

**THE ERWIN BOARD OF COMMISSIONERS  
SEPTEMBER 2021 REGULAR WORKSHOP  
MONDAY, SEPTEMBER 27, 2021 @ 6:00 P.M.  
ERWIN MUNICIPAL BUILDING BOARD ROOM**

**AGENDA**

1. **MEETING CALLED TO ORDER**
  - A. Invocation
  - B. Pledge of Allegiance
2. **AGENDA ADJUSTMENTS /APPROVAL OF AGENDA**
3. **OLD BUSINESS**
  - A. Discuss Law Enforcement Separation Allowance
4. **NEW BUSINESS**
  - A. Upcoming Meeting Agenda Information
5. **CLOSED SESSION**
  - A. Pursuant to General Statute 143-318.11(a) (6) for the Purpose of Discussing Personnel
  - B. Pursuant to General Statute 143-318.11(a) (3) for the Purpose of Preserving the Attorney-Client Privilege
6. **ADJOURNMENT**

**ERWIN BOARD OF COMMISSIONERS****REGULAR WORKSHOP MINUTES****SEPTEMBER 27, 2021****ERWIN, NORTH CAROLINA**

The Board of Commissioners for the Town of Erwin with Mayor Patsy Carson presiding, held its Regular Workshop in the Erwin Municipal Building Board Room on Monday, September 27, 2021, at 6:00 P.M. in Erwin, North Carolina.

Board Members present were: Mayor Patsy Carson, Mayor Pro Tem Randy Baker, and Commissioners William Turnage, and Thurman Whitman.

Board Members absent were: Commissioners Ricky Blackmon, Alvester McKoy, and Melinda Alvarado,

Town Manager Snow Bowden, Town Clerk Lauren Evans, and Town Attorney Tim Morris were present.

Mayor Carson called the meeting to order at 6:00 P.M.

Mayor Pro Tem Baker gave the invocation.

Commissioner Turnage led the Pledge of Allegiance.

**AGENDA ADJUSTMENT/APPROVAL OF AGENDA**

Mayor Pro Tem Baker requested to add Upcoming Meeting Agenda Information under New Business as Item A.

Commissioner Turnage made a motion to approve the adjusted agenda and was seconded by Commissioner Whitman. **The Board voted unanimously.**

**OLD BUSINESS****DISCUSS LAW ENFORCEMENT SEPARATION ALLOWANCE**

Jerry Royal came forward and addressed the Board. He handed out a packet he put together to highlight his case. He thanked the Board for taking the time to hear his case and he thanked the Town Manager and Town Attorney for being compassionate and professional in the process. He

**MINUTES CONTINUED FROM SEPTEMBER 27, 2021**

expressed to the Board about what he had been through in the last six years since his retirement from the Town and why in his opinion he earned the Separation Pay. He read the G.S. 143-166.42 Special separation allowances for local officers and explained why he felt that the law was ambiguous. He provided a manifest of what occurred the day he got hurt as well as why he retired. He explained to the Board why getting the special separation allowance is a big deal to him. He stated he believed the Town has treated him unfairly and other than helping with Erwin Fire and EMS, he no longer supports the Town of Erwin. His speech in its entirety is included in the packet he provided. He offered to answer any questions the Board may have.

*A copy of the Packet provided by Mr. Royal is incorporated into these minutes as Attachment #1*

Mayor Carson thanked Mr. Royal for speaking to the Board. She stated he really opened her eyes and asked him to make sure that he leaves the packets for the absent Board Members.

Mayor Pro Tem Baker asked Mr. Royal if at any time during his Worker's Comp claim, they take into consideration the special separation allowance or if it was ever disclosed to him by anyone.

Mr. Royal stated that he asked former HR Director, Debbie Chestnut, about his special separation allowance and she asked former Town Manager Richard Hicks who confirmed he was not eligible for the special separation allowance.

Mayor Pro Tem Baker stated Mr. Royal had said he fought to keep his job, he inquired what brought him to make the decision to end his career.

