and staff shall be the legal advisor to the~~ The
37 Board of Trustees. The Board may Trustees shall employ separate legal counsel as it deems
38 necessary and beneficial for the operation of the System. This legal counsel shall not be
39 contracted with the City of Charlotte.

40 (d) **Auditor.** The Board of Trustees shall appoint an Auditor who shall be a certified
41 public accountant.

42 (e) **Administrator.** The Board of Trustees shall have the authority to appoint an
43 Administrator who shall be responsible for the administration and coordination of all System
44 operations and activities that are not otherwise specified in this act. Such administration shall
45 be in accordance with rules and regulations of this act and the policy and direction of the
46 Board. In the absence of an Administrator, the Secretary of the Board as specified in Section
47 34(b)(2) shall be responsible for the coordination of Board meetings and providing proper
48 notice of such meetings.

49 (f) **Insurance.** The Board of Trustees may purchase and maintain that insurance
50 coverage necessary for the proper operation of the System, including worker's compensation,
51 fidelity insurance, and officers' and employees' liability coverage. All expenses incurred in

1 purchasing or maintaining this coverage, including fees, and retainers, shall be borne by the
2 System.

3 ...
4 "Sec. 39. **Authority of City of Charlotte to Make Changes with Respect to the**
5 **Retirement System.** Upon the recommendation of the Board of Trustees as provided in
6 Section 38 of this act, the City may, within its discretion, increase or decrease the rate of
7 contribution of the Members of the System and the City of Charlotte as may be necessary for
8 the proper operation of the Retirement System. Provided, however, that no change shall reduce
9 benefits being paid to Retirees of the System.

10 The City may deviate from the provisions of this act to the extent necessary to make any
11 changes in the System required by the Internal Revenue Service prior to its issuing a favorable
12 determination letter under Section 401(a) and Section 501(a) of the Internal Revenue Code of
13 1986, as amended from time to time, and as required by the Internal Revenue Service to
14 maintain the qualified status of the Retirement System.

15 All changes to the Retirement System or Procedures require approval of the City Council.

16 ...
17 "Sec. 41. **Rules and Regulations.** Consistent with the provisions of this ~~act~~, act and
18 approval of the City Council, the Board of Trustees shall have the authority to adopt the rules
19 and regulations for the administration of the Retirement System and for the transaction of its
20 business.

21"
22 **SECTION 3.** Section 51 of Chapter 926 of the 1947 Session Laws, as rewritten by
23 Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995
24 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, S.L. 2001-22, and S.L.
25 2002-43 reads as rewritten:

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

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

1 minimum distribution for a calendar year equals the Participant's
2 nonforfeitable Accrued Benefit at the beginning of the year divided by the
3 Participant's life expectancy or, if applicable, the joint and last survivor
4 expectancy of the participant and his Designated Beneficiary. The minimum
5 distribution shall be computed by using the life expectancy multiples under
6 Treasury Regulation 1.72-9. The minimum distribution for a calendar year
7 subsequent to the first calendar year for which a minimum distribution is
8 required may be computed by redetermining the applicable life expectancy.
9 However, there shall be no redetermination of the joint life and last survivor
10 expectancy of the Participant and a nonspouse Designated Beneficiary in a
11 manner which takes into account any adjustment to a life expectancy other
12 than the Participant's life expectancy. A distribution to the Participant in the
13 form of a life annuity, joint and survivor annuity, or an annuity over a fixed
14 period will satisfy the minimum distribution requirements of this paragraph
15 if the method of distribution provides non-increasing payments or otherwise
16 satisfies Treasury Regulations. If the Participant dies after the payment of his
17 benefit has commenced, the death benefit provided by this act shall be paid
18 over a period which does not exceed the payment period which had
19 commenced. If a Participant dies prior to the time the payment of his benefit
20 commences, the death benefit provided by this act shall be paid over a period
21 not exceeding: (i) five years after the date of the Participant's death; or (ii) if
22 the Beneficiary is a Designated Beneficiary, over the Designated
23 Beneficiary's life or life expectancy. No payment of benefit over a period
24 described in (ii) shall be permitted, unless the payment of such benefit to the
25 Designated Beneficiary will commence no later than one year after the date
26 of the Participant's death, or, if later, and the Designated Beneficiary is the
27 Participant's surviving spouse, the date the Participant would have attained
28 age 70 1/2. The life expectancy multiples under Treasury Regulation 1.72-9
29 shall be used for purposes of applying this paragraph. The life expectancy of
30 a Participant's surviving spouse may be recalculated not more frequently
31 than annually, but the life expectancy of a nonspouse Designated
32 Beneficiary may not be recalculated after the commencement of payment of
33 benefits to the Designated Beneficiary. Any amount paid to a Participant's
34 child, which becomes payable to the Participant's surviving spouse upon the
35 child's attaining the age of majority, shall be treated as paid to the
36 Participant's surviving spouse for purposes of 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 were
41 proposed on January 17, 2001, notwithstanding any provision of the Act to
42 the contrary. These regulations shall be followed until the end of the last
43 calendar year beginning before the effective date of final regulations under
44 section 401(a)(9) or such other date as may be specified in guidance
45 published by the Internal Revenue Service.

46 (6) The City of Charlotte shall not use the Funds in the CFFRS as part of their
47 CAFR, and Funds from the CFFRS shall be kept in a separate bank from
48 City of Charlotte Operating Accounts. At no time shall funds be
49 commingled."

50 **SECTION 4.** This act applies only to the City of Charlotte.

51 **SECTION 5.** This act becomes effective July 1, 2017.