CHAPTER 1

South Carolina Retirement System

ARTICLE 1

General Provisions

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑10.** Definitions.

As used in this chapter, unless a different meaning is plainly required by the context:

(1) “Accumulated contribution” means the sum of all the amounts deducted from the compensation of a member and credited to the members individual account in the employee annuity savings fund, together with regular interest on the account, as provided in Article 9 of this chapter.

(2) “Active member” means an employee who is compensated by an employer participating in the system and who is making regular retirement contributions to the system.

(3) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of mortality tables adopted by the board and regular interest.

(4)(a) “Average final compensation” with respect to Class One and Class Two members retiring on or after July 1, 1986, means the average annual earnable compensation of a member during the twelve consecutive quarters of his creditable service on which regular contributions as a member were made to the system producing the highest such average; a quarter means a period January through March, April through June, July through September, or October through December. An amount up to and including forty‑five days’ termination pay for unused annual leave at retirement may be added to the average final compensation. Average final compensation for an elected official may be calculated as the average annual earnable compensation for the thirty‑six consecutive months before the expiration of the elected official’s term of office.

(b) “Average final compensation” with respect to Class Three members means the average annual earnable compensation of a member during the twenty consecutive quarters of the member’s creditable service on which regular contributions as a member were made to the system producing the highest such average; a quarter means a period January through March, April through June, July through September, or October through December. Termination pay for unused annual leave at retirement may not be added to the average final compensation.

(5) “Beneficiary” means a person in receipt of a pension, an annuity, a retirement allowance or other benefit provided under the system.

(6) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority which shall act under the provisions of this chapter through its Division of Retirement Systems.

(7) “Creditable service” means a member’s earned service, prior service, and purchased service.

(8)(a) “Earnable compensation” means the full rate of the compensation that would be payable to a member if the member worked the member’s full normal working time; when compensation includes maintenance, fees, and other things of value the board shall fix the value of that part of the compensation not paid in money directly by the employer.

(b) For work performed by a member after December 31, 2012, earnable compensation does not include any overtime pay not mandated by the employer.

(9) “Earned service” means:

(a) paid employment as a teacher or employee of an employer participating in the system where the teacher or employee makes regular retirement contributions to the system; or

(b) service rendered while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four Year and Postgraduate Institutions of Higher Education that has been purchased pursuant to Section 9‑1‑1140(F); or

(c) service earned as a participant in the system, the South Carolina Police Officers Retirement System, the Retirement System for Members of the General Assembly, or the Retirement System for Judges and Solicitors that is transferred to or purchased in the system.

(10) “Educational service” means paid service as a classroom teacher in a public, private, or sectarian school providing elementary or secondary education, kindergarten through grade twelve.

(11) “Employee” means:

(a) to the extent compensated by this State, an employee, agent, or officer of the State or any of its departments, bureaus, and institutions, other than the public schools, whether the employee is elected, appointed, or employed;

(b) the president, dean, professor, or teacher or any other person employed in any college, university, or educational institution of higher learning supported by and under the control of the State;

(c) an employee, agent, or officer of a county, municipality, or school district, or an agency or department of any of these, which has been admitted to the system under the provisions of Section 9‑1‑470, to the extent the employee, agent, or officer is compensated for services from public funds;

(d) an employee of the extension service and any other employee a part of whose salary or wage is paid by the federal government if the federal funds from which the salary or wage is paid before disbursement become state funds;

(e) an employee of a service organization, the membership of which is composed solely of persons eligible to be teachers or employees as defined by this section, if the compensation received by the employees of the service organization is provided from monies paid by the members as dues or otherwise, or from funds derived from public sources and if the employee contributions prescribed by this title are paid from the funds of the service organization;

(f) an employee of an alcohol and drug abuse planning agency authorized to receive funds pursuant to Section 61‑12‑20;

(g) an employee of a local council on aging or other governmental agency providing aging services funded by the Office on Aging, Office of the Lieutenant Governor.

“Employee” does not include supreme and circuit court judges, any person whose services are remunerated solely by per diem payments, or any person employed by a school, college, or university at which the person is enrolled as a student or otherwise regularly attending classes for academic credit unless the person is employed as a school bus driver and is paid by the same school district in which the person is enrolled in school. In determining student status, the system may consider the guidelines of the Social Security Administration regarding student services and other criteria the system uniformly prescribes.

(12) “Employee annuity” means annual payments for life derived from the accumulated contributions of a member.

(13) “Employee annuity reserve” means the present value of all payments to be made on account of an employee annuity or benefit in lieu of the employee annuity, computed on the basis of mortality tables adopted by the board and regular interest.

(14) “Employer” means this State, a county board of education, a district board of trustees, the board of trustees or other managing board of a state‑supported college or educational institution, or any other agency of this State by which a teacher or employee is paid; the term “employer” also includes a county, municipality, or other political subdivision of the State, or an agency or department of any of these, which has been admitted to the system under the provisions of Section 9‑1‑470, a service organization referred to in item (11)(e) of this section, an alcohol and drug abuse planning agency authorized to receive funds pursuant to Section 61‑12‑20, and a local council on aging or other governmental agency providing aging services funded by the Office on Aging, Office of the Lieutenant Governor.

(15) “Employer annuity” means annual payments for life derived from money provided by the employer.

(16) “Employer annuity reserve” means the present value of all payments to be made on account of an employer annuity or benefit in lieu of the employee annuity, computed on the basis of mortality tables adopted by the board and regular interest.

(17) [Reserved]

(18) “Member” means a teacher or employee included in the membership of the system as provided in Article 5 of this chapter.

(18A) “Class Three member” means an employee member of the system with an effective date of membership after June 30, 2012.

(19) “Military service” means:

(a) service in the United States Army, United States Navy, United States Marine Corps, United States Air Force, or United States Coast Guard;

(b) service in the select reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or the Coast Guard Reserve, and

(c) service as a member of the Army National Guard or Air National Guard of this or any other state.

(20) “Nonqualified service” means purchased service other than public service, educational service, military service, leave of absence, and reestablishment of withdrawals.

(21) “Prior service” means service rendered as a teacher or employee before July 1, 1945, for which credit is allowable under Article 7 of this chapter.

(22) “Public school” means a school conducted within this State under the authority and supervision of a duly elected or appointed school district board of trustees.

(23) “Public service” means service as an employee of the government of the United States, a state or political subdivision of the United States, or an agency or instrumentality of any of these. “Public service” does not include “educational service” or “military service” as defined in this section. “Public service” does include paid service rendered as an employee of a postsecondary public technical college or public junior college, or a public four‑year or postgraduate institution of higher education, while the member was a student at that institution.

(24) “Purchased service” means service credit purchased by an active member while an employee of an employer participating in the system.

(25) “Regular interest” means interest compounded annually at a rate determined by the board in accordance with Section 9‑1‑280.

(26) “Retirement” means the withdrawal from active service with a retirement allowance granted under the system.

(27) “Retirement allowance” means the sum of the employer annuity and the employee annuity or any optional benefit payable in lieu of the annuity.

(28) “Retirement system” or “system” means the South Carolina Retirement System established under Section 9‑1‑20.

(28A) “Rule of ninety” means a requirement that the total of the member’s age and the member’s creditable service equals at least ninety years.

(29) “State” or “this State” means the State of South Carolina;

(30) “Teacher” means a classroom teacher employed in the public schools supported by this State as determined by the board.

HISTORY: 1962 Code Section 61‑1; 1952 Code Section 61‑1; 1945 (44) 212; 1949 (46) 424; 1950 (46) 3605; 1951 (47) 172; 1964 (53) 1843; 1966 (54) 2009; 1970 (56) 1939; 1977 Act No. 27 Section 1; 1978 Act No. 408; 1978 Act No. 430 Section 1; 1984 Act No. 512, Part II, Section 27A; 1986 Act No. 540, Part II, Section 25A, effective June 18, 1986, and became law without the Governor’s signature; 1991 Act No. 162, Sections 1, 2, eff June 12, 1991; 1996 Act No. 458, Part II, Section 48A, eff June 19, 1996; 1998 Act No. 317, Sections 2, 3, eff July 1, 1998; 2000 Act No. 387, Part II, Section 67A, eff January 1, 2001; 2003 Act No. 77, Section 1, eff June 27, 2003; 2005 Act No. 14, Section 1, eff July 1, 2004; 2005 Act No. 153, Pt III, Section 1, eff July 1, 2005; 2008 Act No. 311, Section 30, eff June 4, 2008; 2008 Act No. 353, Section 2, Pt 25D.1 and Pt 25D.2, eff July 1, 2008; 2012 Act No. 278, Pt I, Section 3, Pt. IV, Subpt 2, Section 39, eff July 1, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, the internal cross‑references to Section 61‑5‑320 have been changed to Section 61‑12‑20, in accordance with 1996 Act No. 415.

Effect of Amendment

The 1986 amendment revised item (17) by making grammatical changes; by substituting “July 1, 1986” for “July 1, 1970”; by substituting “twelve consecutive quarters” for “three consecutive fiscal years”; by adding the provision defining “quarter”; by adding “at retirement” following “unused annual leave”; and by substituting “average final compensation” for “pay period immediately prior to retirement and included in the average as applicable”.

The 1991 amendment in item (4) added sub‑item (f) and made grammatical changes, and in item (5) added “and an alcohol and drug abuse planning agency authorized to receive funds pursuant to Section 61‑5‑320” and made grammatical changes.

The 1996 amendment revised item (4)(f).

The 1998 amendments, in item 4, added subitem (g); and at the end of item 5, added “and a local council on aging or other governmental agency providing aging services funded by the Office on Aging, Department of Health and Human Services”.

The 2000 amendment rewrote this section.

The 2003 amendment, in item (9), designated the existing subparagraph as (a), made nonsubstantive changes in the introductory paragraph and new paragraph (a), and added paragraph (b) relating to services rendered while participating in specific retirement programs and paragraph (c) relating to services earned in the system.

The first 2005 amendment, in item (23), added the third sentence relating to student employment.

The second 2005 amendment, in item (17), substituted “[Reserved]” for “ ‘Medical board’ means the board of physicians provided for in section 9‑1‑220;”.

The first 2008 amendment, in item (11), in the undesignated paragraph at the end added “, any person whose services are remunerated solely by per diem payments,”.

The second 2008 amendment, in items (11)(g) and (14), substituted “Office of the Lieutenant Governor” for “Department of Health and Human Services”.

The 2012 amendment rewrote items (4), (6), and (8); and added item (18A), defining “class three member”, and item (28A), defining “rule of ninety”.

CROSS REFERENCES

Employees of SC Edisto Development Authority eligible for participation in the State Retirement System, see Section 13‑21‑30.

Employees of SC Midlands Authority eligible for participation in the State Retirement System, see Section 13‑19‑30.

South Carolina Retirement System regulations, see S.C. Code of Regulations R. 19‑900 et seq.

Retirement system for judges and solicitors, service credit, vesting, see Section 9‑8‑50.

RESEARCH REFERENCES

ALR Library

91 ALR 5th 225 , What Constitutes “Salary,” “Wages,” “Pay,” or the Like, Within Pension Law Basing Benefits Thereon.

Forms

Am. Jur. Pl. & Pr. Forms Pensions and Retirement Funds Section 2 , Introductory Comments.

Attorney General’s Opinions

Fees received by a county official are considered as part of his earnable compensation within the meaning of item (16). 1964‑65 Op Atty Gen, No 1867, p 132.

“Employer”. The Oconee Memorial Hospital qualifies under items (4) and (5) of this section [Code 1962 Section 61‑1] as an “employer.” 1968‑69 Op Atty Gen, No 2705, p 152.

The Six Mile Rural Community Water District qualifies under items (4) and (5) of this section [Code 1962 Section 61‑1] as an “employer.” 1969‑70 Op Atty Gen, No 2826, p 40.

The Greenwood Metropolitan District Commission qualifies under items (4) and (5) of this section [Code 1962 Section 61‑1] as an “employer.” 1969‑70 Op Atty Gen, No 3006, p 290.

“Employee”. An independent contractor is not an employee of the State under this Title, as defined in item (4) of this section [Code 1962 Section 61‑1]. 1970‑71 Op Atty Gen, No 3088, p 31.

Board can limit employment after retirement. The State Budget and Control Board is empowered under this section [Code 1962 Section 61‑1] to make an administrative ruling that a retired member of the State Retirement System cannot return to covered employment after retirement. 1970‑71 Op Atty Gen, No 3104, p 50.

“Creditable service”. Annual creditable service for State board member paid on a per diem basis is to be fixed and determined by the State Budget and Control Board. 1970‑71 Op Atty Gen, No 3172, p 140.

The fact that a member of a State board is paid on a per diem basis does not disqualify him as an “employee” within the meaning of item (4) of this section [Code 1962 Section 61‑1]. 1970‑71 Op Atty Gen, No 3172, p 140.

The Carolina Art Association of Charleston is not an “employer” within the meaning of item (5) of this section [Code 1962 Section 61‑1]. 1970‑71 Op Atty Gen, No 3174, p 143.

When a beneficiary named under the South Carolina Retirement System is disqualified from receiving payments, the Estate or the heirs of the deceased would take in place of the beneficiary. 1976‑77 Op Atty Gen, No 77‑192, p 146.

NOTES OF DECISIONS

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1. In general

Pursuant to doctrine of stare decisis, Supreme Court would honor Kennedy precedent concerning calculation of state employees’ retirement benefits, and dismiss employees’ class action which raised identical issue as that raised in Kennedy, that being whether Retirement System was required to add a credit for unused annual leave up to 45 days to average final compensation. Wehle v. South Carolina Retirement System (S.C. 2005) 363 S.C. 394, 611 S.E.2d 240. Courts 90(1)

Statute defining average final compensation for a retiring state employee and permitting up to 45 days of annual leave to be “added to the average final compensation” was unclear at what point the unused annual leave was to be added into the average final compensation equation, and thus was ambiguous on its face; statute could be read as adding up to 45 days of unused annual leave to the average final compensation equation after average was taken or as adding up to 45 days of unused annual leave to equation before taking average of the 12 highest quarters, and word “to” in phrase “added to” could be read as either a word of exclusion or inclusion. Kennedy v. South Carolina Retirement System (S.C. 2001) 345 S.C. 339, 549 S.E.2d 243, rehearing denied 349 S.C. 531, 564 S.E.2d 322. Public Employment 396; States 64.1(2)

The purposes of the state’s retirement act, Sections 9‑1‑10 et seq., are remedial and beneficent. King v. South Carolina Retirement Systems (S.C. 1995) 319 S.C. 373, 319 S.C. 822, 461 S.E.2d 822. Public Employment 381; States 64.1(1)

The statutes of the state’s retirement act, Sections 9‑1‑10 et seq., should be liberally construed in favor of those to be benefitted and the objects sought to be accomplished. King v. South Carolina Retirement Systems (S.C. 1995) 319 S.C. 373, 319 S.C. 822, 461 S.E.2d 822. Public Employment 381; States 64.1(2)

2. Termination pay

Under statute defining average final compensation for retiring state employees and permitting up to 45 days of annual leave to be “added to the average final compensation,” up to 45 days of unused annual leave would be added to the computation before taking the average of the 12 highest quarters. Kennedy v. South Carolina Retirement System (S.C. 2001) 345 S.C. 339, 549 S.E.2d 243, rehearing denied 349 S.C. 531, 564 S.E.2d 322. Public Employment 396; States 64.1(3)

Statute providing that state Retirement System “may” add up to 45 days of unused annual leave to calculation of state employee’s retirement benefits did not give Retirement System complete discretion as to whether and how to add unused annual leave but, rather, allowed Retirement System to include up to 45 days, and no more, of unused annual leave if the employee had such unused leave when he or she retired. Kennedy v. South Carolina Retirement System (S.C. 2001) 345 S.C. 339, 549 S.E.2d 243, rehearing denied 349 S.C. 531, 564 S.E.2d 322. Public Employment 396; States 64.1(3)

3. Evidence of legislative intent

Legislative intent of state retirement system statute allowing 45 days of unused leave to be added to average compensation when calculating retirement benefit was to cap the amount of accumulated leave that could be figured into the retirement calculation at 45 days. Duvall v. South Carolina Budget and Control Bd. (S.C. 2008) 377 S.C. 36, 659 S.E.2d 125. Public Employment 396

Testimony of former director of state Retirement System as to how he drafted amendment to statute defining average final compensation for retiring state employees and what he intended amendment to accomplish was not admissible as evidence of legislative intent, in declaratory judgment action concerning proper method for calculation of retirement benefits under statute. Kennedy v. South Carolina Retirement System (S.C. 2001) 345 S.C. 339, 549 S.E.2d 243, rehearing denied 349 S.C. 531, 564 S.E.2d 322. Public Employment 396; States 64.1(2)

4. Average final compensation

Under statute defining average final compensation for retiring state employees and permitting up to 45 days of annual leave to be “added to the average final compensation,” up to 45 days of unused annual leave would be added to the computation before taking the average of the 12 highest quarters, even if a proposed increased benefit involving the addition of a credit for unused annual leave to the average final compensation was affordable in 1986, which was year that legislature amended definition of average final compensation; critical inquiry was legislature’s intent, and legislature did not intend the proposed benefit. Wehle v. South Carolina Retirement System (S.C. 2005) 363 S.C. 394, 611 S.E.2d 240. Public Employment 396; States 64.1(3)

5. Annual leave

Fact that retiree was not classified as a state employee did not exempt him from state retirement system statutory requirement limiting amount of unused accumulated annual leave retirees could add to their final compensation when calculating benefits. Duvall v. South Carolina Budget and Control Bd. (S.C. 2008) 377 S.C. 36, 659 S.E.2d 125. Public Employment 396

When calculating his final compensation for purposes of state retirement system benefits, retiree could not add pre‑retirement payment for more than 90 days of excess unused leave, in addition to payment he received at retirement for 45 days of unused annual leave, under statute limiting amount of termination pay for unused leave to 45 days. Duvall v. South Carolina Budget and Control Bd. (S.C. 2008) 377 S.C. 36, 659 S.E.2d 125. Public Employment 396

Evidence did not support retired state employees’ claim that state Retirement System, through its actuaries and state Budget and Control Board, intentionally miscalculated its assets and liabilities to create illusion that purported retirement benefit involving the addition of a credit for unused annual leave to an employee’s average final compensation was not affordable; evidence demonstrated that professionals charged with managing System discharged their duties responsibly and with a commitment to ensure the continued stability and soundness of state’s various pension funds. Wehle v. South Carolina Retirement System (S.C. 2005) 363 S.C. 394, 611 S.E.2d 240. Public Employment 396; States 64.1(3)

6. Immunity

A judgment on favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑1‑20.** South Carolina Retirement System created; System shall have powers and privileges of corporation; purposes of System.

A retirement system is hereby established and placed under the management of the board for the purpose of providing retirement allowances and other benefits for teachers and employees of the State and political subdivisions or agencies or departments thereof. The system so created shall have the power and privileges of a corporation and shall be known as the “South Carolina Retirement System”, and by such name all of its business shall be transacted, all of its funds invested, and all of its cash, securities, and other property held.

HISTORY: 1962 Code Section 61‑2; 1952 Code Section 61‑2; 1945 (44) 212; 1949 (46) 424; 2012 Act No. 278, Pt IV, Subpt 2, Section 40, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board” for “State Budget and Control Board” and made other, nonsubstantive, changes.

CROSS REFERENCES

Public officers and employees, generally, see Section 8‑1‑10 et seq.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 3.

NOTES OF DECISIONS

In general 1

Immunity 2

1. In general

South Carolina Retirement Systems Act places no duty on State Senate as employer to inform employee faced with termination of availability of disability retirement benefits. Hamiter v. Retirement Div. of the South Carolina Budget and Control Bd. (S.C. 1997) 326 S.C. 93, 484 S.E.2d 586. Public Employment 389(2); States 64.1(1)

Senate did not owe fiduciary duty to allegedly disabled employee faced with threat of termination to advise her of availability of disability retirement benefits, based on assertion that Senate acted as trustee of retirement funds, as Senate retained no control over funds. Hamiter v. Retirement Div. of the South Carolina Budget and Control Bd. (S.C. 1997) 326 S.C. 93, 484 S.E.2d 586. Public Employment 389(2); States 64.1(1)

2. Immunity

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2384

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑1‑30.** Property of System exempt from taxation.

All property owned or acquired by the Retirement System for the purposes of this chapter shall be exempt from all taxes imposed by the State or any political subdivision thereof.

HISTORY: 1962 Code Section 61‑3; 1952 Code Section 61‑3; 1945 (44) 212; 1949 (46) 424.

CROSS REFERENCES

Tax exemptions, generally, see Sections 12‑37‑210 et seq.

**SECTION 9‑1‑40.** Penalties for making false statement or record.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record of the System in any attempt to defraud the System as a result of such act shall be guilty of a misdemeanor and, on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding twelve months, or both such fine and imprisonment at the discretion of the court.

HISTORY: 1962 Code Section 61‑4; 1952 Code Section 61‑4; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑50.** Reservation of right to revise System to conform to changes in Federal Social Security Act.

The State hereby reserves the right, in case the Federal Social Security Act be so amended that the members or beneficiaries of the System can be included in the old age and survivors insurance plan provided for in said Federal Act, to revise the System upon a fair and equitable basis so that the members or beneficiaries of the System may be included under the provisions of said Federal Act.

HISTORY: 1962 Code Section 61‑5; 1952 Code Section 61‑7; 1945 (44) 212; 1949 (46) 424.

CROSS REFERENCES

Coverage of public officers and employees under the Federal Social Security Act, see Sections 9‑3‑10 et seq.

**SECTION 9‑1‑60.** Implementation of “cafeteria” plan.

(A) The System may develop and implement a program for the administration of a flexible benefits or “cafeteria” plan as defined by Section 125 of the Internal Revenue Code of 1986 for all employees covered by the health and dental insurance plan administered by the System. The plan may not decrease contributions paid to or benefits paid by the System.

The South Carolina Department of Highways and Public Transportation is herewith authorized to continue its independent cafeteria or flexible benefits pilot plan and to modify and implement the plan to accomplish maximum available benefits under Internal Revenue Section 125, until such time as the Comptroller General can convert Department of Transportation employees into the state cafeteria plan.

(B) Political subdivisions may develop and implement a program for the administration of a flexible benefits or “cafeteria” plan as defined by Section 125 of the Internal Revenue Code of 1986, as amended, for their employees. The plan may not decrease contributions paid to or benefits paid by the system. For political subdivisions that also participate in the plan adopted pursuant to subsection (A) of this section, any separate cafeteria plan adopted pursuant to this subsection may provide benefits in addition to, but shall not include, the specific types of benefits provided to employees under the plan adopted pursuant to subsection (A) of this section.

(C) An employer or coalition of employers working in concert may develop and implement a program for the administration of a flexible benefits or “cafeteria” plan as defined by Section 125 of the Internal Revenue Code of 1986, as amended, for their employees. The plan may not decrease contributions paid to or benefits paid by the system. For employers or coalition of employers working in concert, that also participate in the plan adopted pursuant to subsection (A) of this section, any separate cafeteria plan adopted pursuant to this subsection may provide benefits in addition to, but shall not include, the specific types of benefits provided to employees under the plan adopted pursuant to subsection (A) of this section.

HISTORY: 1987 Act No. 170, Part II, Section 18, eff June 22, 1987 (became law without Governor’s signature); 1993 Act No. 181, Section 78, eff July 1, 1993; 2001 Act No. 62, Section 3, eff June 22, 2001; 2001 Act No. 62, Section 4, eff June 22, 2001.

Editor’s Note

2001 Act No. 62, Section 5, provides:

“The implementation of the ‘parallel’ cafeteria plans authorized in Sections 3 and 4 of this act is contingent on a ruling from the Internal Revenue Service that such ‘parallel’ plans may be tested alone for purposes of discrimination testing and not aggregated with the cafeteria plan maintained by the State.”

Effect of Amendment

The 1993 amendment revised this section by adding to the end of (A) the words: “, until such time as the Comptroller General can convert Department of Transportation employees into the state cafeteria plan.”

The 2001 amendment added the third sentence of subsection (B) and added subsection (C).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 40, Agreements Affecting Compensation.

**SECTION 9‑1‑70.** Repealed by 1990 Act No. 458, Section 2, eff May 3, 1990.

Editor’s Note

Former Section 9‑1‑70 was derived from 1988 Act No. 509.

Former section 9‑1‑70 directed the Retirement System to develop a long term care insurance program for active and retired members of the system. For similar provisions, see Section 1‑11‑440.

**SECTION 9‑1‑80.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑80 was entitled “Payroll deduction installment purchase plan for establishing credit” and was derived from 1990 Act No. 559, Section 2, eff July 1, 1990; 1991 Act No. 64, Section 1, eff May 27, 1991.

**SECTION 9‑1‑100.** Payments to beneficiaries may include payments to persons, trustees, and estates.

Payments made to beneficiaries pursuant to the provisions of this chapter may include payments to a person or persons, trustees, and estates.

HISTORY: 1990 Act No. 412, Section 4, eff January 1, 1991.

ARTICLE 3

Administration

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑210.** Board shall administer system.

The general administration and responsibility for the proper operation of the system and for making effective the provisions hereof are hereby vested in the board.

HISTORY: 1962 Code Section 61‑11; 1952 Code Section 61‑11; 1945 (44) 212; 1949 (46) 424; 2012 Act No. 278, Pt IV, Subpt 2, Section 41, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “board” for “State Budget and Control Board”.

CROSS REFERENCES

Department of Administration, generally, see Section 1‑11‑10 et seq.

Funding of administrative costs of system and allocation of costs, see Section 9‑1‑310.

Attorney General’s Opinions

Board can limit employment after retirement. The State Budget and Control Board is empowered under Code 1962 Sections 61‑1 et seq. to make an administrative ruling that a retired member of the State Retirement System cannot return to covered employment after retirement. 1970‑71 Op Atty Gen, No 3104, p 50.

The Attorney General’s Office will not pass judgment on the State Budget and Control Board when the latter is acting within its discretionary authority to administer and manage the State Retirement System. 1975‑76 Op Atty Gen, No 4451, p 310.

NOTES OF DECISIONS

In general 1

1. In general

Senate did not owe fiduciary duty to allegedly disabled employee faced with threat of termination to advise her of availability of disability retirement benefits, based on assertion that Senate acted as trustee of retirement funds, as Senate retained no control over funds. Hamiter v. Retirement Div. of the South Carolina Budget and Control Bd. (S.C. 1997) 326 S.C. 93, 484 S.E.2d 586. Public Employment 389(2); States 64.1(1)

**SECTION 9‑1‑220.** Repealed by 2005 Act No. 153, Pt. III Section 5, eff July 1, 2005.

Editor’s Note

Former Section 9‑1‑220 was entitled “Designation and duties of Medical Board; other physicians may report on special cases” and was derived from 1962 Code Section 61‑12; 1952 Code Section 61‑12; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑230.** Authority to engage actuarial and other services.

The Board shall engage such actuarial and other services as shall be required to transact the business of the System.

HISTORY: 1962 Code Section 61‑13; 1952 Code Section 61‑13; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑240.** Actuary for board.

The board shall designate an actuary, subject to the approval of the State Fiscal Accountability Authority or its successor, who is the technical advisor of the board on matters regarding the operation of the system and shall perform such other duties as are required in connection therewith, provided, however, that the Retirement System Investment Commission is a third‑party beneficiary of the contract with the actuary, with full rights to all actuarial valuations prepared by the actuary. The board shall provide to the State Fiscal Accountability Authority or its successor actuarial valuations and reports requested.

HISTORY: 1962 Code Section 61‑14; 1952 Code Section 61‑14; 1945 (44) 212; 1949 (46) 424; 2017 Act No. 13 (H.3726), Pt. II, Section 6, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. II, Section 6, rewrote the section, providing that the state fiscal accountability authority shall approve the actuary and providing that the Retirement System Investment Commission is a third‑party beneficiary of the contract with the actuary.

**SECTION 9‑1‑250.** Investigation and valuation by actuary every five years.

At least once in each five‑year period, the first of which began in 1947, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the System and shall make a valuation of the contingent assets and liabilities of the System and the Board, after taking into account the results of such investigations and valuations, shall adopt for the System such mortality, service and other tables as shall be deemed necessary.

HISTORY: 1962 Code Section 61‑15; 1952 Code Section 61‑15; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑260.** Annual valuation by actuary.

On the basis of regular interest and tables last adopted by the Board the actuary shall make an annual valuation of the contingent assets and liabilities of the System.

HISTORY: 1962 Code Section 61‑16; 1952 Code Section 61‑16; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑270.** Board shall keep actuarial data in convenient form.

The Board shall keep in convenient form such data as shall be necessary for actuarial valuation of the contingent assets and liabilities of the System and for checking the experience of the System.

HISTORY: 1962 Code Section 61‑17; 1952 Code Section 61‑17; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑280.** Board shall determine interest rate; base rate established.

The Board shall determine from time to time the rate of regular interest for use in all calculations, with the rate of four per cent per annum applicable unless heretofore or hereafter changed by the Board.

HISTORY: 1962 Code Section 61‑18; 1952 Code Section 61‑18; 1945 (44) 212; 1949 (46) 424.

Editor’s Note

The rate of interest noted in this section was increased from 4% to 6% by resolution of the Budget and Control Board on March 23, 1982.

**SECTION 9‑1‑290.** Rules and regulations.

Subject to the limitations hereof, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of business. The Board shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of the System.

HISTORY: 1962 Code Section 61‑19; 1952 Code Section 61‑19; 1945 (44) 212; 1949 (46) 424.

CROSS REFERENCES

Regulation pertaining to creditable service, see S.C. Code of Regulations R. 19‑905.

**SECTION 9‑1‑300.** Records and reports.

The Board shall keep a record of all its proceedings under this chapter, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the System for the preceding year, the amount of the accumulated cash and securities of the System and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the contingent assets and liabilities of the System.

HISTORY: 1962 Code Section 61‑20; 1952 Code Section 61‑20; 1945 (44) 212; 1949 (46) 424; 1981 Act No. 178 Part II Section 17; 1982 Act No. 466 Part II Section 3A.

**SECTION 9‑1‑310.** Administrative costs of retirement systems funded from interest earnings; allocation of costs.

The administrative cost of the South Carolina Retirement System, the South Carolina Police Officers Retirement System, the Retirement System for Members of the General Assembly of the State of South Carolina, the Retirement System for Judges and Solicitors of the State of South Carolina, and the National Guard Retirement System must be funded from the interest earnings of the above systems. The allocation of the administrative costs of the systems must be made by the board and must be based upon a proration of the cost in proportion to the assets that each system bears to the total assets of all of the systems for the most recently completed fiscal year.

HISTORY: 1982 Act No. 466 Part II Section 3B; 2005 Act No. 155, Section 2, eff January 1, 2006; 2012 Act No. 278, Pt IV, Subpt 2, Section 42.A, eff July 1, 2012.

Effect of Amendment

The 2005 amendment added “, and the National Guard Retirement System”, added “State” before “Budget and Control Board” and substituted “must” for “shall” throughout.

The 2012 amendment substituted “board” for “State Budget and Control Board”.

**SECTION 9‑1‑320.** Confidentiality of member records.

All records of all active, retired, and inactive members maintained by the South Carolina Retirement Systems are classified as confidential records. These records are exempt from the disclosure requirements of Chapter 4 of Title 30, and shall not be disclosed to third parties, except where authorized by the member or where requested by state and federal authorities, and then only at the sole discretion of the director of the South Carolina Retirement Systems.

HISTORY: 2008 Act No. 311, Section 29, eff June 4, 2008.

ARTICLE 5

Membership in System

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑410.** Membership generally.

The membership of the System shall be composed as provided in this article.

HISTORY: 1962 Code Section 61‑31; 1952 Code Section 61‑31; 1945 (44) 212; 1949 (46) 424.

LIBRARY REFERENCES

60 C.J.S., Pensions Section 4.

**SECTION 9‑1‑420.** Certain persons employed after December 31, 1948, are automatically members of System.

All persons who have or shall become teachers or employees after December 31, 1948, except those specifically excluded under Section 9‑1‑450 or those as to whom membership is optional under Sections 9‑1‑510 to 9‑1‑560, have become or shall become members of the System as a condition of their employment.

HISTORY: 1962 Code Section 61‑32; 1952 Code Section 61‑32; 1945 (44) 212; 1949 (46) 424; 1950 (46) 2369.

**SECTION 9‑1‑425.** Contributing member of system.

Notwithstanding any other provision of law, a contributing member of the System shall remain a contributing member while under employment to an employer covered by the System.

HISTORY: 1983 Act No. 26 Section 4.

**SECTION 9‑1‑430.** Special provision for certain persons employed between April 26, 1945 and December 31, 1966.

All persons who were teachers or State, county or municipal employees on April 26, 1945, or who became such after this date but on or before December 31, 1966, except those specifically excluded under Section 9‑1‑450 and the persons permitted to exercise the option under Sections 9‑1‑510 to 9‑1‑560, became members as of July 1, 1945, or as of the date of last employment, if later, unless on or before December 31, 1948, they filed with the Board on a form prescribed by the Board a notice of their election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the System.

HISTORY: 1962 Code Section 61‑33; 1952 Code Section 61‑33; 1945 (44) 212; 1949 (46) 424; 1950 (46) 2170, 2369; 1951 (47) 172; 213; 1952 (47) 2094; 1955 (49) 512; 1964 (53) 1848; 1966 (54) 2600.

**SECTION 9‑1‑440.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑440 was entitled “Certain persons who originally elected not to become members may subsequently apply for membership; adjustments for service credits” and was derived from 1962 Code Section 61‑34; 1952 Code Section 61‑34; 1945 (44) 212; 1949 (46) 424; 1964 (53) 1848; 1966 (54) 2600; 1970 (56) 1949; 1976 Act No. 523; 1977 Act No. 27 Section 2; 1991 Act No. 86, Section 2, eff May 27, 1991; 1994 Act No. 420, Section 1, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit; 1996 Act No. 458, Part II, Section 48B, eff June 19, 1996.

**SECTION 9‑1‑450.** Members of other agency or departmental retirement plans.

Notwithstanding any provisions to the contrary, any teacher or employee who was a member of any other retirement plan or fund in operation on April 26, 1945 under sponsorship of any governmental agency or department shall not be entitled to membership in the System unless on or before July 1, 1946 any such teacher or employee indicated by a notice filed with the Board on a form prescribed by the Board his individual election and choice to participate in the System. If a majority of the members of any such retirement plan or fund so voted all members of that retirement plan or fund became eligible to participate in the System and became members of the System unless within thirty days next succeeding a date named by the Board they elected not to become members.

HISTORY: 1962 Code Section 61‑35; 1952 Code Section 61‑35; 1945 (44) 212; 1949 (46) 424.

Attorney General’s Opinions

The Richland County Economic Opportunity Commission qualifies as an employer for purposes of the South Carolina Retirement System. 1964‑65 Op Atty Gen, No 1888, p 170.

**SECTION 9‑1‑460.** Discontinuance of certain local plans or funds.

If the majority of the members of a retirement or pension plan or fund voted to enter the System in the manner described in Section 9‑1‑450, the local plan or fund was discontinued and the payment of all pensions to members on the pension roll as of the date of discontinuance became and is an obligation of the city, county or other unit in which the plan or fund was operated and shall be continued and paid by such city, county or other unit.

HISTORY: 1962 Code Section 61‑36; 1952 Code Section 61‑36; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑470.** Political subdivisions may apply for admission to System as employers.

A county, municipality, or other political subdivision of the State, an agency or department of them, including a school board, a service organization as defined in Section 9‑1‑10(11)(e), and any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer, in its discretion, may become an employer by applying to the board for admission to the system and by complying with the requirements and the regulations of the board.

HISTORY: 1962 Code Section 61‑37; 1952 Code Section 61‑37; 1945 (44) 212; 1949 (46) 424; 1950 (46) 2369; 1951 (47) 172; 1988 Act No. 555, Section 1, eff May 29, 1988; 2000 Act No. 387, Part II, Section 67B, eff January 1, 2001.

Effect of Amendment

The 1988 amendment added a provision providing that any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer, is eligible for membership in the system, and made grammatical changes.

The 2000 amendment substituted “Section 9‑1‑10(11)(e)” for “Section 9‑1‑10(4)” and made other nonsubstantive changes.

CROSS REFERENCES

Qualification for participation in System of personnel employed pursuant to Joint Municipal Electric Power and Energy Act, see Chapter 23 of Title 6.

Attorney General’s Opinions

Qualified entities. The Oconee Memorial Hospital meets the requirements of the South Carolina Retirement Act as set forth in this section [Code 1962 Section 61‑37], and qualifies under Code 1962 Section 61‑1 as an “employer.” 1968‑69 Op Atty Gen, No 2705, p 152.

The Six Mile Rural Community Water District meets the requirements of the South Carolina Retirement Act as set forth in this section [Code 1962 Section 61‑37] and qualifies under Code 1962 Section 61‑1 as an “employer.” 1969‑70 Op Atty Gen, No 2826, p 40.

The Greenwood Metropolitan District Commission meets the requirements of the South Carolina Retirement Act as set forth in this section [Code 1962 Section 61‑37] and qualifies under Code 1962 Section 61‑1 as an “employer.” 1969‑70 Op Atty Gen, No 3006, p 290.

Eligible entities. The Greenwood County Airport Commission is an integral part of the county and/or city of Greenwood and the Commission is eligible to become an employer under the provisions of the South Carolina Retirement System. 1969‑70 Op Atty Gen, No 3049, p 344.

The Greenville Transit Authority is a political subdivision of the State, and thus meets the requirements for retirement coverage under the State system. 1975‑76 Op Atty Gen, No 4456, p 315.

The Chester County Commission on Alcohol and Drug Abuse is a political subdivision of the State and therefore is entitled to coverage under the South Carolina Retirement System. 1975‑76 Op Atty Gen, No 4457, p 316.

**SECTION 9‑1‑480.** Employees of political subdivisions as members.

All persons, except those specifically excluded in Sections 9‑1‑450 and 9‑1‑490 and the persons permitted to exercise the option under Sections 9‑1‑510 to 9‑1‑560, who are employed by any county, municipality, or other political subdivision or agency or department of them, any eligible service organization, or any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer, after the admission of the county, municipality, or other subdivision, agency, or department of them, service organization, or any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer, into the System under the provisions of this section, shall become members of the System as a condition of their employment. All persons, except those specifically excluded in Section 9‑1‑450 and persons permitted to exercise the option under Sections 9‑1‑510 to 9‑1‑560, who are employed by any county, municipality, or other political subdivision or agency or department of them, by any eligible service organization, or any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer, at the date of the admission of the county, municipality, or other subdivision or agency or department, or eligible service organization, or any nonprofit corporation created under the provisions of Chapter 35, Title 33, for the purpose of supplying water and sewer, into the System under the provisions of this section become members on the date of the admission, unless within a period of six months next following the admission they have filed with the Board on a form prescribed by the Board a notice of their election not to be covered in the membership and a duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the System.

HISTORY: 1962 Code Section 61‑37.1; 1952 Code Section 61‑37.1; 1945 (44) 212; 1949 (46) 424; 1950 (46) 2369; 1951 (47) 172; 1986 Act No. 504, eff June 10, 1986; 1988 Act No. 555, Section 2, eff May 29, 1988.

Effect of Amendment

The 1986 amendment added the provisions relative to credit for prior service by members of a city retirement system who are transferred to a unit covered by the System.

The 1988 amendment added “or any nonprofit corporation created under the provisions of Chapter 35 of Title 33, for the purpose of supplying water and sewer” following “service organization” in the four places it occurred, made grammatical changes, and deleted a second paragraph (added by 1986 Act No. 504) relating to credit for prior service by transferees from city retirement systems.

CROSS REFERENCES

Participation by regional councils of government in State Retirement System, see Section 6‑7‑190.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

Attorney General’s Opinions

Persons who are already employed by an employer when it enters the retirement system have six (6) months in which to file a Notice of Election not to become members, and if no such election is filed within that time, those persons automatically become members. Section 9‑1‑480, Code of Laws, S.C., 1976. 1976‑77 Op Atty Gen, No 77‑389, p 319.

**SECTION 9‑1‑490.** Firemen and peace officers.

A person employed by the State or by any county, municipality or other political subdivision in the capacity of a fireman or a peace officer shall not be required to participate in the Retirement System if such person is or becomes a member of any fireman’s pension fund or plan which may be established or created pursuant to law or the police insurance and annuity fund.

HISTORY: 1962 Code Section 61‑38; 1952 Code Section 61‑38; 1949 (46) 424.

CROSS REFERENCES

Firemen’s pension funds in cities, see Sections 9‑13‑10 et seq.

Police officers’ retirement system, see Sections 9‑11‑10 et seq.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

**SECTION 9‑1‑500.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑500 was entitled “Members of police insurance and annuity fund” and was derived from 1962 Code Section 61‑38.1; 1958 (50) 1649.

**SECTION 9‑1‑510.** Option of employees and teachers receiving $100 or less a month; legislators, and certain elected officials.

All employees and teachers having a monthly compensation from public funds of one hundred dollars or less and members of the General Assembly may exercise the option within thirty days after entering upon the discharge of such duties not to become a member of the System. Elected officials who are not fulltime employees and who earn nine thousand dollars annually, or less, may exercise an option not to become members of the system.

HISTORY: 1962 Code Section 61‑39; 1952 Code Section 61‑39; 1950 (46) 2369; 1964 (53) 1826; 1977 Act No. 28; 1981 Act No. 40.

**SECTION 9‑1‑520.** Certain members of General Assembly may elect to remain members of System; contributions.

Members of the General Assembly who have been members of the South Carolina Retirement System for at least ten years may elect to remain a member of the System within one year following termination of service in the General Assembly and shall make yearly contributions to the System in an amount equivalent to contributions payable by active members of the General Assembly.

HISTORY: 1962 Code Section 61‑39.1; 1962 (52) 2210.

CROSS REFERENCES

Legislation pertaining to the General Assembly, generally, see Title 2.

Retirement system for members of General Assembly, see Sections 9‑9‑10 et seq.

**SECTION 9‑1‑530.** Certain former legislators may elect to remain members following termination of service; contributions; members must establish service and qualify for allowance on or before December 31, 1965.

Members of the General Assembly who have been members of the South Carolina Retirement System and a member of the General Assembly for at least eight years may elect to remain a member of the System within one year following termination of service in the General Assembly and shall make yearly contributions to the System in an amount equivalent to contributions payable by active members of the General Assembly. Such members may establish such service and qualify for a retirement allowance from the Retirement System provided they do so on or before December 31, 1965.

HISTORY: 1962 Code Section 61‑39.2; 1965 (54) 622.

CROSS REFERENCES

Legislation pertaining to the General Assembly, generally, see Title 2.

Retirement system for members of General Assembly, see Sections 9‑9‑10 et seq.

Attorney General’s Opinions

Constitutionality ‑ Classification by legislative enactment of former members of the General Assembly as a class with respect to continued membership in the Retirement System after termination of service in the General Assembly is within the discretion of the legislature and appears to be a reasonable classification and therefore constitutional. 1964‑65 Op Atty Gen, No 1913, p 206.

**SECTION 9‑1‑540.** Certain constitutional officers and members of General Assembly may elect, prior to December 31, 1965, to return to System.

Any constitutional officer who has been a member of the South Carolina Retirement System and who has at least ten years of creditable service either as a constitutional officer or as a member of the General Assembly, or a combination of both under the System and who has separated prior to May 28, 1965 may elect to come under the provisions hereof; provided, he makes such election on or before December 31, 1965, and has not withdrawn his contributions from the System. Such constitutional officer shall make yearly contributions to the System in an amount equivalent to contributions payable by active members of the General Assembly.

HISTORY: 1962 Code Section 61‑39.3; 1965 (54) 622.

CROSS REFERENCES

Legislation pertaining to the General Assembly, generally, see Title 2.

Retirement system for members of General Assembly, see Sections 9‑9‑10 et seq.

**SECTION 9‑1‑550.** Option of certain public school employees.

Any teacher or employee employed in connection with the public school pupil transportation system or in connection with any program or activity defined by the Board as being of a nonpermanent nature may exercise an option not to become a member of the System, if such option is exercised within thirty days after entering upon the discharge of his duties in such employment.

HISTORY: 1962 Code Section 61‑40; 1952 Code Section 61‑40; 1950 (46) 2369; 1975 (59) 56.

**SECTION 9‑1‑560.** Option of day laborers.

Day laborers may exercise an option not to become members of the System, provided they file notice thereof within thirty days after beginning work as such day laborers.

HISTORY: 1962 Code Section 61‑41; 1952 Code Section 61‑41; 1950 (46) 2369.

**SECTION 9‑1‑570.** Option of State employees required to become members of Federal Railroad Retirement System.

Any person who becomes an employee of the State and, because of the nature of his employment, is required to become a member of the Federal Railroad Retirement System, may elect to become, or not to become, a member of the South Carolina Retirement System, provided that such option is exercised within thirty days after he enters upon the discharge of the duties of such position.

HISTORY: 1962 Code Section 61‑41.1; 1958 (50) 1649.

**SECTION 9‑1‑580.** Option of certain hospital employees.

(A) Any persons employed by a hospital, which is an employer under the system by application, in the capacity of a physician, nursing service personnel, technicians, housekeeping personnel, dietary personnel, and laundry personnel may elect not to become members of the South Carolina Retirement System, if this option is exercised within thirty days after they enter upon the discharge of their duties. The option provided for in this section is irrevocable.

(B) If for any reason, a determination is made that a person who exercised the option provided for in subsection (A) is entitled to any benefit provided pursuant to this title, the cost to establish service credit must be calculated pursuant to Section 9‑1‑1140(A). This calculation must be based on the person’s current salary or career highest fiscal year salary for any period of time the person was employed in a position that otherwise would have been covered by membership in the system, regardless of whether the person requests to purchase all of the eligible service credit. The calculated cost must be paid solely by the person’s employer, the person, or any combination of these.

(C) For purposes of this section, “physician” means a person who is licensed to practice medicine or osteopathy in this State in accordance with Chapter 47, Title 40.

HISTORY: 1962 Code Section 61‑41.2; 1964 (53) 1826; 1966 (54) 2652; 1976 Act No. 550; 2007 Act No. 112, Section 1, eff upon approval (became law without the Governor’s signature on June 27, 2007).

Effect of Amendment

The 2007 amendment designated subsection (A), adding “a physician” and the second sentence and making nonsubstantive changes; and added subsections (B) and (C).

**SECTION 9‑1‑610.** Determination of who is teacher or employee.

In all cases of doubt, the Board shall determine whether any person is a teacher or employee for the purposes of the System.

HISTORY: 1962 Code Section 61‑44; 1952 Code Section 61‑44; 1945 (44) 212; 1949 (46) 424.

Attorney General’s Opinions

Board determines employee status. Under the provisions of this section [Code 1962 Section 61‑44] the State Budget and Control Board shall determine if a member of the State Board of Barber Examiners is an “employee” within the meaning of Code 1962 Section 61‑1. 1970‑71 Op Atty Gen, No 3169, p 135.

**SECTION 9‑1‑620.** Effect on members, beneficiaries, their widows or other dependents, of other statutes.

Subject to the provisions of Chapter 5 of this Title, no other provisions of law in any other statute which provides wholly or partly at the expense of the State for annuities, pensions or retirement benefits for teachers or employees of the State, their widows or other dependents, shall apply to members or beneficiaries of the System, their widows or other dependents.

HISTORY: 1962 Code Section 61‑45; 1952 Code Section 61‑45; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38.

**SECTION 9‑1‑630.** Certain persons may withdraw from System.

The Director of the South Carolina Retirement System is authorized to permit any member of the System who has joined through error or misunderstanding to withdraw from the System.

HISTORY: 1962 Code Section 61‑46; 1962 (52) 1741.

**SECTION 9‑1‑640.** Employers and members divided into two classes; change from Class One to Class Two.

Notwithstanding any other provisions of law governing the System, effective July 1, 1964, there shall be two classes of participating employers and two classes of members. Class One employers shall include all employers who irrevocably elect, by written notification to the Board not later than December 31, 1964, to remain, and to have members in their employ remain, under the provisions of the System as in effect on June 30, 1964. Class Two employers shall include all employers who irrevocably elect, by written notification to the Board not later than December 31, 1964, to participate, and to have members in their employ participate, under the provisions of the System as amended effective July 1, 1964. Any such notification shall become effective for all purposes as of July 1, 1964. Failure by any employer to file such notification shall be deemed an irrevocable election by the employer to be a Class One employer. In any event, the State shall be a Class Two employer. Members in the employ of a Class One employer shall be Class One members, and members in the employ of a Class Two employer shall be Class Two members. Any employer becoming such on or after July 1, 1964 shall be a Class Two employer. In the event that a member shall transfer, without break in membership, from one class to another, the Board shall determine his benefit upon retirement in an equitable manner by uniform rules consistent herewith.

Notwithstanding the foregoing, any Class One employer may elect to become a Class Two employer and have employees in its employ participate under the provisions of the System as amended effective July 1, 1964; provided, that such employer and each and every such member shall make such additional contributions to the System, plus regular interest, as would have been required had such employer become a Class Two employer as of July 1, 1964.

Effective July 1, 1976, or any subsequent July first, a Class One employer may elect Class Two coverage on July 1, 1976, or as of July first of any year thereafter. It is mandatory for each Class One employee of any such employer to participate in Class Two coverage from the effective date of the employer election. Upon service retirement, a member shall receive a service retirement allowance equal to the sum of his benefit computed by the Class One formula for service credited under Class One membership and his benefit computed by the Class Two formula for service credited under Class Two membership. A Class One member may convert Class One service to Class Two by paying into the System two and one‑half percent of his earnable compensation, or the average of the highest twelve consecutive quarters, whichever is greater, for each year prorated for periods of less than one year. A member who elects to convert from Class One to Class Two must convert all such service for which eligible.

HISTORY: 1962 Code Section 61‑47; 1964 (53) 1843; 1966 (54) 2424; 1973 (58) 264; 1976 Act No. 587 Section 1; 1988 Act No. 500, Section 1, eff May 9, 1988.

Effect of Amendment

The 1988 amendment in the last paragraph replaced “shall be” with “is” in the second sentence, and added a provision providing a formula for converting a Class One membership to a Class Two membership.

**SECTION 9‑1‑650.** Continuation of membership in correlated systems.

As used in this section, “correlated system” shall mean one or more of the following:

(1) South Carolina Retirement System;

(2) South Carolina Police Officers’ Retirement System;

(3) Retirement System for members of the General Assembly of the State of South Carolina.

If a member of any correlated system ceases to occupy a position covered under the System and if, within the protective period and under such conditions as are set forth in the correlated system for continuation of membership therein, he accepts a position covered by another correlated system, he shall notify the Director of each System of the employment, and his membership in the first System must be continued so long as his membership in the other System continues. Service credited to the member under the provisions of the first System must be considered service credits for the purpose of determining eligibility for benefits, but not the amount thereof, under the other System. Any benefit under any one of the correlated systems must be computed solely on the basis of service and contributions credited under that System, and must be payable at such times and subject to such age and service conditions as are set forth therein, except the average final salary under either the South Carolina Retirement System or the Police Officers Retirement System may be used for the benefit calculation under both systems for consecutive earned service credit. A member shall not be eligible to receive retirement payments so long as he is employed in a position covered by the South Carolina Retirement System or the South Carolina Police Officers Retirement System.

HISTORY: 1962 Code Section 61‑48; 1967 (55) 252; 1986 Act No. 529, Section 4, eff June 18, 1986.

Effect of Amendment

The 1986 amendment revised the second paragraph by making grammatical changes; deleting “Notwithstanding any other provision of law,” at the beginning thereof; and adding “except the average final salary under either the South Carolina Retirement System or the Police Officers Retirement System may be used for the benefit calculation under both systems for consecutive earned service credit”.

**SECTION 9‑1‑660.** Firemen eligible for Police Officers Retirement System; benefits.

Any county, municipality or other political subdivision of the State and any agency or department thereof which has firemen it employs covered under the South Carolina Retirement System may become an employer and have such firemen covered under the South Carolina Police Officers Retirement System by applying for admission to the System on July 1, 1976, or any subsequent July first. A majority of the persons then employed as firemen by the prospective employer must elect irrevocably to become members of the South Carolina Police Officers Retirement System as of the requested date of admission.

Any fireman who is a member of the South Carolina Retirement System and who becomes a member of the South Carolina Police Officers Retirement System as provided in this section shall be continued as a member under the provisions of the South Carolina Retirement System so long as his membership in the South Carolina Police Officers Retirement System continues. Service credited to the member under the provisions of the South Carolina Police Officers Retirement System shall be considered for the purpose of determining eligibility for benefits but not the amount thereof under the South Carolina Retirement System. Any benefit under either one of these two correlated systems shall be computed solely on the basis of service and contributions credited under that System, but in determining the member’s average final compensation, his compensation received during credited service under both Systems shall be taken into account. Such benefits shall be payable at such times and subject to such age and service conditions as provided under the respective Systems; provided, however, a member shall not be eligible to receive retirement payments so long as he is employed in a position covered by the South Carolina Retirement System or the South Carolina Police Officers Retirement System. Notwithstanding the above, the disability retirement benefit shall only be paid from and based on the benefit provisions of the System to which the member is contributing at the time of disability and shall be based on the total of his credited service under both Systems. The amount of accumulated contributions of such disabled member which is credited to his account under the System to which he is not contributing at the time of disability, shall be transferred to the System from which his disability retirement benefit shall be paid.

For the purposes of this section, “fireman” shall mean any person who receives his salary from an employer and who is required by the terms of his employment, either by election or appointment, to give his time to prevention and control of property destruction by fire. No fireman shall be eligible under this section unless his employer certifies to the System that his service as a fireman will require at least one thousand, six hundred hours per year of active duty and that his salary for such service will be at least two thousand dollars per year.

HISTORY: 1962 Code Section 61‑49; 1976 Act No. 586 Section 1.

CROSS REFERENCES

Application to become an employer under Police Officers Retirement System, membership, and related matters, see Section 9‑11‑40.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

**SECTION 9‑1‑670.** Members eligible for membership in South Carolina State Employees Credit Union.

Notwithstanding any other provision of law, any person who is eligible to participate in the South Carolina Retirement System shall also be eligible for membership in the South Carolina State Employees Credit Union.

HISTORY: 1980 Act No. 517 Part II, Section 22.

ARTICLE 7

Creditable Service

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑810.** Claims for prior service.

Under rules and regulations adopted by the Board, each member who was a teacher or employee at any time prior to July 1, 1945, and who became a member on or before December 31, 1966, was required to file a detailed statement of all service as a teacher or employee rendered by him prior to July 1, 1945, for which he claimed credit.

HISTORY: 1962 Code Section 61‑51; 1952 Code Section 61‑51; 1945 (44) 212; 1949 (46) 424; 1950 (46) 2170; 1951 (47) 172, 213; 1952 (47) 2094; 1955 (49) 512; 1964 (53) 1848; 1966 (54) 2600.

**SECTION 9‑1‑820.** Verification of service claimed; determination of compensation paid during period of prior service.

Subject to the restrictions herein contained and to such other rules and regulations as the Board may adopt, the Board verified or, if such verifications have not been completed, shall verify, as soon as practicable after the filing of such statements under Section 9‑1‑810, the service therein claimed. In lieu of a determination of the actual compensation of a member that was received during such period of prior service the Board may use for the purpose of the System the compensation rates which, if they had progressed with the rates of salary increase shown in the tables as prescribed in 9‑1‑250, would have resulted in the same average earnable compensation of the member for five years immediately preceding July 1, 1945 as the records show the member actually received.

HISTORY: 1962 Code Section 61‑51.1; 1952 Code Section 61‑51.1; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑830.** Prior service certificates.

Upon verification of such statements of service, the Board issued or shall issue prior service certificates certifying to each member the period of service prior to July 1, 1945 with which the member was credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service. When membership ceases, such prior service certificate shall become void. Should the teacher or employee again become a member such teacher or employee shall enter the System as a teacher or employee not entitled to prior service credit except as provided in Section 9‑1‑1590.

HISTORY: 1962 Code Section 61‑51.2; 1952 Code Section 61‑51.2; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑840.** What constitutes one year of service.

The Board shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year’s service.

HISTORY: 1962 Code Section 61‑52; 1952 Code Section 61‑52; 1945 (44) 212; 1949 (46) 424.

