

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-43
HOUSE BILL 1666**

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

The General Assembly of North Carolina enacts:

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

"(9) 'Compensation' means the remuneration reportable on Form W-2 earned by a Member for services performed as an employee of the Charlotte Fire Department prior to any reductions pursuant to sections 125, 401(k), 402(k), 402(e)(3), 414(h)(2), and 457 of the Internal Revenue Code. Compensation shall include payments for unused sick and vacation days, longevity payments, bonus payments, and merit increases. For the purpose of calculating a Member's Final Average Salary, (i) payments for unused sick and vacation days shall be included as Compensation to the extent that the vacation and sick days for which payments are made could have accrued during two Plan Years of the Member's last five years of Membership Service, and (ii) payments for longevity shall be included as Compensation to the extent such payments were made during two Plan Years of the Member's last five years of Membership Service. Effective July 1, 2002, for purposes of applying the limitations described in Section 51 of this Act, compensation paid or made available during such limitation years shall also include elective amounts that are not includible in the gross estate of the Member by reason of section 132(f)(4) of the Internal Revenue Code.

~~In addition to the other applicable limitations set forth in this Act, and notwithstanding any other provision of this Act to the contrary, for Plan Years beginning on or after January 1, 1996, the annual Compensation of each Member taken into account under the Act shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is one hundred fifty thousand dollars (\$150,000), as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost of living adjustment in effect for a calendar year applies to any period not exceeding 12 months over which Compensation is determined ('the determination period') beginning in each calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. If Compensation for any prior determination period is taken into account in determining a Member's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the~~

OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996, the OBRA '93 annual compensation limit is one hundred fifty thousand dollars (\$150,000). January 1, 2002, the annual Compensation of each Member taken into account under the Act shall not exceed two hundred thousand dollars (\$200,000), the annual compensation limit under section 401(a)(17) of the Internal Revenue Code, as amended by section 611(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001. Annual compensation means compensation during the Plan Year or such other 12-month period over which Compensation is otherwise determined (the 'determination period'). If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For purposes of determining benefit accruals in a plan year, beginning after December 31, 2001, the compensation limit for any prior determination period shall be two hundred thousand dollars (\$200,000). The two hundred thousand dollars (\$200,000) limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code."

SECTION 2. Section 7 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22, reads as rewritten:

"Sec. 7. **Purchase of Membership Service Credit for Prior Active Military Duty. Credit.**

(a) Military Service. – Effective July 1, 1999, Membership Service Credit for prior active military duty may be purchased upon the completion of five years of Membership Service Credit by any Member who served on active duty in the Armed Forces of the United States of America prior to his employment with the Charlotte Fire Department. Such Membership Credit shall be purchased by the Member before termination of membership or retirement. The amount of Membership Service Credit that may be purchased by a Member will be equal to the actual active military duty by the Member not to exceed five years and shall be credited upon the payment of the required contributions as determined by the Administrator, provided that the Membership Service to be so credited shall not be credited in any other retirement system, except the national guard or any reserve component of the Armed Forces of the United States. The required contributions shall be an amount equal to the annualized Compensation rate the Member earned when he first entered membership in the Retirement System, multiplied by the sum of the Member and the City of Charlotte contribution rates in effect at the time when he first entered membership in the Retirement System, increased by five percent (5%) compounded per annum from the date of membership to the date of the payment of the required contributions and multiplied by the number of years and days of Membership Service to be credited. Membership Service Credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a nonduty disability retirement benefit or an early service retirement benefit, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit.

(b) Local, State, and Federal Government Service. – Membership Service Credit for prior public employment may be purchased upon completion of five years of Membership Service Credit by any Member who was employed by any state, governmental subdivision of any state, or the federal government prior to his current employment with the Charlotte Fire Department. Such Membership Service Credit shall

be purchased by the Member before termination of membership or retirement. A Member may purchase one year of Membership Service Credit for every two years of prior government service. The maximum amount of Membership Service Credit that may be purchased is five years. The purchased Membership Service Credit shall be credited upon the payment of the required contributions, provided that the Membership Service to be so credited shall not be credited in any other retirement system. The required contributions shall be the full actuarial cost as determined by the System's actuary. Membership Service Credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a nonduty disability retirement benefit or an early service retirement benefit, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit.

(c) Withdrawn Service. – Any Member who withdrew his contributions in accordance with the provisions of this Act and who subsequently returns to service, may upon completion of five years of Membership Service Credit, purchase the withdrawn service. Such Membership Service Credit shall be purchased by the Member before termination of membership or retirement. The maximum amount of Membership Service Credit that may be purchased by a Member is equal to the prior years of service with the Charlotte Fire Department and shall be credited upon the payment of the required contributions, provided that the Membership Service Credit to be so credited shall not be credited in any other retirement system. The required contributions shall be the full actuarial cost as determined by the System's actuary. Membership Service Credit purchased pursuant to this section cannot be used to meet the minimum service requirements for a nonduty disability retirement benefit or an early service retirement, but may be used to meet the minimum service requirements for a service retirement benefit and to compute the amount of any retirement benefit."

SECTION 3. Section 13.1 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22, 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); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities)-section 401(k)(2)(B)(i)(IV). 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. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. 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."

SECTION 4. Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22, is amended by adding a new section to read:

"Sec. 13.2. Acceptance of Rollovers and Transfers From Other Plans.

(a) Effective January 1, 2002, and subject to the provisions of federal law, the Retirement System may accept an eligible rollover distribution, as defined in Section 13.1, or a direct trustee-to-trustee transfer of funds from an eligible retirement plan, as defined in Section 13.1, for the purchase of Membership Service Credit pursuant to Section 7. The amount of the rollover distribution or trustee-to-trustee transfer accepted by the Retirement System shall not exceed the cost of service to be purchased.

(b) In order to authorize the rollover or transfer of funds described in this section, a Member shall provide or cause to be provided to the Retirement System information sufficient for the Retirement System to reasonably conclude that the contribution is a valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If the Retirement System later determines that a contribution was an invalid rollover or trustee-to-trustee transfer or otherwise not permitted under federal tax law, the Retirement System may take any action appropriate or required by the Internal Revenue Code or regulations issued there under, including a return of the invalid contribution and cancellation of any credit purchased with the returned amounts.

(c) The Retirement System shall construe and administer this section in a manner such that the Retirement System plan will be considered a qualified plan under section 401(a) of the Internal Revenue Code."

SECTION 5. Section 51 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, and S.L. 2001-22, reads as rewritten:

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

- (1) No part of the funds contributed to the Retirement System, or the income thereon, may be used for, or diverted to, purposes other than for the exclusive benefit of the Participants of the Retirement System as authorized by the provisions of this act, provided that in the event of the termination of the Retirement System, the City shall receive any surplus funds or assets after all liabilities of the Retirement System are satisfied.
- (2) Upon termination of the Retirement System or upon complete discontinuance of contributions to the Retirement System, the rights of all Participants of the Retirement System to benefits accrued to the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.
- (3) Forfeitures under the Retirement System may not be applied to increase the benefits that any Participant would otherwise receive under the Retirement System.
- (4) Notwithstanding any provision of the Retirement System to the contrary, the maximum annual benefit payable in the form of a straight life annuity from the Retirement System on behalf of a Participant, when combined with any benefits from another qualified benefit plan maintained by the City, shall not exceed the amount permitted by section 415 of the Internal Revenue Code.
- (5) Any benefit payable to a Participant pursuant to Section 4 of this act shall commence not later than the April 1 immediately following the calendar year in which the Participant attains age 70 1/2 or, if later, the April 1 immediately following the calendar year in which the Participant terminates service. Additionally, the distribution of any such benefit must satisfy the minimum distribution requirements set forth in this paragraph and must be consistent with Treasury Regulations, as of the required beginning date. The minimum distribution for a calendar year equals the Participant's nonforfeitable Accrued Benefit at the beginning of the year divided by the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the participant and his Designated Beneficiary. The minimum distribution shall be computed by using the life expectancy multiples under Treasury Regulation 1.72-9. The minimum distribution for a calendar year subsequent to the first calendar year for which a minimum distribution is required may be computed by redetermining the applicable life expectancy. However, there shall be no redetermination of the joint life and last survivor expectancy of the Participant and a nonspouse Designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A distribution to the Participant in the form of a life annuity, joint and survivor annuity, or an annuity over a fixed period will satisfy the minimum distribution requirements of this paragraph if the method of distribution provides non-increasing payments or otherwise satisfies Treasury Regulations. If the Participant dies after the payment of his benefit has commenced, the death benefit provided by this act shall be paid over a period which does not exceed the payment period which had commenced. If a Participant dies prior to the time the payment of his benefit

commences, the death benefit provided by this act shall be paid over a period not exceeding: (i) five years after the date of the Participant's death; or (ii) if the Beneficiary is a Designated Beneficiary, over the Designated Beneficiary's life or life expectancy. No payment of benefit over a period described in (ii) shall be permitted, unless the payment of such benefit to the Designated Beneficiary will commence no later than one year after the date of the Participant's death, or, if later, and the Designated Beneficiary is the Participant's surviving spouse, the date the Participant would have attained age 70 1/2. The life expectancy multiples under Treasury Regulation 1.72-9 shall be used for purposes of applying this paragraph. The life expectancy of a Participant's surviving spouse may be recalculated not more frequently than annually, but the life expectancy of a nonspouse Designated Beneficiary may not be recalculated after the commencement of payment of benefits to the Designated Beneficiary. Any amount paid to a Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, shall be treated as paid to the Participant's surviving spouse for purposes of applying this paragraph.

With respect to distributions under the Act made for calendar years beginning on or after January 1, 2001, the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code will be applied in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Act to the contrary. These regulations shall be followed until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service."

SECTION 6. This act applies only to the City of Charlotte.

SECTION 7. This act becomes effective July 1, 2002.

In the General Assembly read three times and ratified this the 29th day of July, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives