

# Public Employment

The 2008 session of the General Assembly saw few significant changes to North Carolina law affecting state and local government employees. State employees received modest salary and retirement income increases. Local government employees also received modest retirement income allowance increases, but through their retirement system's board of trustees, not through the General Assembly.

## State Employees

### Salary

Pursuant to S.L. 2008-107 (H 2436), the appropriations act, the governor's annual salary will increase to \$139,590, while the annual salaries of the members of the Council of State will increase to \$123,198. The salaries of appointed state department heads will increase to \$120,363. Other executive, legislative, and judicial branch officials also receive salary increases.

The General Assembly has also increased the salaries of all permanent, full-time SPA employees by the greater of 2.75 percent or \$1,100. The salaries of all nonelected employees of the General Assembly will also increase by the greater of 2.75 percent or \$1,100.

Community college faculty and professional staff supported by state funds will receive a 3 percent salary increase. The General Assembly also set minimum salaries for community college faculty members based on the highest educational degree held by a faculty member. All other community college employees supported by state funds will receive a salary increase of the greater of 2.75 percent or \$1,100.

For all University of North Carolina faculty and EPA employees supported by state funds, the General Assembly authorized aggregate average increases of 3 percent. For teaching employees of the North

Carolina School of Science and Mathematics, the General Assembly authorized aggregate average increases of 3 percent, with a minimum increase of \$470.

S.L. 2008-132 (H 2728) authorizes the State Treasurer to establish a compensation system that includes bonuses for the Investment Division's Chief Investment Officer and Investment Director. The act allows the bonuses to be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation.

### Study Commission on Compensation of the Governor's Cabinet and State Elected Officials

S.L. 2008-181 (H 2431), the studies act, creates the Study Commission on Compensation of the Governor's Cabinet and State Elected Officials to study whether the compensation of the Cabinet and state elected officials is fair and appropriate in light of the duties of each office. The commission will have eighteen members, five of whom will be selected from the members of the Senate, five of whom will be selected from the members of the House of Representatives, and eight of whom will be representatives of business and industry. The commission is to report its findings, together with any recommended legislation, to the 2009 session of the General Assembly.

### State Health Plan

In the 2007 appropriations act (S.L. 2007-323), the General Assembly terminated the traditional major medical indemnity plan covering state employees effective July 1, 2008, and provided for the automatic enrollment in the Standard Preferred Provider Plan of any state employee or retiree who had not yet enrolled in one of the previously optional preferred provider network (PPO) plans. The 2007 appropriations act also

changed the official name of the State Health Plan, namely, the Teachers' and State Employees' Comprehensive Major Medical Plan, to the State Health Plan for Teachers and State Employees.

This year the General Assembly did not increase deductibles or co-payments under any of the preferred provider plans, nor did it make any substantive changes in benefits. S.L. 2008-168 (H 2443) does, however, make numerous technical and conforming changes to the governing provisions of the State Health Plan, and it renumbers sections to reflect the completed changeover from a comprehensive major medical plan to a preferred provider-based organization. This act also amends G.S. 135-39.22 to authorize the state health plan to offer a new Medicare Advantage benefit for retired participants who are eligible for Medicare in lieu of other coverage offered under the State Health Plan.

### **State Personnel Commission Rules**

The use of temporary employees in state government has come under scrutiny in recent years as some workers alleged in newspaper reports that they were routinely hired for periods of less than a year, then dismissed and rehired a month or two later. This practice prevented them from becoming permanent employees entitled to benefits, including participation in the Teachers' and State Employees' Retirement System. The Office of State Personnel (OSP) subsequently drafted a set of rules designed to bring consistency to state practices with respect to temporary employees. These rules were adopted by the State Personnel Commission and approved by the Rules Review Commission.

In S.L. 2008-82 (H 2748) the General Assembly disapproved these rules, specifically 25 N.C.A.C. 01C. 0216 (Temporary Employment Services), 25 N.C.A.C. 01C. 0217 (Office of State Personnel Temporary Employment Services), 25 N.C.A.C. 01C. 0405 (Temporary Appointment), and 25 N.C.A.C. 01C. 0407 (Temporary Part-Time Appointment). The effect of the disapproval is to prevent the specified rules from taking effect.

S.L. 2008-82 directs OSP to conduct an analysis of the use of nonpermanent employees by state agencies and to use the results of the analysis to develop draft definitions distinguishing among various categories of nonpermanent employment, as well as policies governing the selection, appointment, and duration of the various categories of nonpermanent employment for recommendation to the State Personnel Commission for adoption as rules. OSP must report to the General Assembly by December 31, 2008.

## **State and Local Government Retirement**

### **Retirement Allowance Increases**

The appropriations act provides a 2.2 percent cost-of-living retirement allowance increase for retirees in the Teachers' and State Employees' Retirement System, the Judicial Retirement System, and the Legislative Retirement System. The act also adjusts the employer contribution rates for the various state retirement programs. Although not addressed by the appropriations act, local government retirees will also receive an increase in their retirement allowance. The Board of Trustees of Local Governmental Employees' Retirement System Local government retirees had previously approved a 2.17 percent cost-of-living increase for the 2008–09 fiscal year.

### **Administration of the North Carolina 401(k) and 457 Deferred Compensation Plans**

S.L. 2008-132 creates a new board called the Supplemental Retirement Board of Trustees to administer both the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan (this is the public employee plan authorized by Internal Revenue Code section 457 and is known as a 457 plan). The new board will consist of nine members, six of whom will be appointed by the governor, and two of whom will be appointed by the General Assembly. The ninth member will be the State Treasurer, who shall serve as chair. Previously, the North Carolina 401(k) Plan was administered by the combined boards of trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees Retirement System. The 457 plan was administered by a separate board of trustees.

### **Public Safety Retirement and Death Benefits**

The appropriations act increases the monthly benefit for members of the Firemen's and Rescue Squad Workers' Pension Fund to the sum of \$170 per month. S.L. 2008-163 (H 1563) amends G.S. 143-166.2 to make state and local firefighters and rescue workers who die while conducting training outside their home departments eligible for line-of-duty death benefits. Before the statute was amended, firefighters and rescue workers were only covered by line-of-duty death benefits if they were working in their employing department or squad.

S.L. 2008-142 (S 1100) amends G.S. 143B-476 to authorize the Department of Crime Control and Public Safety to use up to \$10,000 to reimburse families of State Highway Patrol members killed in the line of duty for funeral expenses. This authorization expires June 1, 2009. The act also directed the department to study whether the Department should reimburse the costs of funeral expenses to the families of all state law enforcement officers killed in the line of duty.

## Disclosure of State and Local Retiree Personal Information

S.L. 2008-194 (H 545) amends G.S. 126-22 and 115C-321 (personnel privacy acts applicable to state employees and to public school employees, respectively) to allow the Retirement Systems Division to disclose the name and mailing address of former state and public school employees to nonprofit organizations with 10,000 or more active or retired public employees. The act also amends G.S. 115D-29, 153A-98, and 160A-168 (personnel privacy acts applicable to community college employees, to county employees, and to municipal employees, respectively) to allow the Retirement Systems Division to disclose the name and mailing address of former community college, county, and municipal employees to nonprofit organizations with 2,000 or more active or retired public employees.

## Overtime for Municipal Firefighters

S.L. 2008-151 (S 963) creates new Article 14A of G.S. Chapter 160A. The new article seems to incorporate the provisions of section 207(K) of the federal Fair Labor Standards Act (FLSA) [29 U.S.C. 207(k)] as they apply to

municipal firefighters, as well as the FLSA's rules governing compensation for on-call time. FLSA section 207(k) allows firefighters to be scheduled on twenty-eight-day work cycles (or any increment thereof) and increases the number of hours that firefighters must work before being entitled to overtime to 212 hours in a twenty-eight-day cycle and fifty-three hours in a seven-day cycle. The new article does not use the same terminology as the FLSA, and thus the extent of its coverage appears to be narrower than that of the FLSA. The new article also changes the overtime rules for members of a fire department who do not engage in fire suppression by defining eligibility for overtime by reference to the average number of hours worked by nonfire personnel in a normal workweek, instead of by reference to a standard forty-hour workweek.

This act only becomes effective when section 207(k) of the FLSA is repealed or becomes unenforceable. There is nothing pending in Congress or the courts to suggest that this is under consideration, much less imminent, so municipalities need not change any of their compensation practices in response to the passage of this bill.

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