

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-396
HOUSE BILL 816

AN ACT TO CLARIFY THE LAW REGARDING THE SPECIAL SEPARATION ALLOWANCE PROVIDED TO LAW ENFORCEMENT OFFICERS UNDER THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-166.42 reads as rewritten:

"§ 143-166.42. Special separation allowances for local officers.

(a) ~~On and after January 1, 1987, the provisions of G.S. 143-166.41 shall apply to all eligible law enforcement officers~~ every sworn law enforcement officer as defined by G.S. 128-21(11b) or G.S. 143-166.50(a)(3) who are employed by a local government employer, except as may be provided by this section. As to the applicability of the provisions of G.S. 143-166.41 to locally employed officers, the governing body for each unit of local government shall be responsible for making determinations of eligibility for their local officers retired under the provisions of G.S. 128-27(a) and for making payments to their eligible officers under the same terms and conditions, other than the source of payment, as apply to each State department, agency, or institution in payments to State officers according to the provisions of G.S. 143-166.41. government employer who qualifies under this section shall receive, beginning in the month in which the officer retires on a basic service retirement under the provisions of G.S. 128-27(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or



(3) The first day of reemployment by a local government employer in any capacity.

Notwithstanding the provisions of subdivision (3) of this subsection, a local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section.

(d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.

(e) The governing body of each local employer shall determine the eligibility of employees for the benefits provided herein.

(f) The governing body of each local employer shall make the payments set forth in subsection (a) of this section to those persons certified under subsection (e) of this section from funds available."

SECTION 2. Nothing in this act shall be deemed to (i) entitle a law enforcement officer to retroactive payments of any benefit for the period prior to the effective date of this act for which the officer's employer previously determined that the officer was not entitled; (ii) prospectively deny payment of an annual separation allowance to an officer who was previously determined by the officer's employer to be eligible for such benefit; (iii) apply to any pending litigation related to the special separation allowance; or (iv) extend the payment beyond the date when payment shall cease pursuant to G.S. 143-166.42(c), as enacted by Section 1 of this act.

SECTION 3. This act is effective when it becomes law and applies prospectively to payments required by this act whether the officer retired before, on, or after the effective date of this act.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ William L. Wainwright
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:55 p.m. this 31st day of July, 2009