**SECTIONS 9‑1‑850, 9‑1‑860.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑850 was entitled “What constitutes creditable service” and was derived from 1962 Code Section 61‑53; 1952 Code Section 61‑53; 1945 (44) 212; 1949 (46) 424.

Former Section 9‑1‑860 was entitled “Effect on claims to prior service credits of election under Section 9‑1‑470; contributions may be required” and was derived from 1962 Code Section 61‑54; 1952 Code Section 61‑54; 1949 (46) 424; 1952 (47) 2094; 1955 (49) 512; 1964 (53) 1848; 1966 (54) 2600; 1970 (56) 1949; 1982 Act No. 367, Section 1.

ARTICLE 9

Three Funds and Collections for Funds

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑1010.** Assets to be credited to employee annuity savings fund and employer annuity accumulation fund.

All of the assets of the System are credited, according to the purpose for which they are held, to two bookkeeping accounts, hereinafter referred to as “funds”. The accounts are referred to as the employee annuity savings fund and the employer annuity accumulation fund.

HISTORY: 1962 Code Section 61‑61; 1952 Code Section 61‑61; 1945 (44) 212; 1949 (46) 424; 1960 (51) 1524; 1980 Act No. 407, Section 1; 1986 Act No. 309 Section 1, eff February 4, 1986.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

“Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment changed “shall be” to “are”, decreased the number of bookkeeping accounts from “three” to “two”, and deleted “and the post‑retirement increase special fund” at the end of the section.

**SECTION 9‑1‑1020.** Employee annuity savings fund; deductions from compensation of members of System; employer to pay required member contributions on earnings after July 1, 1982; tax treatment; funding; retirement treatment.

The employee annuity savings fund shall be the account in which shall be recorded the contributions deducted from the earnable compensation of members to provide for their employee annuities. Each employer shall cause to be deducted from the compensation of each member on each and every payroll of such employer for each and every payroll period four percent of his earnable compensation. With respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Chapter 7 of this Title; however, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three percent of the part of his earnable compensation not in excess of four thousand eight hundred dollars, plus five percent of the part of his earnable compensation in excess of four thousand eight hundred dollars. In the case of any member so eligible and receiving compensation from two or more employers, such deductions may be adjusted under such rules as the board may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. In determining the amount earnable by a member in a payroll period, the board may consider the rate of annual earnable compensation of such member on the first day of the payroll period as continuing throughout such payroll period and it may omit deduction from earnable compensation for any period less than a full payroll period if a teacher or employee was not a member on the first day of the payroll period.

Each employer shall certify to the board on each and every payroll or in such other manner as the board may prescribe the amounts to be deducted and such amounts shall be deducted and, when deducted, shall be credited to said employee annuity savings fund, to the individual accounts of the members from whose compensation the deductions were made.

The rates of the deductions, without regard to a member’s coverage under the Social Security Act, must be the percentage of earnable compensation as provided pursuant to Section 9‑1‑1085.

Each department and political subdivision shall pick up the employee contributions required by this section for all compensation paid on or after July 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code. For this purpose, each department and political subdivision is deemed to have taken formal action on or before January 1, 2009, to provide that the contributions on behalf of its employees, although designated as employer contributions, shall be paid by the employer in lieu of employee contributions. The department and political subdivision shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The department and political subdivision may pick up these contributions by a reduction in the cash salary of the employee.

The employee, however, must not be given the option of choosing to receive the contributed amount of the pick ups directly instead of having them paid by the employer to the retirement system. Employee contributions picked up shall be treated for all purposes of this section in the same manner and to the extent as employee contributions made before the date picked up.

Payments for unused sick leave, single special payments at retirement, bonus and incentive‑type payments, or any other payments not considered a part of the regular salary base are not compensation for which contributions are deductible. Not including Class Three employees, contributions are deductible on up to and including forty‑five days’ termination pay for unused annual leave. If a member has received termination pay for unused annual leave on more than one occasion, contributions are deductible on up to and including forty‑five days’ termination pay for unused annual leave for each termination payment for unused annual leave received by the member. However, only an amount up to and including forty‑five days’ pay for unused annual leave from the member’s last termination payment shall be included in a member’s average final compensation calculation for other than Class Three employees.

HISTORY: 1962 Code Section 61‑62; 1952 Code Section 61‑62; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38; 1964 (53) 1843; 1966 (54) 2009; 1982 Act No. 315, Section 1; 1982 Act No. 349, Section 1; 1982 Act No. 372, Section 1; 1985 Act No. 201, Part II, Section 48A; 1986 Act No. 529, Section 1, eff June 18, 1986; 1988 Act No. 475, Section 2, eff July 1, 1988; 2005 Act No. 14, Section 3, eff July 1, 2004; 2005 Act No. 153, Pt II, Section 4, eff July 1, 2005; 2008 Act No. 311, Section 4, eff June 4, 2008; 2012 Act No. 278, Pt I, Section 4, eff July 1, 2012.

Effect of Amendment

The 1986 amendment revised the fifth paragraph by making grammatical changes; deleting “and other” before “single special payments at retirement”; adding “bonus and incentive‑type payments, or any other payments not considered a part of the regular salary base”; and adding the provision that contributions are deductible on pay for unused annual leave.

The 1988 amendment in the third unnumbered paragraph deleted “Notwithstanding the foregoing, effective July 1, 1964,” at the beginning of the paragraph, increased employee contributions, and made grammatical changes.

The first 2005 amendment, in the last undesignated paragraph, in the second sentence added “up to and including forty‑five days termination” and added the third and fourth sentences.

The second 2005 amendment rewrote the third undesignated paragraph relating to the rates of deductions.

The 2008 amendment rewrote the fourth undesignated paragraph, replacing it with the fourth and fifth undesignated paragraphs.

The 2012 amendment in the third paragraph, substituted “pursuant to Section 9‑1‑1085” for “in the following schedule:”; removed the compensation table; in the last paragraph, added references to Class Three employees; and, made other, nonsubstantive, changes.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑1‑1085.

Identical provisions as to payment of required member contributions by employer on earnings after July 1, 1982, see Sections 9‑1‑1160, 9‑8‑130, 9‑9‑120, 9‑11‑210.

Option that contributions be made under this section by disability beneficiary under age 65 restored to active service, and cessation of retirement allowance of such person, see Section 9‑1‑1590.

NOTES OF DECISIONS

In general 1

Immunity 2

1. In general

Legislature clarified the state retirement system statute governing contributions on termination pay for unused annual leave, rather than materially changing the statute, when it added language regarding the use of such payments in calculating average final compensation, such that under the prior version, as under the amended version, only an amount up to 45 days’ pay for unused annual leave was includable in retiree’s average final compensation calculation. Duvall v. South Carolina Budget and Control Bd. (S.C. 2008) 377 S.C. 36, 659 S.E.2d 125. Public Employment 396

2. Immunity

A judgment on favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑1‑1030.** Deductions must be made although compensation is thereby reduced below legal minimum; consent to deductions.

The deductions provided for in Section 9‑1‑1020 shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deduction made and provided for in said section and shall receipt for his full compensation, and payment of such compensation less such deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except as to the benefits provided hereunder.

HISTORY: 1962 Code Section 61‑63; 1952 Code Section 61‑63; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1040.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑1040 was entitled “Repayment of amounts withdrawn; interest allowed on such amounts” and was derived from 1962 Code Section 61‑64; 1952 Code Section 61‑64; 1945 (44) 212; 1949 (46) 424; 1977 Act No. 27 Section 3.

**SECTION 9‑1‑1050.** Employer annuity accumulation fund; contributions shall be paid by employers.

The employer annuity accumulation fund shall be the account:

(1) in which shall be recorded the reserves on all employee annuities in force and against which shall be charged all employee annuities and all benefits in lieu of employee annuities;

(2) in which must be recorded all reserves for the payment of all employer annuities and other benefits payable from contributions made by employers and against which is charged all employer annuities and other benefits on account of members with prior service credit; and

(3) in which shall be recorded the reserves on all employer annuities granted to members not entitled to prior service credit and against which such employer annuities and benefits in lieu thereof shall be charged.

There shall be paid to the system and credited to the employer annuity accumulation fund contributions by the employers in an amount equal to a certain percentage of the earnable compensation of each member employed by each employer to be known as the “normal contribution” and an additional amount equal to a percentage of such earnable compensation to be known as the “accrued liability contribution”. The rate percent of such contributions shall be fixed on the basis of the liabilities of the system as shown by actuarial valuation but may not be less than those required pursuant to Section 9‑1‑1085.

HISTORY: 1962 Code Section 61‑66; 1952 Code Sections 61‑65, 61‑66, 61‑77; 1945 (44) 212; 1949 (46) 424; 1960 (51) 1524; 1980 Act No. 407, Section 2; 1986 Act No. 309 Section 2, eff February 4, 1986; 2012 Act No. 278, Pt I, Section 5, eff July 1, 2012.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.

Effect of Amendment

The 1986 amendment rewrote item (2).

The 2012 amendment inserted “but may not be less than those required pursuant to Section 9‑1‑1085” at the end of the section, and made other nonsubstantive changes.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑1‑1085.

Transfer of monies received pursuant to this section to the post‑retirement increase special fund, see Section 9‑1‑1830.

Notes of Decisions

Immunity 1

1. Immunity

A judgment on favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑1‑1060.** Normal contribution rate.

On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board, the actuary engaged by the Board to make each annual valuation during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any employer annuity payable on his account. The rate per cent so determined shall be known as the “normal contribution rate.” After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per cent of the earnable compensation of all members obtained by deducting from the total liabilities of the employer annuity accumulation fund the amount of the funds in hand to the credit of that account and dividing the remainder by one per cent of the present value of the prospective future earnable compensation of all members as computed on the basis of the mortality and service tables adopted by the Board and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

HISTORY: 1962 Code Section 61‑67; 1952 Code Section 61‑67; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1070.** Accrued liability contribution rate.

The rate per cent determined immediately after the first valuation by the actuary engaged by the Board as the rate per cent of the total annual earnable compensation of all members which is equivalent to four per cent of the amount of the total employer annuity liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service shall be known as the “accrued liability contribution rate.” Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the Board that the accrued liability contribution rate may be reduced without impairing the System, the Board may cause the accrued liability contribution rate to be reduced.

HISTORY: 1962 Code Section 61‑68; 1952 Code Section 61‑68; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38.

**SECTION 9‑1‑1080.** Minimum contributions to employer annuity accumulation fund.

The total amount payable in each year by each employer for credit to the employer annuity accumulation fund shall not be less than the sum of the rate percent known as the normal contribution rate and the accrued liability contribution rate of the total earnable compensation of all members during the preceding year. The aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the employer annuities and other benefits payable out of the fund during the year then current.

HISTORY: 1962 Code Section 61‑69; 1952 Code Section 61‑69; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38; 2012 Act No. 278, Pt I, Section 6, eff July 1, 2012.

Effect of Amendment

The 2012 amendment removed “Subject to the provisions of Section 9‑1‑1070, the amount of each annual accrued liability contribution shall be at least three per cent greater than the preceding annual accrued liability payment, and”; and made other nonsubstantive changes.

**SECTION 9‑1‑1085.** Employer and employee contribution rates.

(A) As provided in Sections 9‑1‑1020 and 9‑1‑1050, the employer and employee contribution rates for the system beginning in Fiscal Year 2017‑2018, expressed as a percentage of earnable compensation, are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | Fiscal Year | Employer Contribution | Employee Contribution |
|  | 2017‑2018 | 13.56 | 9.00 |
|  | 2018‑2019 | 14.56 | 9.00 |
|  | 2019‑2020 | 15.56 | 9.00 |
|  | 2020‑2021 | 16.56 | 9.00 |
|  | 2021‑2022 | 17.56 | 9.00 |
|  | 2022‑2023 | 18.56 | 9.00 |
|  | 2023‑2024 | 18.56 | 9.00 |
|  | 2024‑2025 | 18.56 | 9.00 |
|  | 2025‑2026 | 18.56 | 9.00 |
|  | 2026‑2027 and after | 18.56 | 9.00 |

The employer contribution rate set out in this schedule includes contributions for participation in the incidental death benefit plan provided in Sections 9‑1‑1770 and 9‑1‑1775. The employer contribution rate for employers that do not participate in the incidental death benefit plan must be adjusted accordingly.

(B) After June 30, 2027, the board may increase the percentage rate in employer contributions for the system on the basis of the actuarial valuation. An increase in the employer contribution rate adopted by the board pursuant to this section may not provide for an increase in an amount of more than one‑half of one percent of earnable compensation in any one year.

(C)(1) The unfunded actuarial accrued liability (UAAL) of the system as determined by the annual actuarial valuation must be amortized over a funding period that does not exceed the following schedule:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | Fiscal Year | Funding Period |  |
|  | 2017‑2018 | 30 years |  |
|  | 2018‑2019 | 29 years |  |
|  | 2019‑2020 | 28 years |  |
|  | 2020‑2021 | 27 years |  |
|  | 2021‑2022 | 26 years |  |
|  | 2022‑2023 | 25 years |  |
|  | 2023‑2024 | 24 years |  |
|  | 2024‑2025 | 23 years |  |
|  | 2025‑2026 | 22 years |  |
|  | 2026‑2027 | 21 years |  |
|  | 2027‑2028 and after | 20 years |  |

(2) If the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B), are insufficient to meet the funding period set forth in item (1) for the applicable year, then the board shall increase the employer contribution rate as necessary to meet the funding period set forth in item (1). Such adjustments may be made without regard to the annual limit increase of one‑half of one percent of earnable compensation provided pursuant to subsection (B). Participating employers must be notified of any contribution rate increase required by this item by July first of the fiscal year preceding the fiscal year in which the increase takes effect.

(D)(1) After June 30, 2027, if the most recent annual actuarial valuation of the system shows a ratio of the actuarial value of system assets to the actuarial accrued liability of the system (the funded ratio) that is equal to or greater than eighty‑five percent, then the board, effective on the following July first, may decrease the then current employer and employee contribution rates in equal amounts upon making a finding that the decrease will not result in a funded ratio of less than eighty‑five percent. However, the employee contribution rate may not be less than one‑half of the normal cost for the system and any contribution reduction allowed by this item after the employee contribution rate equals one‑half of the normal cost must be a reduction in the employer contribution rate.

(2) If contribution rates are decreased pursuant to item (1) of this subsection and the most recent annual actuarial valuation of the system shows a funded ratio of less than eighty‑five percent, then effective on the following July first, and annually after that time as necessary, the board shall increase the then current employer and employee contribution rates in equal amounts not exceeding one‑half of one percent of earnable compensation in any one year until a subsequent annual actuarial valuation of the system shows a funded ratio that is equal to or greater than eighty‑five percent. However, the employee contribution rate may not exceed nine percent and any contribution increase required by this item after the employee contribution rate equals nine percent must be an employer contribution rate.

HISTORY: 2012 Act No. 278, Pt I, Section 2.B, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. I, Section 1, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. I, Section 1, rewrote the section, changing future employer and employee contribution rates and requiring that the unfunded liabilities of the system must be on a certain amortization schedule.

CROSS REFERENCES

Employee annuity savings fund, deductions from compensation of members of System, see Section 9‑1‑1020.

Employer annuity accumulation fund, contributions shall be paid by employers, see Section 9‑1‑1050.

Attorney General’s Opinions

Discussion of the calculation of amortization schedules and contribution rates for the South Carolina Retirement System. S.C. Op.Atty.Gen. (January 10, 2017) 2017 WL 569540.

**SECTION 9‑1‑1090.** Discontinuance of accrued liability contribution.

The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the employer annuity accumulation fund shall equal the present value, as actuarially computed and approved by the Board, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.

HISTORY: 1962 Code Section 61‑70; 1952 Code Section 61‑70; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1100.** Employer annuities and benefits to be paid from employer annuity accumulation fund.

All employer annuities, and benefits in lieu thereof, must be paid from the employer annuity accumulation fund.

HISTORY: 1962 Code Section 61‑71; 1952 Code Section 61‑71; 1945 (44) 212; 1949 (46) 424; 1960 (51) 1524; 1980 Act No. 407, Section 3; 1986 Act No. 309 Section 3, eff February 4, 1986.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment deleted “, with the exception of those provided after June 30, 1981, in accordance with Sections 9‑1‑1810 and 9‑1‑1820,” and substituted “must” for “shall”.

**SECTION 9‑1‑1110.** Obligations of employer annuity accumulation fund.

The maintenance of employee annuity reserves and employer annuity reserves as provided for hereunder and regular interest creditable to the various funds as provided in this article and the payment of all annuities, retirement allowances, refunds, and other benefits granted hereunder, are made obligations of the employer annuity accumulation fund. All income, interest, and dividends derived from deposits and investments authorized hereunder must be used for payment of the obligations of the fund.

HISTORY: 1962 Code Section 61‑72; 1952 Code Section 61‑72; 1949 (46) 424; 1980 Act No. 407, Section 4; 1986 Act No. 309 Section 4, eff February 4, 1986.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment (1) deleted two clauses which set forth exceptions and (2) made minor grammatical changes.

**SECTION 9‑1‑1120.** Transfer between funds on return of retired employee to active service.

Should any beneficiary be restored to active service and again become a member under the provisions of Section 9‑1‑1590, his employee annuity reserve shall be transferred from the employer annuity accumulation fund to the employee annuity savings fund and credited to his individual account therein.

HISTORY: 1962 Code Section 61‑73; 1952 Code Section 61‑65; 1945 (44) 212; 1949 (46) 424; 1960 (51) 1524; 1973 (58) 167.

**SECTION 9‑1‑1130.** Earnings to be credited to employer annuity accumulation fund.

All interest and dividends earned on the invested assets of the System must be credited to the employer annuity accumulation fund. The Board shall credit regular interest to the individual accounts of members in the employee annuity savings fund and shall transfer the amounts of the credits from the employer annuity accumulation fund. Any interest credited to the individual account of a member in the employee annuity savings fund and not payable to him under the provisions of Section 9‑1‑1650 upon his ceasing to be a teacher or employee except by death or retirement must be transferred from the fund to the employer annuity accumulation fund.

HISTORY: 1962 Code Section 61‑75; 1952 Code Section 61‑75; 1945 (44) 212; 1949 (46) 424; 1960 (51) 1524; 1980 Act No. 407, Section 5; 1986 Act No. 309 Section 5, eff February 4, 1986.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment changed “shall” to “must”, “such” to “the”, and “said” to “the”, and deleted a second paragraph pertaining to the post‑retirement increase special fund.

CROSS REFERENCES

Requirement that after July 1, 1986, all contributions previously credited to the post‑retirement increase special fund be diverted and credited to the employer annuity accumulation fund, see Section 9‑1‑1830.

**SECTION 9‑1‑1135.** Interest on member accounts.

(A) Interest must be credited to the account of each member once each year as of June thirtieth, on the basis of the balance in the account of each member as of the previous June thirtieth. Upon the death, retirement, or termination of a member, interest must be figured to the end of the month immediately preceding the date of refund or retirement, interest being based on the balance in the member’s account as of the June thirtieth immediately preceding the date of refund or retirement.

(B) Notwithstanding subsection (A), interest must not be credited to an inactive member account. For purposes of this subsection, a member account becomes inactive on July first if no contributions were made to the account in the preceding twelve months.

HISTORY: 2008 Act No. 311, Section 33, eff June 4, 2008; 2012 Act No. 278, Pt V, Section 69.A, eff July 1, 2012.

Effect of Amendment

The 2012 amendment added the subsection designators, added subsection (B), and made other nonsubstantive changes.

**SECTION 9‑1‑1140.** Establishing service credits by making payments into system; career highest fiscal year salary; credits during absences; employer payments; rules and regulations; credits for unused sick leave.

(A) An active member may establish service credit for any period of paid public service by making an actuarially neutral payment to the system as determined by the actuary for the board based on the member’s current age and service credit, but not less than sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated. A member may not establish credit for a period of public service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit for public service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.

(B) An active member may establish service credit for any period of paid educational service by making an actuarially neutral payment to the system determined by the actuary for the board based on the member’s current age and service credit, but not less than sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated. A member may not establish credit for a period of educational service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit for educational service to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code.

(C) An active member may establish up to six years of service credit for any period of military service, if the member was discharged or separated from military service under conditions other than dishonorable, by making an actuarially neutral payment to the system to be determined by the actuary for the board based on the member’s current age and service credit, but not less than sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated.

(D) An active member on an approved leave of absence from an employer that participates in the system who returns to covered employment within four years may purchase service credit for the period of the approved leave, but may not purchase more than two years of service credit for each separate leave period, by making an actuarially neutral payment to the system to be determined by the actuary for the board based on the member’s current age and service credit, but not less than sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated.

(E) An active member who has five or more years of earned service credit may establish up to five years of nonqualified service by making an actuarially neutral payment to the system to be determined by the actuary for the board based on the member’s current age and service credit, but not less than thirty‑five percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education if the member has purchased service rendered under any of these programs pursuant to subsection (F) of this section. Periods of less than a year must be prorated.

(F) An active member may establish service credit for any period of service in which the member participated in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education, by making an actuarially neutral payment to the system to be determined by the actuary for the board based on the member’s current age and service credit, but not less than sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. A member’s career highest fiscal year salary shall include the member’s salary while participating in the system or in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education. Periods of less than a year must be prorated. A member may not establish credit for a period of service for which the member also may receive a retirement benefit from another defined benefit retirement plan. A member may not establish service credit under this subsection to the extent such service purchase would violate Section 415 or any other provision of the Internal Revenue Code. Service purchased under this subsection is “earned service” and counts toward the required five or more years of earned service necessary for benefit eligibility. Compensation earned for periods purchased under this subsection while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education must be treated as earnable compensation and must be used in calculating a member’s average final compensation. A member purchasing service under this subsection who has funds invested in a TIAA Traditional account under a TIAA‑CREF Retirement Annuity contract is eligible to make a plan to plan transfer in accordance with the terms of that contract.

(G) An active member who previously withdrew contributions from the system may reestablish the service credited to the member at the time of the withdrawal of contributions by repaying the amount of the contributions previously withdrawn, plus regular interest from the date of the withdrawal to the date of repayment to the system.

(H) An active member establishing retirement credit pursuant to this chapter may establish that credit by means of payroll deducted installment payments. Interest must be paid on the unpaid balance of the amount due at the rate of the prime rate plus two percent a year.

(I) An employer, at its discretion, may pay to the system all or a portion of the cost for an employee’s purchase of service credit under this chapter. Any amounts paid by the employer under this subsection for all purposes must be treated as employer contributions.

(J) Service credit purchased under this section is not “earned service” and does not count toward the required five or more years of earned service necessary for benefit eligibility except:

(1) earned service previously withdrawn and reestablished;

(2) service rendered while participating in the State Optional Retirement Program, the Optional Retirement Program for Teachers and School Administrators, or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education that has been purchased pursuant to subsection (F); or

(3) service earned as a participant in the system, the South Carolina Police Officers Retirement System, the Retirement System for Members of the General Assembly, or the Retirement System for Judges and Solicitors that is transferred to or purchased in the system.

(K) A member may purchase each type of service under this section once each fiscal year.

(L) The board shall promulgate regulations and prescribe rules and policies, as necessary, to implement the service purchase provisions of this chapter.

(M) At retirement, after March 31, 1991, a Class One or Class Two member shall receive credit for not more than ninety days of his unused sick leave from the member’s last employer at no cost to the member. The leave must be credited at a rate where twenty days of unused sick leave equals one month of service. This additional service credit may not be used to qualify for retirement.

(N) An employee drawing workers’ compensation who is on a leave of absence for a limited period may voluntarily contribute on his contractual salary, to be matched by the employer.

(O) An active member who is terminated within one year of retirement eligibility shall have five business days after the date of termination to purchase any service credit that the member is otherwise eligible to purchase under this section.

HISTORY: 1962 Code Section 61‑76; 1952 Code Section 61‑76; 1945 (44) 212; 1949 (46) 424; 1972 (57) 2207; 1974 (58) 2332; 1983 Act No. 32 Section 1; 1983 Act No. 151 Part II Section 45; 1984 Act No. 476; 1984 Act No. 486, Section 2; 1985 Act No. 76 Sections 2, 3; 1986 Act No. 461, Section 2, eff June 2, 1986; 1988 Act No. 658, Part II, Section 48A, eff June 8, 1988; 1989 Act No. 189, Part II, Section 49A, eff June 8, 1989 (became law without the Governor’s signature); 1991 Act No. 59, Section 1, eff May 27, 1991; 1991 Act No. 87, Section 1, eff May 27, 1991; 1991 Act No. 170, Section 1, eff June 28, 1991; 1993 Act No. 166, Section 4, eff June 16, 1993; 1994 Act No. 420, Section 2, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit; 1996 Act No. 458, Part II, Section 49, eff June 19, 1996; 1998 Act No; 439, Section 1, eff June 16, 1998; 2000 Act No. 387, Part II, Section 67C, eff January 1, 2001; 2003 Act No. 77, Section 2, eff June 27, 2003; 2008 Act No. 311, Section 31, eff June 4, 2008; 2012 Act No. 278, Pt I, Section 7.A, eff January 2, 2013; 2016 Act No. 202 (S.381), Section 2, eff June 3, 2016.

Editor’s Note

1998 Act No. 439, Section 4, provides as follows:

“This act takes effect upon approval by the Governor and applies with respect to military service established in the state retirement systems on or after that date.”

Effect of Amendment

The 1986 amendment, in the third unnumbered paragraph, substituted “may establish a portion of the service on a one‑time basis” for “must establish credit for all service for which eligible”.

The 1988 amendment added the fifth unnumbered paragraph providing that merchant marine seamen and civil service crew members may establish service credit for certain periods of service.

The 1989 amendment, in the 3rd unnumbered paragraph, provided that active duty military service performed after December 31, 1975, may not be considered creditable service.

The 1991 amendment by Act No. 170, Section 1, in the fifth paragraph changed “1945” to “1947”.

The 1991 amendment by Act No. 59 Section 1, added the sixth unnumbered paragraph relative to employment by a redevelopment commission.

The 1991 amendment by Act No. 87, Section 1, added the seventh unnumbered paragraph.

The 1993 amendment, in the third and fourth paragraphs, concerning member payment added “and effective July 1, 1994, twelve percent”; and in the fourth paragraph added “undergraduate or” preceding “graduate school”.

The 1994 amendment, in the second paragraph, increased the cost of establishing time for pregnancy leave from eight percent to twelve percent of earnable compensation.

The 1996 amendment revised the fourth undesignated paragraph.

The 1998 amendment substituted, in the third paragraph “one year” for “two years”, “before” for “prior to” in three places, and “member’s current employer” for “State” in the first and second sentences, added the fourth and fifth sentences relating to active military duty and prohibition on duplication of benefits, and deleted “ten percent and effective July 1, 1994,” from the sixth sentence and “other” from the last sentence.

The 2000 amendment rewrote this section.

The 2003 amendment rewrote this section.

The 2008 amendment added subsection (N) relating to voluntary contributions.

The 2012 amendment substituted “an actuarially neutral” for “a”, inserted “actuary for the”, and inserted “based on the member’s current age and service credit” in subsections (A)‑(F); inserted “Class One or Class Two” in subsection (M); and, made other, nonsubstantive, changes.

2016 Act No. 202, Section 2, added (O), relating to the purchase of service credit.

CROSS REFERENCES

Retirement system for judges and solicitors, service credit, vesting, see Section 9‑8‑50.

Attorney General’s Opinions

Discussion of whether a law enforcement officer may purchase time from the State toward his police retirement based on a request properly and timely submitted in March of 2013 when the statutes (Sections 9‑1‑1140 and 9‑11‑50) concerning purchasing years of service were amended and signed by the Governor in June of 2013 making the amendments retroactive to January 2 of 2013. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6162676.

NOTES OF DECISIONS

In general 1

Purchasing service credit 2

1. In general

State retirement systems’ liberal interpretation of statutory requirement that employee return “directly” to covered employment in order to qualify for retirement credit for educational leave as allowing for ninety‑day grace period for returning to covered employment was not arbitrary and capricious, though it would be impossible for state employees to take bar examination and be admitted to practice within ninety days of graduation from law school, where it was common practice among state agencies to employ law school graduates as attorneys contingent upon admission to the bar. Stuckey v. State Budget and Control Bd. (S.C. 2000) 339 S.C. 397, 529 S.E.2d 706, rehearing denied. Public Employment 385; States 64.1(3)

State retirement system properly calculated the ninety‑day grace period during which Department of Education employee must have returned to covered employment in order to qualify for statutory retirement credit for educational leave as commencing on date she graduated from law school rather than on date she completed the bar examination; applicable version of statute governing entitlement to retirement credit for educational leave required that employee return directly to employment following attendance at graduate school and optional bar review course that employee took after graduation and bar examination were not part of her attendance at law school. Stuckey v. State Budget and Control Bd. (S.C. 2000) 339 S.C. 397, 529 S.E.2d 706, rehearing denied. Public Employment 385; States 64.1(3)

2. Purchasing service credit

State retirement system had no discretion to determine member’s eligibility to purchase non‑qualified service credit that was in contradiction to the governing statute, and thus, retirement system was not estopped from using member’s current highest salary in calculating the cost of purchasing service credit. Morgan v. South Carolina Budget and Control Bd. (S.C.App. 2008) 377 S.C. 313, 659 S.E.2d 263. Estoppel 62.2(2); Public Employment 400; States 64.1(3)

**SECTION 9‑1‑1150.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑1150 was entitled “Payments to System and prior service credits of members of police insurance and annuity fund” and was derived from 1962 Code Section 61‑77; 1958 (50) 1649.

**SECTION 9‑1‑1160.** Collection of members’ contributions; failure to make payroll reports and remittances; employer to pay required member contributions on earnings after July 1, 1982; tax treatment; funding; retirement treatment.

(A) The collection of members’ contributions must be as follows:

Each employer shall deduct on each payroll of a member the contributions payable by the member as provided in this section. The chief fiscal officer of the employer shall draw his warrant for the amount to be deducted, payable to the Retirement System, on a monthly basis, and shall transmit the warrant together with a schedule of the contributions on forms prescribed by the board, which is due in the office of the Retirement System no later than the last day of the month following the close of each month for the preceding month. If any employer fails to do so or arrears exist at any time in making monthly remittances required by this section and by regulations of the board, the monthly compensation of any person or officer of any employer charged with the responsibility of making monthly payroll reports and remittances to the system must be withheld by the employer until all required reports and remittances have been made. The system shall furnish monthly to the disbursing officers of each employer a statement of any failure to make payroll reports and remittances and the names of the persons or officers failing to make the reports and remittances.

A person failing to transmit the contributions deducted in the manner required in this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

(B) Each department and political subdivision shall pick up the employee contributions required by this section for all compensation paid on or after July 1, 1982, and the contributions picked up must be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code. Each department and political subdivision shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service, or the federal courts, rule, pursuant to Section 414(h) of the United States Internal Revenue Code, that these contributions are not included as gross income of the employee until such time as they are distributed or made available. The department and political subdivision shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The department and political subdivision may pick up these contributions by a reduction in the cash salary of the employee. Employee contributions picked up must be treated for all purposes of this section in the same manner and to the extent as employee contributions made before the date picked up.

HISTORY: 1962 Code Section 61‑78; 1952 Code Section 61‑78; 1945 (44) 212; 1949 (46) 424; 1951 (47) 518; 1959 (51) 15; 1960 (51) 1522; 1976 Act No. 709 Part II Section 19; 1982 Act No. 315, Section 2; 1982 Act No. 349, Section 2; 1985 Act No. 201, Part II, Section 47A; 1993 Act No. 184 Section 149, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

CROSS REFERENCES

Identical provisions as to payment of required member contributions by employer on earnings after July 1, 1982, see Sections 9‑1‑1020, 9‑8‑130, 9‑9‑120 and 9‑11‑210.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

**SECTION 9‑1‑1170.** Collection of employers’ contributions.

The collection of employers’ contributions shall be made as follows:

(1) Upon the basis of each actuarial valuation provided herein the Board shall annually prepare and certify to each employer a statement of the total amount payable by the employer for the ensuing fiscal year to the employer annuity accumulation fund and this amount must be handled and disbursed in accordance with the usual appropriations;

(2) The chief fiscal officer of each employer shall transmit funds which are due in the Retirement System office no later than the last day of the month on account of each employee who is a member of the System an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by the employer for the preceding month. Delinquent payments under this section and Section 9‑1‑1160 must be charged interest compounded annually based on the adjusted prime rate charged by banks, rounded to the nearest full percent. The effective date of the adjustment must be based on the twelve‑month period ending March thirty‑first of any calendar year and must be established by April fifteenth for an effective date of the next July first. The adjusted prime rate charged by banks means the average predominant prime rate quoted by commercial banks to large businesses as determined by the Board of Governors of the Federal Reserve System. The adjusted prime rate used must be the adjusted prime rate charged by the bank during March of that year; and

(3) If within ninety days after request by the Board any employer has not provided the System with the records and other information required under this item or if the full accrued amount of the contributions and interest provided for under this section due from members employed by an employer or from an employer other than the State has not been received by the System from the chief fiscal officer of the employer within thirty days after the last due date as provided in this item, then upon notification by the Board to the State Treasurer and Comptroller General as to the default of the employer as provided in this item, any distributions which might otherwise be made to the employer from any funds of the State must be withheld from the employer until notice from the Board to the State Treasurer that the employer is no longer in default.

HISTORY: 1962 Code Section 61‑79; 1952 Code Section 61‑79; 1945 (44) 212; 1949 (46) 424; 1959 (51) 15; 1976 Act No. 709 Part II Section 19; 1980 Act No. 407, Section 6; 1985 Act No. 201, Part II, Sections 47B and 47C; 1986 Act No. 309 Section 6, eff February 4, 1986.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment rewrote item (1) by changing “such” to “the”, deleting “and to the post retirement increase special fund”, and changing “such” to “this” and “shall” to “must”.

**SECTION 9‑1‑1175.** Employer contributions.

Effective July 1, 2006, the board shall increase the employer contribution rate for the system by one‑half percent of the earnable compensation of all members employed by an employer participating in the system. The board shall further increase the employer contribution rate by one‑half percent effective July 1, 2007. The employer rate provided in this section also applies to payments for unused annual leave under the circumstances provided in Section 9‑1‑1020. The employer rate provided in this section includes the system’s normal contribution rate and accrued liability contribution rate, but does not include contributions for group life insurance or other benefits that are remitted to the retirement systems. Contributions for group life insurance or other benefits are in addition to the applicable employer contribution rate. After June 30, 2007, the board, in its discretion, may increase or decrease the employer contribution rate set by this section based on the actuarial valuation provided to the board by the system’s actuaries and considering the normal contribution rate determined pursuant to Section 9‑1‑1060 and the accrued liability contribution rate determined pursuant to Section 9‑1‑1070.

HISTORY: 2005 Act No. 153, Pt II, Section 5.A, eff July 1, 2005.

**SECTION 9‑1‑1180.** Deductions and employer contributions for teachers and employees of technical training schools.

The deductions authorized hereunder from the earnable compensation of teachers, the payments by employers of teachers of the required percentages of earnable compensation and all retirement allowances or other benefits herein provided shall be calculated upon the full earnable compensation of teachers from public funds derived from any source, and all employers’ contributions for teachers shall be paid by the State. Provided, further, that all employers’ contributions for employees of the various county technical training schools shall be paid by the State, effective July 1, 1962.

Payments for unused sick leave, single special payments at retirement, bonus and incentive‑type payments, or any other payments not considered a part of the regular salary base are not compensation for which contributions are deductible. Contributions are deductible on pay for unused annual leave.

HISTORY: 1962 Code Section 61‑80; 1952 Code Section 61‑80; 1945 (44) 212; 1949 (46) 424; 1963 (53) 358 [478]; 1982 Act No. 372, Section 2; 1985 Act No. 201, Part II, Section 48B; 1986 Act No. 529, Section 2, eff June 18, 1986.

Effect of Amendment

The 1986 amendment revised the second paragraph by making grammatical changes; deleting “and other” before “single special payments at retirement”; adding “bonus and incentive‑type payments, or any other payments not considered a part of the regular salary base”; and adding the provision that contributions are deductible on pay for unused annual leave.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

**SECTION 9‑1‑1190.** Board may change accounting methods and procedures of System.

The Board may make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration.

HISTORY: 1962 Code Section 61‑81; 1960 (51) 1524.

**SECTION 9‑1‑1200.** Repealed by 2005 Act No. 153, Pt II, Section 5.C, eff July 1, 2006.

Editor’s Note

Former Section 9‑1‑1200 was entitled “ Revision of contribution rates of Class Two employers” and was derived from 1962 Code Section 61‑82; 1964 (53) 1843.

**SECTION 9‑1‑1210.** Employer contributions shall reflect cost of Preretirement Death Benefit Program.

Notwithstanding any other provisions of law effective July 1, 1969, the rates of employer contributions shall be revised on the basis of actuarial valuation to reflect the additional cost resulting from the provisions of Section 9‑1‑1770 which added a death benefit provision effective on July 1 1968.

HISTORY: 1962 Code Section 61‑83; 1968 (55) 2497.

**SECTION 9‑1‑1220.** Repealed by 2005 Act No. 153, Pt II, Section 5.C, eff July 1, 2006.

Editor’s Note

Former Section 9‑1‑1220 was entitled “Employer contribution rate to be increased” and was derived from 1975 (59) 154; 1989 Act No. 189, Part II, Section 60A.

ARTICLE 11

Management of Funds

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑1310.** Trustee of retirement system; investment of funds.

(A) The South Carolina Public Employee Benefit Authority and the Retirement System Investment Commission are cotrustees of the assets of the retirement system as “assets” and “retirement system” are defined in Section 9‑16‑10(1) and (8). Notwithstanding any other provision of law, any reference in law to the trustee of the assets of the Retirement System must be construed to conform to the cotrusteeship as provided in this subsection. The Public Employee Benefit Authority shall hold the assets of the Retirement System in a group trust as provided in Section 9‑16‑20. The Retirement System Investment Commission shall invest and reinvest the assets of the Retirement System, subject to all the terms, conditions, limitations, and restrictions imposed by Section 16, Article X of the South Carolina Constitution, 1895, subsection (B) of this section, and Chapter 16 of this title.

(B) Except where not allowed pursuant to Sections 11 and 16, Article X of the Constitution of this State and Chapter 16 of this title, the funds of the system may be invested in, including, but not limited to, the following:

(1) bonds of this State, other states of the United States, the United States, or any political subdivisions or agencies thereof;

(2) banks and savings and loan institutions;

(3) top‑rated commercial paper;

(4) funds of funds;

(5) foreign certificates of deposit;

(6) short‑term debt;

(7) investment trust securities;

(8) real estate securities;

(9) foreign fixed‑income obligations;

(10) futures and options regulated by the United States Securities and Exchange Commission;

(11) private equity;

(12) domestic and foreign group trusts;

(13) investment vehicles of Federal Deposit Insurance Corporation approved institutions;

(14) bonds of foreign countries designated industrialized by the International Monetary Fund;

(15) collateralized mortgage obligations;

(16) World Bank bonds;

(17) debt of the United States or Canadian corporations;

(18) equipment trust debt;

(19)(a) purchase money mortgages received for real estate;

(b) real property;

(c) exchange traded funds;

(d) American Depository Receipts;

(20) real estate investment trusts; and

(21) investments allowed pursuant to Section 11‑9‑660 and equity investments as allowed pursuant to Section 16, Article X of the Constitution of this State.

(C) The funds and assets of the various state retirement systems are not funds of the State, but are instead held in trust as provided in Section 9‑16‑20.

HISTORY: 1962 Code Section 61‑91; 1952 Code Section 61‑91; 1945 (44) 212; 1949 (46) 424; 1959 (51) 128; 1998 Act No. 371, Section 3, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 1.A, eff July 1, 2005; 2006 Act No. 264, Section 2, eff May 2, 2006; 2012 Act No. 278, Pt IV, Subpt 2, Section 42.B, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. IV, Section 14, eff July 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 1998 amendment made nonsubstantive changes to the first sentence, and added the second sentence.

The 2005 amendment designated and rewrote subsection (A) and added subsections (B) and (C).

The 2006 amendment designated subparagraph (B)(19)(a) and added subparagraphs (B)(19)(b) to (B)(19)(d).

The 2012 amendment rewrote subsection (A).

2017 Act No. 13, Pt. IV, Section 14, rewrote (A), changing a trustee from the state fiscal accountability authority to the Retirement System Investment Commission.

CROSS REFERENCES

Legality of investments in housing revenue bonds issued by trustees of Medical University of South Carolina, see Section 59‑123‑280.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 656, South Carolina.

NOTES OF DECISIONS

In general 1

1. In general

Senate did not owe fiduciary duty to allegedly disabled employee faced with threat of termination to advise her of availability of disability retirement benefits, based on assertion that Senate acted as trustee of retirement funds, as Senate retained no control over funds. Hamiter v. Retirement Div. of the South Carolina Budget and Control Bd. (S.C. 1997) 326 S.C. 93, 484 S.E.2d 586. Public Employment 389(2); States 64.1(1)

**SECTION 9‑1‑1320.** Custodian of assets of the Retirement System.

(A) The board is the custodian of the assets of the Retirement System as “assets” and “Retirement System” are defined in Section 9‑16‑10(1) and (8), and the Retirement System Investment Commission has the exclusive authority to select the custodial bank, provided, however, that the Public Employee Benefit Authority is a third‑party beneficiary of the contract with the custodial bank with full rights to information under them. The custodial banking agreement may provide for electronic signatory approval.

(B)(1) A custodial bank selected by the commission must:

(a) be a United States domiciled trust company and a member of the Federal Reserve;

(b) have in excess of one trillion dollars of assets under custody;

(c) have provided custody services for at least the previous fifteen years; and

(d) provide custody services to other public fund institutional clients that individually have assets under management that meet or exceed the amount of assets managed by the commission.

(2) Nothing in this subsection prohibits the commission from imposing more stringent or additional qualifications as part of its selection process.

HISTORY: 1962 Code Section 61‑92; 1952 Code Section 61‑92; 1945 (44) 212; 1949 (46) 424; 2017 Act No. 13 (H.3726), Pt. IV, Section 15, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. IV, Section 15, rewrote the section, changing the custodian of the assets from the state treasurer to the board.

Attorney General’s Opinions

The State Treasurer as Trustee of the funds of the S. C. Retirement System should dispose of securities within a reasonable time if the securities’ ratings drop below the standards set in Code 1962 Section 1‑797 [Code 1976 Section 11‑9‑660]. 1974‑75 Op Atty Gen, No 4226, p 267.

**SECTION 9‑1‑1330.** Cash shall be kept available.

For the purpose of meeting disbursements for annuities and other payments there may be kept available cash, not exceeding ten per cent of the total funds of the System, on deposit with the State Treasurer.

HISTORY: 1962 Code Section 61‑93; 1952 Code Section 61‑93; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1340.** Conflicts of interest and use of funds by commission members or employees.

Except as otherwise provided in this chapter or in Chapters 8, 9, 10, and 11 of this title, no member of or person employed by the Retirement System Investment Commission shall have any direct interest in the gains or profits of any investment made by the commission. No commission member or employee of the commission shall, directly or indirectly, for himself or as an agent in any manner use the funds of the commission except to make such current and necessary payments as are authorized by the board or commission. Nor shall any member or employee of the commission become an endorser or surety or in any manner an obligor for monies loaned or borrowed from the commission.

HISTORY: 1962 Code Section 61‑94; 1952 Code Section 61‑94; 1945 (44) 212; 1949 (46) 424; 2005 Act No. 153, Pt IV, Section 1.B, eff July 1, 2005; 2006 Act No. 264, Section 3, eff May 2, 2006.

Effect of Amendment

The 2005 amendment in the first sentence substituted “provided in this chapter or in Chapters 8, 9, and 11 of this title” for “herein provided” and “Retirement System Investment Commission” for “Board”; and substituted “commission” for “Board” throughout.

The 2006 amendment, in the first sentence, added “10,”.

**SECTION 9‑1‑1350.** Transfers from general fund authorized.

Notwithstanding the amounts annually appropriated as “State Employer Contributions”, the State Treasurer and Comptroller General are hereby authorized and directed to transfer from the general fund of the State to the proper Retirement System Accounts, month by month, during the current fiscal year, such funds as are necessary to comply with the terms of the Retirement Act as amended, with respect to contributions by the State of South Carolina to the Retirement System.

HISTORY: 2002 Act No. 356, Section 1, Pt IX.F, eff July 1, 2002.

Notes of Decisions

Immunity 1

1. Immunity

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

A judgment on favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

ARTICLE 13

Retirement and Retirement Benefits

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑1510.** Retirement of members at age 60 or after 28 years’ service.

(A) A Class One or Class Two member may retire upon written application to the system setting forth at what time, no more than ninety days before nor more than six months after the execution and filing of the application, the member desires to be retired, if the member at the time specified for the member’s service retirement has:

(1) five or more years of earned service;

(2) attained the age of sixty years or has twenty‑eight or more years of creditable service; and

(3) separated from service.

(B) A Class Three member may retire upon written application to the system setting forth at what time, no more than ninety days before nor more than six months after the execution and filing of the application, the member desires to be retired, if the member at the time specified for the member’s service retirement has:

(1) eight or more years of earned service;

(2) attained the age of sixty years or satisfied the rule of ninety requirement; and

(3) separated from service.

(C) A member who is an elected official whose annual compensation is less than the earnings limitation pursuant to Section 9‑1‑1790 and who is otherwise eligible for service retirement may retire for purposes of this section without a break in service.

HISTORY: 1962 Code Section 61‑101; 1952 Code Section 61‑101; 1945 (44) 212; 1949 (46) 424; 1975 (59) 154; 1989 Act No. 85, Section 1, eff May 17, 1989; 2001 Act No. 1, Part II, Section 2A2, eff January 1, 2001; 2012 Act No. 278, Pt I, Section 8, eff July 1, 2012.

Effect of Amendment

The 1989 amendment added the second paragraph.

The 2001 amendment rewrote the first undesignated paragraph, reducing the years of creditable service from thirty to twenty‑eight, adding a requirement of five or more years of earned service, deleting a former provision relating to separation from service during a notification period, and dividing the requirements into numbered items; and made language changes.

The 2012 amendment added the subsection identifiers; inserted “Class One or Class Two” in subsection (A); and added subsection (B).

CROSS REFERENCES

Disability retirement, see Section 9‑1‑1540.

Early retirement, see Section 9‑1‑1515.

Nominee on member’s death may receive monthly allowance instead of accumulated contributions, see Section 9‑1‑1660.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

Attorney General’s Opinions

Absent statutory authority, a State agency may not require mandatory retirement before age 70. 1974‑75 Op Atty Gen, No 4181, p 235.

**SECTION 9‑1‑1515.** Early retirement.

(A) In addition to other types of retirement provided by this chapter, a Class One or Class Two member may elect early retirement if the member:

(1) has five or more years of earned service;

(2) has attained the age of fifty‑five years;

(3) has at least twenty‑five years of creditable service; and

(4) has separated from service.

A member electing early retirement shall apply in the manner provided in Section 9‑1‑1510.

(B) The benefits for a member electing early retirement under this section must be calculated in the manner provided in Section 9‑1‑1550, except that in lieu of any other reduction factor, the member’s early retirement allowance is reduced by four percent a year, prorated for periods less than one year, for each year of creditable service less than twenty‑eight.

(C) A member who elects early retirement under this section is ineligible to receive any cost‑of‑living increase provided by law to retirees until the second July first after the date the member attains age sixty; or the second July first after the date the member would have twenty‑eight years’ creditable service had he not retired, whichever is earlier.

(D)(1) Except as provided in item (2) of this subsection, a member who elects early retirement under this section is not covered by the State Insurance Benefits Plan until the earlier of:

(a) the date the member attains age sixty, or

(b) the date the member would have twenty‑eight years’ creditable service had he not retired.

(2) A member taking early retirement may maintain coverage under the State Insurance Benefits Plan until the date his coverage is reinstated pursuant to item (1) of this subsection by paying the total premium cost, including the employer’s contribution, in the manner provided by the Division of Insurance Services of the board.

HISTORY: 1990 Act No. 559, Section 1, eff July 1, 1990; 1999 Act No. 100, Part II, Section 52, eff July 1, 1999; 2001 Act No. 1, Part II, Section 2A3, eff January 1, 2001; 2012 Act No. 278, Pt I, Section 9, Pt IV, Subpt 2, Section 43, eff July 1, 2012.

Editor’s Note

1999 Act No. 100, Part II, Section 52B, provides as follows:

“This section takes effect July 1, 1999, and applies with respect to members of the South Carolina Retirement Systems electing early retirement pursuant to Section 9‑1‑1515 of the 1976 Code on and after that date.”

Effect of Amendment

The 1999 amendment rewrote subsection (B).

The 2001 amendment, in subsection (A), added a requirement of five or more years of earned service, divided requirements in the subsection into numbered items, and made language changes; in subsections (B), (C), and (D)(1)(b), substituted “twenty‑eight” for “thirty” years; and in subsection (B), deleted a provision for a lump sum payment into the system to avoid reduction of the early retirement allowance.

The 2012 amendment inserted “Class One or Class Two” in subsection (A), and in subsection (D)(2) substituted “board” for “State Budget and Control Board”.

CROSS REFERENCES

Nominee on member’s death may receive monthly allowance instead of accumulated contributions, see Section 9‑1‑1660.

**SECTIONS 9‑1‑1530, 9‑1‑1535.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑1530 was entitled “Employees shall be retired at age seventy; exceptions” and was derived from 1962 Code Section 61‑103; 1952 Code Section 61‑103; 1945 (44) 212; 1949 (46) 424; 1955 (49) 654; 1969 (56) 444; 1978 Act No. 404 Section 1; 1979 Act No. 31 Section 1; 1988 Act No. 663, Section 3, eff July 25, 1988.

Former Section 9‑1‑1535 was entitled “Conservation officers of Law Enforcement section of South Carolina Wildlife and Marine Resources Department” and was derived from 1982 Act No. 377.

**SECTION 9‑1‑1537.** Repealed by 1994 Act No. 308, Section 1, eff March 16, 1994.

Editor’s Note

Former Section 9‑1‑1537 was derived from 1986 Act No. 520, Section 2.

Former Section 9‑1‑1537 was entitled “Sworn law enforcement officers of South Carolina Highway Patrol” and pertained to their mandatory retirement at age 62.

**SECTION 9‑1‑1540.** Disability retirement.

(A) Upon the application of a member in service or of the member’s employer that is received by the system before January 1, 2014, a member in service on or after July 1, 1970, who has the earned service required pursuant to Section 9‑1‑1510 for the member’s class, or a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of the member’s duties regardless of length of membership on or after July 1, 1985, may be retired by the board not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. For purposes of this section, a member is considered to be in service on the date the application is filed if the member is not retired and the last day the member was employed by a covered employer in the system occurred not more than ninety days prior to the date of filing.

The South Carolina Retirement System may contract with the Department of Vocational Rehabilitation to evaluate the medical evidence submitted with the disability application relative to the job being performed and make recommendations to the medical board. The system may approve a disability retirement subject to the member participating in vocational rehabilitation with the Department of Vocational Rehabilitation. Upon determination by the department that a member retired on disability is able to reenter the job market and work is available, the retirement system may adjust the benefit paid by the system in accordance with Sections 9‑1‑1580, 9‑1‑1590, 9‑9‑60, and 9‑11‑90.

(B)(1) Upon the application of a member in service or of the member’s employer received by the system after December 31, 2013, a member in service who has the earned service required for the member’s class pursuant to Section 9‑1‑1510, or who is disabled as a result of an injury arising out of and in the course of the performance of the member’s duties regardless of length of membership, may be retired by the board if the member is determined to be disabled pursuant to subsection (B)(2) of this section. For purposes of this section, a member is considered to be in service on the date the application is filed if the last day the member was employed by a covered employer in the system occurred not more than ninety days before the date of filing and, if the member has retired on a service retirement allowance, the member’s date of retirement occurred not more than ninety days before the date of filing.

(2) A member whose application for disability retirement benefits was received by the system after December 31, 2013, is considered disabled if the member qualifies for the payment of Social Security disability benefits and is eligible for benefits pursuant to this section upon proof of the disability, provided that the date of disability established by the Social Security Administration falls within one year after the last day the member was employed by a covered employer in the system. The member shall submit to the retirement system the Social Security Award Notice certifying the date of entitlement for disability benefits as issued by the Social Security Administration. Upon final approval by the system, disability benefits become effective on the date of entitlement as established by the Social Security Administration or the day after the member’s last day on the payroll of a covered employer, whichever is later.

HISTORY: 1962 Code Section 61‑104; 1952 Code Section 61‑104; 1945 (44) 212; 1949 (46) 424; 1970 (56) 1939; 1979 Act No. 102 Section 1; 1982 Act No. 466 Part II Section 23A; 1985 Act No. 74 Section 1; 1986 Act No. 529, Section 6, eff June 18, 1986; 2000 Act No. 387, Part II, Section 67D, eff January 1, 2001; 2010 Act No. 162, Section 1, eff May 12, 2010; 2012 Act No. 278, Pt I, Section 10.A, eff July 1, 2012.

Editor’s Note

2005 Act No. 153, Pt III Section 6, as amended by 2013 Act No. 69, Section 3, provides as follows:

“Excluding Chapter 11, in Title 9 of the 1976 Code, wherever the phrase ‘medical board’ or any variant of ‘medical board’ appears, it must be construed to mean the ‘system’ unless the context clearly requires otherwise. The Code Commissioner shall replace the reference in future code supplements and replacement volumes as the Code Commissioner determines appropriate.”

2010 Act No. 162, Section 4, provides as follows:

“This act takes effect upon approval by the Governor and applies to any application for disability retirement filed with the South Carolina Retirement Systems on or after May 12, 2008.”

Effect of Amendment

The 1986 amendment revised the first paragraph of this section by making grammatical changes and by substituting “nine months” for “six months”.

The 2000 amendment, in the first paragraph, substituted “earned service” for “creditable service” and made grammatical changes.

The 2010 amendment added the last sentence to the first paragraph, relating to determining when a member is considered to be in service.

The 2012 amendment rewrote this section.

CROSS REFERENCES

Definition of “disability benefit” as applied to procedures applicable for various retirement systems in acting on judicial orders providing for alimony or marital property rights affecting certain benefits payable by the system, see Section 9‑18‑10.

Reduction of disability allowance of members of General Assembly, see Section 9‑9‑67.

Reexamination of beneficiaries retired on account of disability, consequences of refusal to submit to reexamination, see Section 9‑1‑1570.

Attorney General’s Opinions

Veterans must be rated by the Veterans’ Administration as permanently and totally disabled in order for their children to qualify for free tuition benefits. 1978 Op Atty Gen, No 78‑213, p 245.

NOTES OF DECISIONS

In general 1

1. In general

A school teacher who filed an application for disability benefits in 1979 based upon a disability which admittedly arose in 1975 at which time she ceased working, was not entitled to benefits retroactively to 1975 where her first application in 1975 had been rejected on the basis of insufficient medical evidence of disability and she had taken no further action until the second application was filed in 1979. Anderson v. South Carolina Retirement System (S.C. 1982) 278 S.C. 161, 293 S.E.2d 312.

**SECTION 9‑1‑1545.** Election between service retirement and disability retirement; receipt of service retirement pending approval of disability retirement.

A member may submit an application for service retirement and disability retirement. If the member qualifies for service retirement before the application for disability retirement is approved, the member, upon his request, may begin receiving service retirement benefits immediately. If the application for retirement disability is subsequently approved, the member may choose either the service retirement plan or the disability retirement plan.

HISTORY: 1988 Act No. 658, Part II, Section 12, eff June 8, 1988.

**SECTION 9‑1‑1550.** Service retirement allowances.

(A) Upon retirement from service on or after July 1, 1964, a Class One member shall receive a service retirement allowance which shall consist of:

(1) an employee annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) an employer annuity equal to the employee annuity allowable at the age of sixty‑five years or at age of retirement, whichever is less, computed on the basis of contributions made prior to the age of sixty‑five years; and

(3) if he has a prior service certificate in full force and effect, an additional employer annuity which must be equal to the employee annuity which would have been provided at age sixty‑five or at age of retirement, whichever is less, by twice the contributions which he would have made during his entire period of prior service had the system been in operation and had he contributed thereunder during such entire period.

Upon retirement from service after December 31, 2000, a Class One member shall receive a service retirement allowance computed as follows: If the member’s service retirement date occurs on or after his sixty‑fifth birthday, or after he has completed twenty‑eight or more years of creditable service, the allowance must be equal to one and forty‑five hundredths percent of his average final compensation multiplied by the number of years of his creditable service.

If the member’s service retirement date occurs before his sixty‑fifth birthday and before he completes twenty‑eight years of creditable service, his service retirement allowance is computed as above, but is reduced by five‑twelfths of one percent thereof for each month by which his retirement date precedes the first day of the month, prorated for periods less than a month, coincident with or next following his sixty‑fifth birthday.

Notwithstanding the foregoing provisions, any Class One member who retires on or after July 1, 1976, shall receive not less than the benefit provided under the formula in effect before July 1, 1976.

(B) Upon retirement from service after December 31, 2000, a Class Two member shall receive a service retirement allowance computed as follows:

(1) If the member’s service retirement date occurs on or after his sixty‑ fifth birthday or after he has completed twenty‑eight or more years of creditable service, the allowance must be equal to one and eighty‑two hundredths percent of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member’s service retirement date occurs before his sixty‑fifth birthday and before he completes the twenty‑eight years of creditable service, his service retirement allowance is computed as in item (1) above but is reduced by five‑twelfths of one percent thereof for each month, prorated for periods less than a month, by which his retirement date precedes the first day of the month coincident with or next following his sixty‑fifth birthday.

(3) Notwithstanding the foregoing provisions, a Class Two member whose creditable service began before July 1, 1964, shall receive not less than the benefit provided by subsection (A) of this section.

(C) Upon retirement from service after June 30, 2012, a Class Three member shall receive a service retirement allowance computed as follows:

(1) If the member’s service retirement date occurs on or after his sixty‑fifth birthday or if the member has satisfied the rule of ninety requirement, the allowance must be equal to one and eighty‑two hundredths percent of the member’s average final compensation, multiplied by the number of years of the member’s creditable service.

(2) If the member’s service retirement date occurs before his sixty‑fifth birthday and before he satisfies the rule of ninety requirement the member’s service retirement allowance is computed as in item (1) of this subsection but is reduced by five‑twelfths of one percent thereof for each month, prorated for periods less than a month, by which his retirement date precedes the first day of the month coincident with or next following his sixty‑fifth birthday.

HISTORY: 1962 Code Section 61‑105; 1952 Code Section 61‑105; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38, 153; 1964 (53) 1843; 1965 (54) 622; 1966 (54) 2009; 1969 (56) 259; 1972 (57) 2443; 1975 (59) 154; 1976 Act No. 587 Section 2; 1979 Act No. 16 Section 1; 1984 Act No. 384, Sections 1, 2; 1988 Act No. 475, Section 1, eff July 1, 1988; 1989 Act No. 189, Part II, Section 60B, eff July 1, 1989 (became law without the Governor’s signature); 2001 Act No. 1, Part II, Section 2A4, eff January 1, 2001; 2012 Act No. 278, Pt I, Section 11, eff July 1, 2012.

Effect of Amendment

The 1988 amendment in subsection (A)(3) in the first paragraph replaced “shall” with “must”, in the second paragraph replaced “1976” with “1988”, “such” allowance with “the” allowance, “shall” with “must” and increased the multiplier factor, in subsection (B) inserted “on or after July 1, 1988,” after service, and in item (1) of subsection (B) replaced “such” allowance with “the” allowance, “shall” with “must” and increased the multiplier factor.

The 1989 amendment increased the multiplier fraction used in calculating service retirement benefits from one and thirty‑five hundredths percent to one and forty‑five hundredths percent of average final compensation for class one members and from one and seven‑tenths percent to one and eighty‑two hundredths percent of average final compensation for class two members.

The 2001 amendment substituted “twenty‑eight” for “thirty” and “December 31, 2000” for “July 1, 1989” throughout; deleted former subsection (C); and made language changes.

The 2012 amendment added subsection (C).

CROSS REFERENCES

Amounts shall be paid upon termination of employment, election to leave contributions in System, effect of death before or after retirement, see Section 9‑1‑1650.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 5.

Attorney General’s Opinions

Lump sum payment of service retirement allowance unauthorized. This section [Code 1962, Section 61‑105] contains no provision for lump sum payment of retirement benefits, but if member elects to sever his relationship with System he may withdraw his contributions in lump sum without interest, pursuant to Code 1962 Section 61‑114. Op. Atty Gen, July 24, 1963.

**SECTION 9‑1‑1560.** Allowances upon retirement for disability.

(A) Except as provided in subsection (E) of this section, upon retirement for disability on or after July 1, 1976, a Class One member shall receive a service retirement allowance if he has attained the age of sixty‑five years. Otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service to age sixty‑five based on the average final compensation, minus the actuarial equivalent of the contribution the member would have made during such continued service, with an interest rate of four percent per annum.

(2) Notwithstanding the foregoing provisions, any Class One member whose creditable service commenced prior to July 1, 1976, shall receive not less than the benefit which would have been provided by the provisions of this section in effect immediately prior to July 1, 1976.

(B) Except as provided in subsection (E) of this section, upon retirement for disability on or after May 19, 1973, a Class Two member shall receive a service retirement allowance if he has attained the age of sixty‑five years. Otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service to age sixty‑five based on the average final compensation, minus the actuarial equivalent of the contribution the member would have made during such continued service, with an interest rate of four percent per annum.

(2) Notwithstanding the foregoing provisions, any Class Two member whose creditable service commenced prior to July 1, 1964, shall receive not less than the benefit provided by subsection (A) of this section.

(C) Except as provided in subsection (E) of this section, employees retired on disability subsequent to July 1, 1982, must have their benefits recalculated in accordance with the provisions of item (1) of subsection (A) and item (2) of subsection (B).

(D) Notwithstanding any other provision of this section, upon retirement for disability after October 15, 1992, at any age, a member must receive a disability retirement allowance equal to at least fifteen percent of his average final compensation.

(E)(1) Upon retirement for disability based on an application for disability benefits received by the system after December 31, 2013, a Class One member shall receive a disability retirement allowance equal to one and forty‑five hundredths percent of his average final compensation multiplied by the number of years of his creditable service as of the date of retirement, without reduction because of commencement before the normal retirement date.

(2) Upon retirement for disability based on an application for disability benefits received by the system after December 31, 2013, a Class Two or Class Three member shall receive a disability retirement allowance equal to one and eighty‑two hundredths percent of his average final compensation, multiplied by the number of years of his creditable service as of the date of retirement, without reduction because of commencement before the normal retirement date.

HISTORY: 1962 Code Section 61‑106; 1952 Code Section 61‑106; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38; 1960 (51) 1524; 1964 (53) 1843; 1969 (56) 259; 1970 (56) 1939; 1973 (58) 262; 1976 Act No. 587 Section 3; 1981 Act No. 32, Section 1; 1983 Act No. 32 Sections 2‑4; 1993 Act No. 166, Section 1, eff June 16, 1993; 2012 Act No. 278, Pt I, Section 10.B, eff July 1, 2012.

Editor’s Note

The rate of interest noted in this section was increased from 4% to 6% by resolution of the Budget and Control Board on March 23, 1982.

Effect of Amendment

The 1993 amendment added subsection (D) concerning disability retirement allowance for retirements after October 15, 1992.

The 2012 amendment inserted “Except as provided in Subsection (E) of this section,” in subsections (A)‑(C) and added subsection (E), and made other nonsubstantive changes.

**SECTION 9‑1‑1570.** Reexamination of beneficiaries retired on account of disability; consequences of refusal to submit to reexamination.

(A) Once each year during the first five years following the retirement of a member on a disability retirement allowance and once in every three‑year period thereafter the board may, and upon his application, require any disability beneficiary who has not yet attained the age of sixty‑five years to undergo a medical examination to be made at the place of residence of the beneficiary or other place mutually agreed upon by a physician designated by the board. If any disability beneficiary who has not yet attained the age of sixty‑five years refuses to submit to at least one medical examination in any such year by a physician designated by the board the member’s disability retirement allowance may be discontinued until the member’s withdrawal of refusal and if the member’s refusal continues for one year, all the member’s rights in and to the member’s disability retirement allowance may be revoked by the board.

(B) A member who is retired on a disability retirement allowance based upon an application received by the system after December 31, 2013, and who has not yet attained the age of sixty‑five years annually shall provide proof to the system that the member remains qualified for the receipt of Social Security disability benefits within thirty days of the anniversary of his retirement date. A member’s disability retirement allowance ceases upon a determination by the Social Security Administration that the member is no longer entitled to Social Security disability benefits for any reason. If any disability beneficiary who has not yet attained the age of sixty‑five years refuses to provide proof of disability required by the board, the member’s disability retirement allowance must be discontinued until the member provides such proof. If a member’s refusal to provide proof that the member remains qualified for Social Security disability benefits continues for one year, all of the member’s rights in and to the member’s disability retirement allowance pursuant to Section 9‑1‑1540 may be revoked by the board.

HISTORY: 1962 Code Section 61‑107; 1952 Code Section 61‑107; 1945 (44) 212; 1949 (46) 424; 1973 (58) 262; 1984 Act No. 383, Section 1; 2012 Act No. 278, Pt I, Section 10.C, eff July 1, 2012.

Effect of Amendment

The 2012 amendment added the subsection identifiers, made nonsubstantive changes in subsection (A), and added subsection (B).

**SECTION 9‑1‑1580.** Effect of ability to engage in gainful occupation; change in amount of disability retirement allowance.

Should the system report and certify to the Board that the disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the Board concur in the report, then the amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation. Should his earning capacity be later changed, the amount of his disability retirement allowance may be further modified. The new disability retirement allowance shall not exceed the amount of the disability retirement allowance originally granted nor an amount which, when added to the amount earnable by the beneficiary, equals the amount of his average final compensation.

The average final compensation may be increased up to ten percent annually to adjust for inflation.

If the disability retirement allowance is eliminated as a result of this section for a period of five consecutive years, all rights in and to his disability retirement allowance are revoked. The member then is entitled to a deferred retirement allowance as provided in Section 9‑1‑1650 based upon his average final compensation and creditable service at his date of disability retirement.

After age sixty‑five, a disability retiree is subject to the same earnings limitation as a service retiree.

HISTORY: 1962 Code Section 61‑108; 1952 Code Section 61‑108; 1945 (44) 212; 1949 (46) 424; 1981 Act No. 32, Section 2; 1984 Act No. 383, Section 2; 1985 Act No. 74 Section 2.

Editor’s Note

2005 Act No. 2005, Pt III Section 6, as amended by 2013 Act No. 69, Section 3, provides as follows:

“Excluding Chapter 11, in Title 9 of the 1976 Code, wherever the phrase ‘medical board’ or any variant of ‘medical board’ appears, it must be construed to mean the ‘system’ unless the context clearly requires otherwise. The Code Commissioner shall replace the reference in future code supplements and replacement volumes as the Code Commissioner determines appropriate.”

CROSS REFERENCES

Application of this section to adjustment of benefit of member retired on disability who is determined able to reenter job market and work is available, see Sections 9‑1‑1540, 9‑9‑68, 9‑11‑80.

Disability retirement, see Section 9‑1‑1540.

Retirement allowances, disability retirement, periodic reexaminations, discontinuation or reduction of allowances, see Section 9‑11‑80.

**SECTION 9‑1‑1590.** Effect of restoring beneficiaries to active service.

A disability beneficiary restored to active service at a salary less than his average final compensation shall not become a member of the System and his employer annuity shall be adjusted in accordance with the provisions of Section 9‑1‑1580.

Should a disability beneficiary under the age of sixty‑five years be restored to active service and his compensation then, or at any time thereafter, be equal to or greater than his average final compensation at retirement, his retirement allowance shall cease and any election of an optional benefit shall become void and he shall again become a member of the System and contribute thereafter as provided in Section 9‑1‑1020. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and, in addition, upon his subsequent retirement he shall be credited with all his service as a member. The average final compensation may be increased up to ten percent annually to adjust for inflation.

Should any other beneficiary who has been restored to active employment continue in service for a period of forty‑eight consecutive months and his annual compensation be equal to or greater than seventy‑five percent of his average final compensation at retirement, then he may elect to cease his retirement allowance and become a contributing member again and void his election of an optional benefit. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and, in addition, upon his subsequent retirement he shall be credited with all his service as a member. Any such beneficiary may request the board to allow him to repay to the System all monies received by him as benefits during any periods subsequent to the date of his reentry into active service and make a contribution equal to the amount he would have contributed had he been a member during the period of his restoration to active service prior to his again becoming a member, together with the interest which would have been credited to the contributions on account of such period of restoration up to the date such contribution is made. Upon the completion of such payment, this period shall also be credited to him as membership service. In no event shall the retirement allowance payable upon subsequent retirement be less than the amount of his allowance previously payable plus any increases which would have been payable under Section 9‑1‑1810 had he not been restored to service.

HISTORY: 1962 Code Section 61‑109; 1952 Code Section 61‑109; 1945 (44) 212; 1949 (46) 424; 1973 (58) 167, 262; 1975 (59) 51; 1981 Act No. 32, Section 3; 1988 Act No. 500, Section 2, eff May 9, 1988.

Editor’s Note

Section 9‑1‑1810, referenced in the third paragraph, was repealed by 2012 Act No. 278.

Effect of Amendment

The 1988 amendment in the third unnumbered paragraph changed from mandatory to optional the provision that reemployed persons receiving retirement benefits cease receiving benefits and become a member of the system.

CROSS REFERENCES

Application of this section to adjustment of benefit of member retired on disability who is determined able to reenter job market and work is available, see Sections 9‑1‑1540, 9‑9‑68, 9‑11‑80.

Application of this section to retired member whose return to covered employment continues for at least 48 consecutive months, see Sections 9‑1‑1790, 9‑11‑90.

Disability retirement, see Section 9‑1‑1540.

Retirement allowances, disability retirement, periodic reexaminations, discontinuation or reduction of allowances, see Section 9‑11‑80.

**SECTION 9‑1‑1600.** Repealed by 1999 Act No. 100, Part II, Section 27C, eff July 1, 1999.

Editor’s Note

Former Section 9‑1‑1600 was entitled “Effect of temporary consultative employment” and was derived from 1962 Code Section 61‑110; 1952 Code Section 61‑110; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1610.** Members of General Assembly may draw retirement benefits under certain conditions.

Any person who has been an active member of the South Carolina Retirement System and who meets all of the requirements and qualifications for retirement, and is or becomes a member of the General Assembly, shall be allowed, at his option, to draw his retirement.

HISTORY: 1962 Code Section 61‑110.1; 1965 (54) 665.

Attorney General’s Opinions

Where a member of the Retirement System has attained the age of sixty years, or has thirty‑five or more years of creditable service and is or becomes a member of the General Assembly, he is entitled, at his option, to draw his retirement. 1964‑65 Op Atty Gen, No 1871, p 137.

NOTES OF DECISIONS

In general 1

1. In general

Public school teachers’ payments into South Carolina Retirement System are exempt from inclusion in Chapter 7 (11 USCA Sections 701 et seq.) bankruptcy estate. Hovis v. Wright (C.A.4 (S.C.) 1985) 751 F.2d 714.

**SECTION 9‑1‑1615.** Retirement allowances payable in monthly installments; payments after death of retired member.

All retirement allowances are payable in monthly installments. Upon the death of a retired member, the retirement allowance for the month the retired member died, if not previously paid, must be paid to the member’s designated beneficiary, if the beneficiary is living at the time of the member’s death, otherwise to the member’s estate. If the retired member elected a survivor option pursuant to the optional forms of allowances in Section 9‑1‑1620, any allowance payable to a survivor beneficiary commences in the month after the death of the retired member.

HISTORY: 2001 Act No. 1, Part II, Section 2A5, eff January 1, 2001.

**SECTION 9‑1‑1620.** Optional forms of allowances.

(A) No later than the date the first payment of a retirement allowance is due, a member shall elect a form of monthly payment from the following options:

Option A. The maximum retirement allowance payable under law for the life of the member. Upon the member’s death, the member’s designated beneficiary is entitled to receive any remaining member contributions.

Option B. A reduced retirement allowance payable during the retired member’s life, which continues after the member’s death for the life of the member’s designated beneficiary or, if the member selects multiple beneficiaries, which continues after the member’s death in equal shares to and for the life of each of two or more beneficiaries. The reduced retirement allowance payable under this option must be the actuarial equivalent of the maximum retirement allowance payable to the member under law, and if the member selects multiple beneficiaries, the benefit reduction factor must be based on the average age of the designated beneficiaries. If all of the designated beneficiaries predecease the member, then the member shall receive a retirement allowance equal to the maximum retirement allowance payable under law to the member. Any retirement allowance payable under this option, except an allowance for disability retirement pursuant to Section 9‑1‑1540, shall be subject to the incidental death benefit limitation upon the payment of survivorship benefits to a nonspouse beneficiary under Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401(a)(9)‑6, Q&A‑2.

Option C. A reduced retirement allowance payable during the retired member’s life, which continues after the member’s death at one‑half the rate paid to the member for the life of the member’s designated beneficiary or, if the member selects multiple beneficiaries, which continues after the member’s death at one‑half the rate paid to the member in equal shares to and for the life of each of two or more beneficiaries. The reduced retirement allowance payable under this option must be the actuarial equivalent of the maximum retirement allowance payable to the member under law, and if the member selects multiple beneficiaries, the benefit reduction factor must be based on the average age of the designated beneficiaries. If all of the designated beneficiaries predecease the member, then the member shall receive a retirement allowance equal to the maximum retirement allowance payable under law to the member.

(B)(1) A retired member, within five years after a change in marital status, may revoke the form of monthly payment elected and elect a new form of monthly payment, which must be the actuarial equivalent of the maximum retirement allowance payable to the member under law. The new form of monthly payment is effective on the first day of the month in which the election of the new form of monthly payment is received by the system and must be calculated based upon the ages of the retired member and the member’s beneficiary or beneficiaries as of that effective date.

(2) Notwithstanding any other provision of law, a retired member’s form of monthly payment may not be changed more than twice. A reversion to the maximum retirement allowance payable under law upon the death of the beneficiary or beneficiaries as provided in Options B and C of subsection (A) constitutes a change in the form of monthly payment for the purposes of this item.

(C) Members retiring before January 1, 2001, shall continue to receive a retirement allowance in accordance with the form of payment selected under the law in effect at the time of their retirement. The provisions of subsection (B) apply to these members but changes in forms of payment occurring before January 1, 2001, are not included in the limitation provided in subsection (B)(2).

(D) A member who retired under the provisions of the previously existing Social Security Advance Option before July 1, 1990, may elect to have his benefit adjusted so that cost‑of‑living and other special increases in benefits are not applied to the amount of advance or reduction in allowance under this option after July 1, 1992, or the member’s attainment of age sixty‑ two, if later, by making a special lump sum payment before that date. This lump sum payment must be equal to the excess, if any, of cost‑of‑living and other special increases in benefits actually paid to the member, over the increases that would have been paid had the member not elected an optional form of allowance. If a member does not elect to make the payment, his benefit must be automatically adjusted when no such excess exists, but not before July 1, 1992.