Mr. Royal informed the Board of his last day on the job. He stated he was on light duty, a car chase came through Erwin and he jumped in his car to help. The chase ended in front of Sports Zone in Lillington and when he got out to help, he could barely walk. He stated the other law enforcement had it under control so he went back to his patrol vehicle. He decided that it was time to stop because he was concerned he may be put in a situation where a citizen or fellow officer's life is on the line and he would not be able to do his job due to his back. If that happened, he wouldn't be able to deal with that.

Mayor Pro Tem Baker asked how he lost his certifications.

Mr. Royal stated the Former Police Chief, Bill Morris, informed him that Former Town Attorney, Mac Hunter, would not allow him to be in the qualifications class while on light duty. It costs him his Instructor's Certification and he could not keep the hours he needed.

# Erwin Board of Commissioners

## REQUEST FOR CONSIDERATION

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To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: September 27, 2021

Subject: Discuss Law Enforcement Separation Allowance

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A former employee with the Erwin Police Department Jerry Royal requested to speak to the members of the Town Board. After some discussion with our Town Attorney Tim Morris, he recommended having Mr. Royal speak to the Town Board at our September workshop meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2018-22  
HOUSE BILL 284

AN ACT TO ALLOW LAW ENFORCEMENT OFFICERS WHO ARE MEMBERS OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OR THE LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM TO RETIRE AFTER ACHIEVING TWENTY-FIVE YEARS OF CREDITABLE SERVICE, TO ALLOW FOR SEPARATION BUYOUTS FOR LAW ENFORCEMENT OFFICERS, AND TO ALLOW TRANSFERS UNDER THE SPECIAL RETIREMENT ALLOWANCE TO BE PAID IN WHOLE OR IN PART WITH EMPLOYER CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 12D of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-166.43. Separation buyouts for law enforcement officers.**

Any State department, agency, or institution, or any local government employer, may, in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves employment prior to reaching the officer's eligibility for a separation allowance under this Article. The lump sum separation buyout shall be paid from funds available and shall not exceed the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41 or G.S. 143-166.42."

**SECTION 2.(a)** G.S. 135-5(m2) reads as rewritten:

"(m2) Special Retirement Allowance. – At any time coincident with or following retirement, a member may make a one-time, irrevocable election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance.

A member who became a member of the Supplemental Retirement Income Plan prior to retirement and who remains a member of the Supplemental Retirement Income Plan may make a one-time, irrevocable election to transfer eligible balances, not including any Roth after-tax contributions and the earnings thereon, from any of the following plans to the Supplemental Retirement Income Plan, subject to the applicable requirements of the Supplemental Retirement Income Plan, and then through the Supplemental Retirement Income Plan to this Retirement System: (i) a plan participating in the North Carolina Public School Teachers' and Professional Educators' Investment Plan; (ii) a plan described in section 403(b) of the Internal Revenue Code; (iii) a plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (iv) an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income; or (v) a tax-qualified plan described in section 401(a) or section 403(a) of the Internal Revenue Code. In addition, any transfer under this subsection may be paid



\* H 2 8 4 - V - 6 \*

**SECTION 5.** Sections 2 and 3 of this act become effective July 1, 2019. The remainder of this act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 14<sup>th</sup> day of June, 2018.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 9:11 a.m. this 22<sup>nd</sup> day of June, 2018

Article 12D.

Separation Allowances for Law-Enforcement Officers.

**§ 143-166.40. Rules for selection and retention of law-enforcement officers; rules exempt from Administrative Procedure Act.**

(a) Except as otherwise provided by State and federal law, the head of each principal State department may establish rules and procedures for the selection and retention of sworn law-enforcement officers to ensure that they are physically, emotionally, and intellectually qualified to perform their duties. These rules and procedures shall not establish any mandatory age limit for service as a law-enforcement officer that conflicts with a federal statute.

(b) These rules and procedures are exempt from the provisions of Chapter 150B of the General Statutes. (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1987, c. 827, s. 1.)

**§ 143-166.41. Special separation allowance.**

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11c) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning in the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(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 him 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.

(a1) Repealed by Session Laws 2014-88, s. 3(j), effective July 30, 2014.

(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 or as a probation/parole officer as defined in G.S. 135-1(17a).

(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 any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State

employment in a position exempt from the North Carolina Human Resources Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, 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 the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14; 2007-69, s. 1; 2011-232, s. 9; 2013-382, s. 9.1(c); 2014-88, s. 3(j); 2017-57, s. 35.19B(b).)

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

(a) On and after January 1, 1987, every sworn law enforcement officer as defined by G.S. 128-21(11d) or G.S. 143-166.50(a)(3) employed by a local 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.
- (c1) Notwithstanding the provisions of subdivision (3) of subsection (c) of this section, payments to a retired officer shall not cease when a local government employer employs a retired officer for any of the following:
- (1) In a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System.
  - (2) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Government Employees' Retirement System.
- (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. (1985 (Reg. Sess., 1986), c. 1019, s. 2; 2009-396, s. 1; 2018-25, s. 1.)

**§ 143-166.43. Separation buyouts for law enforcement officers.**

Any State department, agency, or institution, or any local government employer, may, in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves employment prior to reaching the officer's eligibility for a separation allowance under this Article. The lump sum separation buyout shall be paid from funds available and shall not exceed the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41 or G.S. 143-166.42. (2018-22, s. 1.)

§ 143-166.44: Reserved for future codification purposes.

§ 143-166.45: Reserved for future codification purposes.

§ 143-166.46: Reserved for future codification purposes.

§ 143-166.47: Reserved for future codification purposes.

§ 143-166.48: Reserved for future codification purposes.

**§ 143-166.49:** Reserved for future codification purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 1019  
HOUSE BILL 2130

AN ACT CONCERNING LOCAL LAW OFFICERS'S RETIREMENT.

Whereas, local governments were authorized by the 1983 General Assembly in Chapter 908, Session Laws of 1983, to levy an additional one-half cent sales tax; and

Whereas, both the House and Senate have in 1986 passed a bill to authorize an additional one-half cent sales tax for local governments; and

Whereas, local governments would raise over three hundred fifty million dollars (\$350,000,000) annually from these two taxes; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1987, G.S. 143-166.50(e) is amended by adding a new sentence at the end of the first paragraph to read: "From July 1, 1987, until July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to at least two percent (2%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers; and on and after July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to five percent (5%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers."

Sec. 2. Article 12D of Chapter 143 of the North Carolina General Statutes is amended by adding a section to read:

"§ 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 as defined by G.S. 128-21(11b) or G.S. 143-166.50(a)(3) who are employed by local government employers, 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."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1986.

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 employers, 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 23<sup>rd</sup> 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 31<sup>st</sup> day of July, 2009

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2018-25  
HOUSE BILL 9

AN ACT TO ALLOW RETIRED LAW ENFORCEMENT OFFICERS TO BE EMPLOYED BY A COUNTY BOARD OF ELECTIONS FOR ELECTION DAY SERVICE WITHOUT CAUSING THE SUSPENSION OF THE RETIRED OFFICERS' SPECIAL SEPARATION ALLOWANCE.

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, every sworn law enforcement officer as defined by G.S. 128-21(11d) or G.S. 143-166.50(a)(3) employed by a local 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.

(c1) Notwithstanding the provisions of subdivision (3) of this subsection, subsection (c) of this section, payments to a retired officer shall not cease when a local government employer may employ employs a retired officers in officer for any of the following:

- (1) In a public safety position in a capacity not requiring participation in the Local Government Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section.System.



(2) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Government Employees' Retirement System.

(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.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14<sup>th</sup> day of June, 2018.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 9:13 a.m. this 22<sup>nd</sup> day of June, 2018

Every law, ordinance or statute when it is put into effect has intent. There is an outcome that wants to be reached and to do that they put one of those in place or as some say on the books. Like the speed limit law. They didn't want people driving as fast as they wanted so they said, lets come up with a law to slow people down. So they come up with laws that say you have to obey the speed limit signs that are put up stating the speed for that area. Shoplifting would be another one, you don't want people walking out without paying for things so they came up with the law of shoplifting. And it goes on and on.

Lets look at the intent of the Special Separation Allowance. Prior to 1987 only government employees were covered under the special separation allowance. On January 1 of 1987 they opened up the umbrella of that statute to cover local government employees in law enforcement. What was the intent of this statute? They needed something to add to the benefits of law enforcement officers to help with the recruitment and retention of officers. So they came up with the benefit of the allowance, so they could say to officers if you retire from our agency we will pay you .85% of your salary until you reach the age of 62. That in its self is very attractive to someone thinking about getting into law enforcement. If I can retire I'll draw .85% of my salary until I turn 62. They are providing me a bridge to get me over to 62. So the intent of that law was to recruit, retain and help law enforcement officers after their career had ended. Its that simple.



Thank you Madam Mayor, and Board,

All of you on this board know why I'm up here.

You know my story, hurt on the job, had two back operations, currently have 2 partially herniated discs in my back. Made to retire, your workers comp attorneys tell you that to close your workers comp claim you have to sign a letter stating that you will retire from your position. Some call that voluntarily retiring. To me that don't sound like voluntary. Maybe I'm wrong, I don't know

I retired in 2015, since that time I have asked the town of Erwin to pay me what I earned in my 23 plus years with the town. That is my special separation allowance. That is all I have ever asked for from the town. So for going on 6 years that is all I have asked for and for going on 6 years you have knocked me back down every time. I have asked, I have asked and I have asked. You know the first time is asking, all the other times past the first is pretty much begging. I have worried over it, I lay in bed at night thinking about it, I get up at night and go and get on the computer and study it and every time I come up with what I think proves my case, attorney lingo is put on it and it is turned against me. (Nothing personal Timmy)

Statues 143-166.41, statue 143-166.42 and statue 143-166.43 are what cover the Special separation allowance. They say you work with municipality for 30 years and retire at any age and they will pay you .085% of your salary until you reach the age of 62. It also states that you can work until the age of 55 with a minimum of 5 years consecutive service before your 55<sup>th</sup> birthday and you can retire at 55 and they will pay you until you turn 62. That means a person can come to work with the town at the age of 50, work 5 years and retire at the age of 55 and you will pay them until they reach 62 years of age. After working only 5 years with the

town, I gave you over 23 years of service and got hurt on the job made to retire and you pay me nothing. (Zero) I wish someone could explain to me how that is fair.

. The last part of both of those statute state that the local municipality always determines an officers eligibility for the allowance. ( determines: cause something to occur in a particular way, be the decisive factor in.)

It also states in Article 12D that if an officer leaves before his 55<sup>th</sup> birthday and does not meet the requirements the town in its discretion, (the word discretion means: the freedom to decide what should be done in a particular situation) can offer a onetime buy out to that officer who leaves employment prior to reaching the officers eligibility. And that part was turned against me

Those statues that cover the special separation allowance are very, very vague. Very ambiguous, in other words very open to interpretation. For years I thought when that was the case about a statue, it went to the benefit of the victim or complainant. Hell that was even turned against me.

I am a 54 year man; I will give you the shirt off my back if I can help you. I don't like asking for help, not saying I never have. I just don't like doing that. For going on six years I have asked this board, as I stated earlier I have pretty much begged this board and town to simply pay me what I earned. I have always been a very proud man. You have no idea how much pride and self-worth I have had to swallow asking and begging you for help with this mess. Let me let you in on a little secret, you don't have the first clue. For going on 6 years I have tried every way I know to get what I earned, I been nice, I've been polite and I have been mad as hell mad about it.

I know the state set the qualifications for the special separation allowance and they don't really have a dog in the fight to me because the town pays the allowance. But you as a board want to hold me to the same standard for the allowance as everyone else that retires from a town. You can't do that because I did not retire like everyone else. REMEMBER WORK RELATED INJURY, MADE TO

RETIRE. THE AGE OF 55 OPTION WAS TAKEN AWAY FROM ME. So holding me to the same standards is not and repeat not comparing apples to apples. You as a Town have no ordinance or anything anywhere in writing to deal with a disability retirement, nothing. So you don't really know what to do, so you decide to do nothing.. You want to rely on the NC School of Government and the league of municipalities to give you some type of direction and guess what, they are not here. So they don't really have a clue.

I gave you over 23 years of service, got injured on the job and made to retire and you say you owe me nothing. And you think that's ok ????

Some people ask me, Jerry why are you making such a big deal over this special separation allowance? You as board members may be asking the same question, why is he making such a big deal over this. Well this is why:

1. At that time having the honor to work for the town of Erwin as a police officer in my home town was a big deal to me.
2. Coming to work and trying to help the people and maybe change somebodies life for the better was a big deal to me.
3. Me taking pride in my job, in my appearance and the way I kept my patrol vehicles clean and looking good was a big deal to me.
4. Me being voted police officer of the year on two occasions was a big deal to me.
5. Me being a certified instructor through NC training and standards was a big deal to me.
6. Me coming up through the ranks and becoming the assistant chief of police of my hometown was a big deal to me. Becoming the chief of police of my home town would have been even a bigger deal to me.
7. Me getting hurt on the job, and in my eyes the town of Erwin knocking my feet out from under me was a big deal to me.
8. Me losing my police certification and losing my instructor certification was a big deal to me.

9. Me having to crawl across my bedroom floor on my hands and knees because I hurt so bad and yet I still tried to keep my job, was a big deal to me.
10. The fact that Erwin has turned its back on me, and kicked me to the curb is a big deal to me
11. The fact that I even went to some of the commissioners houses, some of your houses and spoke to you one on one and asked you to help me is a big deal to me. Just the fact that I had to do that .
12. The fact that for 6 years the town of Erwin has screwed me over time and time again is a big deal to me.
13. I was screwed over a couple other ways at the end of my career that some of you may know about and some of you may not and that was a big deal to me.
14. The fact that some past administration and you as a board of commissioners can look me straight in my face and act like everything is just fine is not only a big deal to me, but its unbelievable to me, well maybe not unbelievable.
15. The fact that I have to go through all of this to try get what I earned and what is owed to me is a big deal to me.
16. The fact that you as a town and as town commissioners can do this with a clear conscious, is not only a big deal to me its also hard to understand.
17. And the fact that I have had to come to you in this way about all of this, and all the crap I have been through with the Town of Erwin and some of the past administration, and looking back over my career here, I have to ask myself what did I do that was so wrong for the town to do this to me.

18. And finally, you take everything I have covered since I've been up here and I can tell you this, it's all one Hell of a big deal to me.

Now the Town manager asked me in one of our meetings, was any other job with the town of Erwin offered to me during the time I was trying to work and having the bad back issues. I told him I honestly did not remember any other position with the town being offered. He told me that he was told that I was offered the code enforcement officer job, but I turned it down because I would have to give up my rank. I told him that would have been stupid. I told him it seems like something along that line was talked about but no offer was ever made to me about it. My question to him was with this being a workers comp case wouldn't the offer of that job and my refusal of it be documented somewhere. He stated that there is no documentation on it. You know the saying, if it ain't on paper, its vapor.

I gave you 23 plus years of law enforcement service and I can look anybody in the eyes and them this: I can lay my head down every night with a clear conscious that during my career, I never abused my authority, and I never stepped outside of my authority. Not many people can say that after 23 years. I can

But guess what the statues don't say, they do not say that you can't do it.

Article 12D.

Separation Allowances for Law-Enforcement Officers.

**§ 143-166.40. Rules for selection and retention of law-enforcement officers; rules exempt from Administrative Procedure Act.**

(a) Except as otherwise provided by State and federal law, the head of each principal State department may establish rules and procedures for the selection and retention of sworn law-enforcement officers to ensure that they are physically, emotionally, and intellectually qualified to perform their duties. These rules and procedures shall not establish any mandatory age limit for service as a law-enforcement officer that conflicts with a federal statute.

(b) These rules and procedures are exempt from the provisions of Chapter 150B of the General Statutes. (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1987, c. 827, s. 1.)

**§ 143-166.41. Special separation allowance.**

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11c) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning in the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(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 him 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.

(a1) Repealed by Session Laws 2014-88, s. 3(j), effective July 30, 2014.

(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 or as a probation/parole officer as defined in G.S. 135-1(17a).

(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 any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State

employment in a position exempt from the North Carolina Human Resources Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, 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 the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14; 2007-69, s. 1; 2011-232, s. 9; 2013-382, s. 9.1(c); 2014-88, s. 3(j); 2017-57, s. 35.19B(b).)

#### **§ 143-166.42. Special separation allowances for local officers.**

(a) On and after January 1, 1987, every sworn law enforcement officer as defined by G.S. 128-21(11d) or G.S. 143-166.50(a)(3) employed by a local 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.

(c1) Notwithstanding the provisions of subdivision (3) of subsection (c) of this section, payments to a retired officer shall not cease when a local government employer employs a retired officer for any of the following:

- (1) In a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System.
- (2) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Government Employees' Retirement System.

(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. (1985 (Reg. Sess., 1986), c. 1019, s. 2; 2009-396, s. 1; 2018-25, s. 1.)

**§ 143-166.43. Separation buyouts for law enforcement officers.**

Any State department, agency, or institution, or any local government employer, may, in its discretion, offer a lump sum separation buyout to a law enforcement officer who leaves employment prior to reaching the officer's eligibility for a separation allowance under this Article. The lump sum separation buyout shall be paid from funds available and shall not exceed the total that would otherwise be paid in separation allowance payments under G.S. 143-166.41 or G.S. 143-166.42. (2018-22, s. 1.)

**§ 143-166.44:** Reserved for future codification purposes.

**§ 143-166.45:** Reserved for future codification purposes.

**§ 143-166.46:** Reserved for future codification purposes.

**§ 143-166.47:** Reserved for future codification purposes.

**§ 143-166.48:** Reserved for future codification purposes.



On June 10<sup>th</sup>, 2014 I was getting into my patrol car to go to work. My hands were full and as I tried to ease into my vehicle I slipped and fell against the console. I informed my chief about the incident when I got to work. I continued hurting from that incident. Workers comp got involved with my incident and sent me to see Dr. Mathur at Cary Orthopedic and Spine Specialist in Cary NC. Dr. Mathur ordered an MRI of my lumbar spine. On 07-19-2014 I went to Raleigh Radiology for that MRI. The MRI showed Large right paracentral disc protrusion at L4-L5. Broad-based disc bulge at L5-S1 with small superimposed central disc protrusion and moderate foraminal stenosis bilaterally. L4-L5 large right paracentral disc protrusion measuring 16mm mass effect on the right greater than the left side nerve root. On August 19<sup>th</sup>, 2014 I underwent surgery on my lower back. A right L4-L5 partial laminectomy, facetectomy and discectomy were done. Approx. August 27, 2014 I started doing physical therapy. Shortly after starting therapy I was doing some exercise at home which was recommended by the staff. I was getting off the floor and felt something give in my back. I returned to see Dr. Mathur complaining of severe pain in the lower back and right leg area again. He tried more therapy and a shot in my lower back. The shot did not work, the MRI showed a recurring disc herniation at L4-L5 with small extruded component seen best on the post contrast images. Same was causing mass defect on the spinal cord.

On October 16<sup>th</sup>, 2014 I had a second surgery done on my lower back. Dr. Mathur performed a revised right L4-L5 partial laminectomy, facetectomy and discectomy. I was diagnosed with recurrent L4-L5 herniation. ( please note that during all this I was trying to work when I could. Dr. Mathur put work restrictions on me.) After my second surgery and several weeks of physical therapy they had me start what was called work conditioning physical therapy, to get me ready to go back to work in law enforcement. While doing work conditioning physical therapy I felt something in my back go again. I went back to Dr. Mathur and he ordered another MRI. The third MRI was done on March 20<sup>th</sup>, 2015. That MRI showed Disc herniation and extrusion at L4-L5 with more pronounced right subarticular zone compromise, central spinal stenosis and posterior displacement of the exiting right L5 nerve root. Overall stable configuration of disc herniation, facet arthrosis and central nerve compromise at L5-S1 and mild posterior disc bulge and facet arthrosis at L3-L4. At transforaminal steroid injection again that did not work.

By this time as I stated earlier I was still trying to work with restrictions. I had been promoted to Lieutenant / Assistant Chief with the Erwin Police Dept. I fought very hard to keep my job because I had worked so hard my entire career to be the chief of police of my hometown. After my third MRI I was told by Dr. Mathur that if he went back into my back a third time it would be a fusion and rods, because he had already operated twice and there was nothing else to work

with. Dr. Mathur placed permanent restrictions on me of, no lifting more than 50 pounds, no apprehending suspects and occasional bending and twisting.

Updated X rays in Dr. Mathurs office on 06-21-2021 demonstrates 5 lumbar vertebral bodies. On lateral views there is mild loss of lumbar lordosis. There is noted degenerative disc disease most pronounced at the L4-L5 and L5-S1 levels. It showed no evidence of any acute fracture or listhesis

**MINUTES CONTINUED FROM SEPTEMBER 27, 2021****NEW BUSINESS****UPCOMING MEETING AGENDA INFORMATION**

Mayor Pro Tem Baker stated on the October Town Board Meeting Agenda, he saw that we will be discussing the Depot. He asked if the Town received new information showing that we have funding.

Town Manager Snow Bowden stated he does not have any new information at this time. He received a request to have the Depot added to the agenda.

Mayor Pro Tem Baker inquired for what purpose was the Depot added to the agenda. He wanted to know if someone from the public is coming to speak to the Board about the Depot or if there was any news that would help the Town move forward with the Depot.

Commissioner Turnage stated he told Town Manager Snow Bowden to add the Depot to the agenda. There is a lot of interest in Erwin, especially with the Historical Society, about doing something to the Depot. The Depot has been sitting there for five and a half years and everyone on the Board at that time, except Frankie Ballard, voted to move the Depot and agreed that the Town would not let it just sit there. We agreed to use the money we are receiving from the cell tower.

Mayor Pro Tem Baker stated this is something we work out at a retreat or a work session when we go over the budget for the new fiscal year and decide as a Board that this is a project we want to work on for the year. This is not a discussion for an open meeting when we have no new information since the last time we spoke about it. He has visions for the Depot as well but we have to have a way to pay for it. He stated he was eager to hear we had new information but we have to have a plan to move forward.

Town Manager stated that the LGC did say they could probably approve us borrowing money but they are strongly recommending that Towns do not fund any projects that are not completely necessary due to COVID. Also, the UCSA was waiting for our audit to be completed this year before they will even consider looking at our application. They will want to see our budget and audit from last year. Our audit got in late last year.

Commissioner Turnage stated the people of Erwin are doing their part, infrastructure, building houses like crazy. We send a letter to people every week to clean up their houses and the Depot is just as bad sitting in our back yard. He stated it is time to decide whether to fix the depot or just tear it down. He wanted to see numbers of how much we can borrow.

Town Manager Snow Bowden recommended scheduling a special called meeting or having the discussion at our regular schedule workshop in October. Next year is a revaluation year and he

**MINUTES CONTINUED FROM SEPTEMBER 27, 2021**

will present the Board a net neutral tax rate to show them what the tax rate is now compared to what it will be. We will have to lower the tax rate or justify what we are keeping it at.

**CLOSED SESSION**

Mayor Pro Tem Baker made a motion to go into Closed Session in Pursuant to General Statute 143-318.11 (a) (6) for the Purpose of Discussing Personnel and General Statute 143-318.11(a) (3) for the Purpose of Preserving the Attorney-Client Privilege at 6:54 PM. and was seconded by Commissioner Whitman. **The Board voted unanimously.**

**RECONVENED**

Commissioner Turnage made a motion to go back in regular session at 7:18 PM and was seconded by Commissioner Whitman. **The Board voted unanimously.**

**ADJOURNMENT**

Commissioner Turnage made a motion to adjourn at 7:19 P.M. and was seconded by Mayor Pro Tem Baker. **The Board voted unanimously.**

**MINUTES RECORDED AND TYPED BY**

**LAUREN EVANS TOWN CLERK**

**ATTEST:**



**Patsy M. Carson**

**Mayor**



**Lauren Evans**

**Town Clerk**