

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-42
HOUSE BILL 70**

**AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREFIGHTERS'
RETIREMENT SYSTEM.**

The General Assembly of North Carolina enacts:

SECTION 1. Section 12 of Chapter 926 of the 1947 Session Laws, as amended by Chapter 506 of the 1987 Session Laws, Chapter 1033 of the 1987 Session Laws, Chapter 248 of the 1989 Session Laws, Chapter 830 of the 1991 Session Laws, S.L. 1999-100, and S.L. 2001-22, reads as rewritten:

"Sec. 12. **Failure to Return From Active Military Duty.**

(a) Generally. Should any Member of this Retirement System who entered the Armed Forces of the United States of America pursuant to the provisions of Section 6 of this act fail to return to employment with the Charlotte Fire Department within the period for which his reemployment rights are guaranteed by law, said Member shall thereupon cease membership and shall be entitled to a deferred benefit or reimbursement of his contributions in the same manner and in all respects as provided for in Section 10 or 11 of this act, whichever is applicable.

Such former Member shall not receive Membership Service Credit for the period of active military duty or any period after discharge or release from active duty from the Armed Forces for which his reemployment rights had been guaranteed by law.

(b) Death or Disability. In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in section 414(u) of the Code), the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the System as if the Member had resumed and then terminated employment on account of death.

(c) Benefit Accrual. For benefit accrual purposes, the System treats an individual who, on or after January 1, 2007, dies or becomes disabled (as defined under the terms of the System) while performing qualified military service with respect to the Charlotte Fire Department as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. The System will determine the amount of Member contributions of an individual treated as reemployed under this section for purposes of applying section 414(u)(8)(C) of the Code on the basis of the individual's average actual employee contributions for the lesser of (i) the 12-month period of service with the Sponsor immediately prior to qualified military service or (ii) if service with the Sponsor is less than such 12-month period, the actual length of continuous service with the Sponsor.

(d) Differential Wage Payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by section 3401(h)(2) of the Code, shall be treated as a Member of the Sponsor making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the System shall not be treated as failing to meet the requirements of any provision described in section 414(u)(1)(C) of the Code by reason of any contribution or benefit that is based on the differential wage payment."

SECTION 2. Section 13.1 of Chapter 926 of the 1947 Session Laws, as amended by Chapter 506 of the 1987 Session Laws, Chapter 1033 of the 1987 Session Laws, Chapter 248 of the 1989 Session Laws, Chapter 830 of the 1991 Session Laws, Chapter 640 of the 1993 Session Laws, Chapter 171 of the 1995 Session Laws, S.L. 1999-100, S.L. 2001-22, S.L. 2002-43, and S.L. 2006-117, reads as rewritten:



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

(b) Definitions.

- (1) **Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and any hardship ~~distribution described in section 401(k)(2)(B)(i)(IV)-distribution.~~ A portion of a distribution shall not fail to be an eligible rollover distribution merely because a portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (2) **Eligible retirement plan.** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. With respect to distributions made after December 31, 2001, an eligible retirement plan shall also mean (i) an annuity contract described in section 403(b) of the Code and (ii) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.
- (3) **Distributee.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct rollover.** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (5) **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under section 401(a)(9)(E) of the Code and the regulations thereunder, by a direct trustee-to-trustee transfer (direct rollover), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under section 401(a)(31) of the Code. If a non-spouse beneficiary receives a distribution from the System, the distribution is not eligible for a 60-day (non-direct) rollover. If

the Participant's named beneficiary is a trust, the System may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of section 401(a)(9)(E) of the Code. A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(6) Roth IRA rollover. For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in section 408A(b) of the Code.

(c) In the event of a mandatory distribution greater than one thousand dollars (\$1,000) that is made without the Member's consent and is made to the Member before the Member attains the later of age 62 or Normal Retirement Age, if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution from the Plan, the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator."

SECTION 3. Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 640 of the 1993 Session Laws, Chapter 171 of the 1995 Session Laws, S.L. 1999-100, and S.L. 2001-22, is amended by adding a new section to read:

"Sec. 23.1 **Retiree Health Insurance Premiums.** Effective January 1, 2007, a Member who is an "eligible retired public safety officer" as defined in section 402(1)(4)(B) of the Code who retired pursuant to Section 15, Section 19, or Section 20 of this act may elect to receive a distribution from the System in an amount not to exceed the lesser of the following:

(1) The amount paid by such Member for qualified health insurance premiums of the Member, the Member's spouse, or dependents (as defined in section 152 of the Code) for such taxable year; or

(2) Three thousand dollars (\$3,000) for the taxable year.

Any distribution pursuant to this section shall reduce the benefit payable to the Member for the taxable year from the System. Such distribution shall be paid directly to the provider of the accident or health insurance. All distributions under this section shall be made in compliance with section 402(1) of the Code and any guidance issued thereunder."

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

SECTION 5. This act becomes effective July 1, 2015.

In the General Assembly read three times and ratified this the 1st day of June, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives