**South Carolina General Assembly**

124th Session, 2021-2022

**S. 76**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Malloy

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Introduced in the Senate on January 12, 2021

Currently residing in the Senate Committee on **Finance**

Summary: Retirement system, membership for judges, solicitors and circuit public defenders

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 Senate Prefiled

12/9/2020 Senate Referred to Committee on **Finance**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 159](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Finance** ([Senate Journal‑page 159](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\76_20201209.docx)

**A** **BILL**

TO AMEND SECTION 9‑8‑40 OF THE 1976 CODE, RELATING TO MEMBERSHIP IN THE RETIREMENT SYSTEM FOR JUDGES, SOLICITORS, AND PUBLIC DEFENDERS, TO REMOVE THE AGE LIMIT OF SEVENTY‑TWO FOR THOSE ELIGIBLE TO BECOME MEMBERS OF THE SYSTEM; TO AMEND SECTION 9‑8‑60 OF THE 1976 CODE, RELATING TO RETIREMENT AND RETIREMENT ALLOWANCES, TO REMOVE THE REQUIREMENT THAT MEMBERS OF THE RETIREMENT SYSTEM FOR JUDGES, SOLICITORS, AND PUBLIC DEFENDERS MUST RETIRE BY THE END OF THE CALENDAR YEAR IN WHICH THEY TURN SEVENTY‑TWO; AND TO REPEAL SECTION 22‑1‑25 OF THE 1976 CODE, RELATING TO THE MANDATORY RETIREMENT AGE FOR MAGISTRATES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 9-8-40 of the 1976 Code is amended to read:

“Section 9-8-40. ~~(1)~~(A) ~~All persons who are judges or solicitors on July 1, 1979, and who have not attained age seventy‑two shall become members of the system as of that date. All administrative law judges on July 1, 2014, who have not retired may elect to become a member of the system. Administrative law judges making that election may transfer prior service into the system as provided in Section 9‑8‑50, and to the extent the service thus transferred occurred after the member took office as an administrative law judge, that service is deemed earned service in the system. All other persons become members~~ A person becomes a member of the system ~~on~~ upon taking office as judge, solicitor, or circuit public defender ~~before attaining age seventy‑two~~.

~~(2)~~(B) If a member of the system ceases to be a judge, solicitor, or circuit public defender for reasons other than death or retirement, then he ~~then~~ ceases to be a member of the system, whether or not he withdraws his accumulated contributions.”

SECTION 2. Section 9-8-60 of the 1976 Code is amended to read:

“Section 9-8-60. (A)(1) A member of the system may retire upon written application to the board setting forth at what time, ~~not later than the end of the calendar year in which the member attains age seventy‑two and~~ not more than ninety days prior nor more than six months subsequent to the execution and filing thereof, the member desires to be retired, if the member at the time so specified for retirement is no longer in the service of the State, except as a member of the General Assembly or as allowed pursuant to subsection ~~(7)~~(G), and has completed ten years of earned service as a judge or eight years of earned service as a solicitor or circuit public defender or was in service as a judge or solicitor on July 1, 1984, and has either:

(a) attained the age of sixty‑five and completed at least twenty years of credited service;

(b) attained age seventy and completed at least fifteen years of credited service; or

(c) completed at least twenty‑five years of credited service in the system for a judge, or twenty‑four years of credited service in the system for a solicitor or circuit public defender, regardless of age. A member may retire under this section if the member was a member of this system as of June 30, 2004; attained age sixty‑five with at least four years' earned service in the position of judge, solicitor, or circuit public defender; and, as of June 30, 2004, had a total of twenty‑five years of credited service with the State in the South Carolina Retirement System, the Police Officers Retirement System, or the Retirement System for Members of the General Assembly.

(2) A person receiving retirement allowances under this system who is elected to the General Assembly continues to receive the retirement allowances while serving in the General Assembly, and also must be a member of the retirement system unless the person files a statement with the board on a form prescribed by the board electing not to participate in the applicable system while a member of the General Assembly. A person making this election shall not make contributions to the applicable retirement system nor shall the State make contributions on the member's behalf and the person is not entitled to benefits from the applicable retirement system after ceasing to be a member of the General Assembly.

~~(2)~~(B) A retired member shall receive a monthly retirement allowance which is equal to one‑twelfth of seventy‑one and three‑tenths percent of the current active salary of the respective position.

~~(3)~~(C) No member shall be permitted to retire and resign on account of being totally and permanently disabled and to receive the retirement benefit herein provided for until it is proven to the satisfaction of the Supreme Court, or a majority of the justices thereof, that the member is totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service in the position. Upon the finding of the Supreme Court that any member is totally and permanently disabled, the Supreme Court shall notify the director of its findings. A member shall have a minimum of five years of earned service to qualify for disability retirement.

~~(4)~~(D) Any beneficiary receiving a retirement allowance under any other system of the State providing retirement benefits for judges or from the Solicitors' Retirement Program established pursuant to Article 4 of Chapter 7 of Title 1 shall become a beneficiary under this System as of July 1, 1979, and shall receive a retirement allowance under this section adjusted in accordance with the provisions of this section or Section 9‑8‑90, whichever is applicable, in lieu of any retirement allowance under such other system. The full amount of any accumulated contributions or assets held by that system on behalf of the beneficiary shall be transferred to this system promptly pursuant to the provisions of this chapter. Notwithstanding anything herein to the contrary, no beneficiary under this section shall receive an allowance which is less than the allowance he would have received under such other system as of July 1, 1979.

~~(5)~~(E) A member who retires, who has completed at least twenty‑five years of credited service, or twenty‑four years in the case of a solicitor or circuit public defender, shall receive a monthly retirement allowance which must be equal to one‑twelfth of seventy‑one and three‑tenths percent of the current active salary of the respective position plus one‑twelfth of two and sixty‑seven hundredths percent of the current active salary of the respective position for each additional year of earned service over twenty‑five, or twenty‑four in the case of a solicitor or circuit public defender. The monthly retirement allowance may not exceed one‑twelfth of ninety percent of the current active salary of the respective position.

~~(6)~~(F) A member retiring after 2003 shall receive an additional benefit, paid at retirement, equal to the member's employee contributions, plus interest, paid to the system after the member attains sufficient creditable service to become eligible to receive the maximum benefit of ninety percent of the current active salary of the respective position under this section.

~~(7)(a)~~(G)(1) A member who has attained the age of sixty years and is eligible to retire and receive the maximum monthly benefit of one‑twelfth of ninety percent of the current active salary of a judge, solicitor, or circuit public defender as provided in subsection ~~(5)~~(E) may retire and receive a retirement benefit while continuing to serve as judge, solicitor, or circuit public defender ~~until the end of the calendar year in which the member attains the age of seventy‑two years~~.

(2) The employee and employer contributions must continue to be paid as if the judge, solicitor, or circuit public defender continuing to serve pursuant to this subsection was an active contributing member, but no additional service credit accrues on account of these contributions. A judge, solicitor, or circuit public defender who retires pursuant to this subsection is not subject to the provisions of Section 9‑8‑120 unless he has vacated his office.

~~(b)~~(3) A member who has not yet reached the age of sixty years, but who is eligible to retire and receive the maximum monthly benefit of one‑twelfth of ninety percent of the current active salary of a judge, solicitor, or circuit public defender as provided in subsection ~~(5)~~(E) may retire and continue to serve as judge, solicitor, or circuit public defender ~~until the end of the calendar year in which the member attains the age of seventy‑two years~~. While a member continues to serve as judge, solicitor, or circuit public defender pursuant to this subsection, the member's normal monthly retirement benefit will be deferred and placed in the system's trust fund on behalf of the member. Upon reaching the age of sixty years, the balance of the member's deferred retirement benefit will be distributed to the member. No interest will be paid on the member's deferred monthly retirement benefit placed in the system's trust fund. The employee and employer contributions must continue to be paid as if the judge, solicitor, or circuit public defender continuing to serve pursuant to this subsection was an active contributing member, but no additional service credit accrues on account of these contributions. A judge, solicitor, or circuit public defender who retires pursuant to this subsection is not subject to the provisions of Section 9‑8‑120 unless he has vacated his office.

~~(c)~~(4) For a member retiring and continuing to serve as judge, solicitor, or circuit public defender pursuant to subsection ~~(7)(b)~~ (G)(3) the additional benefit provided for in subsection ~~(6)~~(F) will be deferred and placed in the system's trust fund until the member reaches the age of sixty years. Upon reaching the age of sixty years, the additional benefit will be distributed, plus interest, to the member.

~~(d)~~(5) For all purposes other than employment, a member retiring and continuing to serve as judge, solicitor, or circuit public defender pursuant to ~~either~~ subsection ~~(7)(a) or (7)(b)~~ (G)(1), (G)(2), or (G)(3) is a retired member of the system.”

SECTION 3. Section 22-1-25 of the 1976 Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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