(E) Except as provided in this section, a retired member may not change the form of his monthly payment after the first payment of a retirement allowance is due.

HISTORY: 1962 Code Section 61‑111; 1952 Code Section 61‑111; 1945 (44) 212; 1949 (46) 424; 1955 (49) 38; 1964 (53) 1843; 1982 Act No. 369, Section 1; 1984 Act No. 381, Section 1; 1985 Act No. 201, Part II, Section 65A; 1986 Act No. 540, Part II, Section 23A, effective June 18, 1986, and became law without the Governor’s signature; 1990 Act No. 412, Section 1, eff January 1, 1991, except Option 4 which became eff July 1, 1990; 1992 Act No. 336, Sections 1, 6, eff May 4, 1992; 1996 Act No. 458, Part II, Section 47A, eff June 19, 1996; 2000 Act No. 387, Part II, Section 67S, eff January 1, 2001; 2008 Act No. 311, Sections 5 and 32, eff June 4, 2008; 2015 Act No. 27 (S.373), Section 1, eff June 1, 2015.

Editor’s Note

2015 Act No. 27, Section 3, provides as follows:

“SECTION 3. This act takes effect upon approval by the Governor and applies to any new form of monthly payment elected thereafter due to a change in marital status.”

Effect of Amendment

The 1986 amendment, which appears in the first set out of this section, added the second unnumbered paragraph relating to revocation of nomination and election of a new option in event of divorce.

The 1990 amendment in the first paragraph, in Options 2 and 3 inserted “, or the trustee of the beneficiary,”, revised Option 4, and added Option 6, in the second paragraph inserted “or death of” following “after divorce from”, and made grammatical changes throughout.

The 1992 amendment, by Section 1, added the last two sentences to the second paragraph, and by Section 6, added the next‑to‑last or third paragraph.

The 1996 amendment revised the second undesignated paragraph.

The 2000 amendment rewrote this section.

The 2008 amendment, in subsection (A), added the fourth sentence in Option B relating to the incidental death benefit limitation upon payment of survivorship benefits to a nonspouse; and added subsection (E) relating to form of payment.

2015 Act No. 27, Section 1, rewrote (B)(1).

CROSS REFERENCES

As to the definition of “optional form death benefit” as applied to procedures applicable for various retirement systems in acting on judicial orders providing for alimony or marital property rights affecting certain benefits payable by the system, see Section 9‑18‑10.

Nominee on member’s death may receive monthly allowance instead of accumulated contributions, see Section 9‑1‑1660.

Payment, upon the death of a retired member who has not elected either Option 1 or Option 2 under this section, of a lump sum to such member’s designee, see Section 9‑1‑1650.

Attorney General’s Opinions

S.C. Retirement System may legally make downward adjustments in monthly retirement payment of members who retired pursuant to provisions of Option 4 of Section 9‑1‑1620. 1993 Op Atty Gen No. 93‑15.

**SECTION 9‑1‑1625.** Compliance with Internal Revenue Code Section 401(a)(31).

(A) This section applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee’s election under this chapter, a distributee may elect, at the time and in the manner prescribed by the board, 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) Effective January 1, 2007, and notwithstanding anything in this chapter to the contrary that otherwise would limit a distributee’s election under this section, and to the extent allowed under the applicable provisions of the Internal Revenue Code and the Treasury Regulations, a distributee who is a designated beneficiary, but not a surviving spouse, spouse or former spouse alternate payee may elect, at the time and in the manner prescribed by the board, to have all or part of his benefit that qualifies as an eligible rollover distribution paid in a direct trustee‑to‑trustee transfer to an eligible retirement plan that is an individual retirement plan described in clause (i) or (ii) of Internal Revenue Code Section 402(c)(8)(B). If such a transfer is made:

(1) the transfer shall be treated as an eligible distribution;

(2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity within the meaning of Internal Revenue Code Section 408(d)(3)(C); and

(3) Internal Revenue Code Section 401(a)(9)(B) other than clause (iv) thereof shall apply to such individual retirement plan.

(C) A “designated beneficiary” is an individual who is designated as a beneficiary under this chapter and is the designated beneficiary under Internal Revenue Code Section 401(a)(9) and Section 1.401(a)(9)‑1, Q&A‑4 of the Treasury Regulations. An estate or revocable trust is not considered to be a designated beneficiary for purposes of Internal Revenue Code Section 401(a)(9).

(D) 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:

(1) any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or the 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 ten years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); and

(3) any hardship distribution.

Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the 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 Internal Revenue Code Section 408(a) or (b), or in a direct trustee‑to‑trustee rollover to a qualified trust under Internal Revenue Code Section 401(a) or 403(a) that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Internal Revenue Code Section 403(b), so long as such trust or annuity contract separately accounts for amounts so transferred, including separate accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not includible. Effective January 1, 2008, an eligible rollover distribution also shall mean a qualified rollover contribution to a Roth IRA within the meaning of Internal Revenue Code Section 408A.

(E) Effective January 1, 2002, unless otherwise stated an “eligible retirement plan” is:

(1) a plan eligible under Internal Revenue Code Section 457(b) 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 that agrees to separately account for amounts transferred into the plan from the system;

(2) an individual retirement account described in Internal Revenue Code Section 408(a);

(3) an individual retirement annuity described in Internal Revenue Code Section 408(b);

(4) an annuity plan described in Internal Revenue Code Section 403(a);

(5) an annuity contract described in Internal Revenue Code Section 403(b);

(6) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee’s eligible rollover distribution; or

(7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(F) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(G) A “distributee” includes an employee or former employee. It also includes 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 Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an “inherited” individual retirement account or annuity.

(H) A “direct rollover” is a payment by the system to the eligible retirement plan specified by the distributee.

HISTORY: 2008 Act No. 311, Section 6, eff June 4, 2008.

**SECTION 9‑1‑1630.** Special benefits to teachers for service prior to July 1, 1945.

Teachers who retired between July 1, 1940 and July 1, 1945 under some other retirement or pension fund and who, at the time of their retirement, had taught for thirty‑five years or more shall be eligible for all of the benefits provided under the System on the same terms and conditions that apply to teachers who retire after July 1, 1945. The fact that any such teacher shall have received benefits after his retirement since July 1, 1940 from or under any other retirement or pension fund shall not make such teacher ineligible to come under the provisions of this paragraph, but no such teacher shall draw or receive benefits under the System when he is at the same time receiving benefits from or under any other retirement or pension fund and no such teacher shall be entitled to benefits under the System unless he filed application therefor prior to July 1, 1949.

Subject to the provisions of the preceding paragraph all teachers who, prior to July 1, 1945, shall have taught for a period of thirty‑five years, regardless of whether they were employed on April 26, 1945 or subsequently, shall be eligible to become members of the System and shall be entitled to all benefits therefrom, including prior service credit, provided that no benefits shall be payable prior to the date of application for membership. In the calculation of the thirty‑five years, teaching in adult schools, night schools and schools for illiterates and work in public school libraries shall be deemed to be equivalent to teaching in public schools.

HISTORY: 1962 Code Section 61‑112; 1952 Code Section 61‑112; 1949 (46) 424.

**SECTION 9‑1‑1640.** Manner of paying annuities.

All employee and employer annuities shall be payable in equal monthly installments.

HISTORY: 1962 Code Section 61‑113; 1952 Code Section 61‑113; 1945 (44) 212; 1949 (46) 424.

**SECTION 9‑1‑1650.** Amounts shall be paid upon termination of employment; election to leave contributions in System; effect of death before or after retirement.

If a member ceases to be a teacher or employee except by death or retirement, the member must be paid within six months after the member’s demand for payment, but not less than ninety days after ceasing to be a teacher or employee, the sum of the member’s contributions and the accumulated regular interest on the contributions. If the member has five or more years of earned service or eight or more years of such service for a Class Three member, and before the time the member’s membership would otherwise terminate, elects to leave these contributions in the system, the member, unless these contributions are paid to him as provided by this section before the attainment of age sixty, remains a member of the system and is entitled to receive a deferred retirement allowance beginning at age sixty computed as a service retirement allowance in accordance with Section 9‑1‑1550(A) or (B) for Class One and Class Two members and Section 9‑1‑1550(C) for Class Three members. The employee annuity must be the actuarial equivalent at age sixty of the member’s contributions with the interest credits on the contributions, if any, as allowed by the board. If a member dies before retirement, the amount of the member’s accumulated contributions must be paid to the member’s estate or to the person the member nominated by written designation, duly acknowledged and filed with the board.

Upon the death of a member who did not select a survivor option or who selected a survivor option and the member’s designated beneficiary predeceased the member, a lump sum amount must be paid to the member’s designated beneficiary or the member’s estate if total member contributions and accrued interest at the member’s retirement exceed the sum of the retirement allowances paid to the member. Upon the death of a designated beneficiary selected under a survivor option, a lump sum amount must be paid to the beneficiary’s estate if total member contributions and accrued interest at the member’s retirement exceed the sum of the retirement allowances paid to the member and the member’s beneficiary. The lump sum payment must be the total member contributions and accrued interest at retirement less the sum of the retirement allowances paid to the member or in the case of a survivor option, the total member contributions and accrued interest at retirement less the sum of the retirement allowances paid to the member and the member’s designated beneficiary. This paragraph does not govern lump sum distributions payable on account of members retiring under former Option 1 of Section 9‑1‑1620 or on account of members retiring before July 1, 1990 under former Option 4 of Section 9‑1‑1620.

An active contributing member making the nomination provided under this section also may name contingent beneficiaries in the same manner that beneficiaries are named. A contingent beneficiary has no rights under this chapter unless all beneficiaries nominated by the member have predeceased the member and the member’s death occurs while in service. In this instance, a contingent beneficiary is considered the member’s beneficiary for purposes of this section and Section 9‑1‑1660, if applicable.

HISTORY: 1962 Code Section 61‑114; 1952 Code Section 61‑114; 1945 (44) 212; 1949 (46) 424; 1967 (55) 507; 1974 (58) 2057; 1975 (59) 51; 1979 Act No. 82 Section 2; 1984 Act No. 384, Section 3; 1995 Act No. 139, Section 1, eff June 28, 1995; 2000 Act No. 387, Part II, Section 67E, eff January 1, 2001; 2012 Act No. 278, Pt I, Section 12, eff July 1, 2012.

Effect of Amendment

The 1995 amendment added the third unnumbered paragraph.

The 2000 amendment, in the first paragraph, in the second sentence substituted “earned service” for “creditable service” and made grammatical changes throughout, and rewrote the second paragraph.

The 2012 amendment inserted “or eight or more years of such service for a Class Three member,” and “(A) or (B) for Class One and Class Two members and Section 9‑1‑1550(C) for Class Three members”.

CROSS REFERENCES

As to the definition of “death benefit” as applied to procedures applicable for various retirement systems in acting on judicial orders providing for alimony or marital property rights affecting certain benefits payable by the system, see Section 9‑18‑10.

Payment of a deferred retirement allowance where an individual’s rights to a disability retirement allowance have been revoked because he has been certified as able to engage in a gainful occupation, see Section 9‑1‑1580.

Repayment of refund of deceased member’s accumulated contributions received under this section by nominee electing to receive monthly allowance for life in lieu of such accumulated contributions, see Section 9‑1‑1660.

Attorney General’s Opinions

A bank which has been named as a general trustee is not a “person” that can be designated as a beneficiary under the South Carolina Retirement Act. 1971‑72 Op Atty Gen, No 3263, p 59.

When a beneficiary named under the South Carolina Retirement System is disqualified from receiving payments, the Estate or the heirs of the deceased would take in place of the beneficiary. 1976‑77 Op Atty Gen, No 77‑192, p 146.

**SECTION 9‑1‑1660.** Nominee on member’s death may receive monthly allowance instead of accumulated contributions.

(A) The person nominated by a member to receive the full amount of the member’s accumulated contributions if the member dies before retirement may, if the member:

(1) has five or more years of earned service or eight or more years of such service for a Class Three member;

(2) dies while in service; and

(3) has either attained the age of sixty years or has accumulated fifteen years or more of creditable service, elect to receive in lieu of the accumulated contributions an allowance for life in the same amount as if the deceased member had retired at the time of the member’s death and had named the person as beneficiary under an election of Option B of Section 9‑1‑1620(A).

For purposes of the benefit calculation, a member who is not yet eligible for service retirement is assumed to be sixty years of age.

(B) A person otherwise eligible under subsection (A) of this section to elect to receive an allowance but who has received a refund of the member’s accumulated contributions under Section 9‑1‑1650, upon repayment of the refund to the system in a single sum, may make the election provided for in subsection (A). The monthly payments under Option B to the person date from the time of the repayment of the accumulated contributions to the system.

(C) Regardless of whether a member is in service, if a member dies before retirement and, at the time of the member’s death, was eligible to receive a service retirement allowance pursuant to Section 9‑1‑1510 or Section 9‑1‑1515, the person nominated by a member to receive the full amount of the member’s accumulated contributions if the member dies before retirement may elect to receive, in lieu of the accumulated contributions, an allowance for life in the same amount as if the deceased member had retired at the time of the member’s death and had named the person as beneficiary under an election of Option B of Section 9‑1‑1620(A).

(D) If a member has designated more than one beneficiary for the receipt of the member’s accumulated contributions if the member dies before retirement, and if those beneficiaries become eligible to elect an allowance pursuant to this section upon the member’s death, all of the beneficiaries must elect the allowance in order for the allowance to become payable in lieu of the return of accumulated contributions.

HISTORY: 1962 Code Section 61‑114.1; 1956 (49) 1605; 1957 (50) 540; 1962 (52) 1659; 1978 Act No. 644 Part II Section 33; 1981 Act No. 133, Section 1; 1983 Act No. 26 Section 1; 1985 Act No. 201, Part II, Section 48C; 2000 Act No. 387, Part II, Section 67V, eff January 1, 2001; 2012 Act No. 278, Pt I, Section 13, Pt IV, Subpt 3, Section 66.A, eff July 1, 2012.

Effect of Amendment

The 2000 amendment redesignated subsections (1) and (2) as subsections (A) and (B), substituted, in subsection (a), items (1) to (3) for “if such member dies after the attainment of age sixty‑five or after the accumulation of fifteen years of creditable service and death occurs in service” and made grammatical changes throughout.

The 2012 amendment added “or eight or more years of such service for a Class three member” in subsection (A)(1) and substituted “who is not yet eligible for service retirement” for “under age sixty with less than twenty‑eight years’ credit” in the last undesignated paragraph of subsection (A); and added subsections (C) and (D).

CROSS REFERENCES

As to the definition of “death benefit” as applied to procedures applicable for various retirement systems in acting on judicial orders providing for alimony or marital property rights affecting certain benefits payable by the system, see Section 9‑18‑10.

Attorney General’s Opinions

A bank which has been named as a general trustee is not a “person” that can be designated as a beneficiary under the South Carolina Retirement Act. 1971‑72 Op Atty Gen, No 3263, p 59.

**SECTION 9‑1‑1665.** Compliance with Internal Revenue Code Section 401(a)(9).

(A) Effective as of January 1, 1989, the system will pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirement in Section 401(a)(9)(G), and the applicable Treasury Regulations and Internal Revenue Service Rulings and other interpretations issued thereunder, including Treasury Regulations Sections 1.401(a)(9)‑2 through 1.401(a)(9)‑9. The provisions of this section shall override any distribution options that are inconsistent with Section 401(a)(9) to the extent that those distribution options are not grandfathered under Treasury Regulation Section 1.401(a)(9)‑6, Q&A‑16.

(B) Each member’s entire benefit shall be distributed to the member, beginning no later than the required beginning date, over the member’s lifetime or the joint lives of the member and a designated beneficiary, or over a period not extending beyond the member’s life expectancy or the joint life expectancies of the member and a designated beneficiary. If a member fails to apply for retirement benefits by his required beginning date, the board shall begin distributing the benefit as required by this chapter.

(1) For purposes of this section, the “required beginning date” is April first of the calendar year after the later of the following:

(a) the calendar year in which the member reaches age seventy and one‑half years of age; or

(b) the calendar year in which the member retires.

(2) For purposes of this section, a “designated beneficiary” means any individual designated as a co‑beneficiary by the member under this chapter. If the member designates a trust as a co‑beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirement set forth in Treasury Regulation Section 1.401(a)(9)‑3.

(3) Payment of retirement benefits, for those members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of this chapter, and who continue membership after attaining seventy and one‑half years of age, shall commence on the effective date of retirement.

(C) If a retired member dies after benefit payments have begun or are required to begin under subsection (B) of this section, any survivor benefits shall be distributed at least as rapidly as under the distribution method being used at the member’s death.

(D) If an active or inactive member dies before benefit payments have begun or are required to begin under subsection (B) of this section, any death benefits shall be distributed by December thirty‑first of the calendar year that contains the fifth anniversary of the member’s death. However, the five‑year rule shall not apply to any death benefit that is payable to a member’s designated beneficiary, if:

(1) the benefit is distributed over the designated beneficiary’s lifetime or over a period not extending beyond the designated beneficiary’s life expectancy; and

(2) the distributions begin no later than December thirty‑first of the calendar year that contains the first anniversary of the member’s death.

HISTORY: 2008 Act No. 311, Section 7, eff June 4, 2008.

**SECTION 9‑1‑1670.** Change or error in records.

(A) If a change or error in the records results in a member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct, the board shall correct the error and, so far as practicable, adjust the payment so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid.

(B) The system must correct its records relating to a member upon:

(1) written certification from the employer that the employer’s records contained an error that affected the enrollment of the member; and

(2) a showing to the system that all other related records and accounts have been corrected and adjusted to correspond to the change requested of the system.

A correction of the records of the system takes effect only upon payment by the employer and employee to the system of costs as determined by the system.

(C) An employer’s request to correct a member’s record pursuant to subsection (B) must be made within two years of the commission of the error by the employer.

HISTORY: 1962 Code Section 61‑115; 1952 Code Section 61‑115; 1945 (44) 212; 1949 (46) 424; 1999 Act No. 72, Section 1, eff June 11, 1999.

Editor’s Note

1999 Act No. 72, Section 5, provides in part:

“...the provisions of subsection (C) of Section 9‑1‑1670 do not apply to requests to the system to change its records which are pending on the effective date of this act....”

Effect of Amendment

The 1999 amendment designated the former text, relating to adjusting payments, as (A), and made language changes; added (B), relating to correction of records; and added (C), relating to an employer’s request to correct records.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Estoppel and Waiver Section 4, Equitable Estoppel or Estoppel in Pais.

S.C. Jur. Limitation of Actions Section 54, General Rule.

NOTES OF DECISIONS

In general 1

1. In general

Section 9‑1‑1670, requiring that correct records regarding retirement benefits be maintained by the South Carolina Retirement System, is not addressed to the Ports Authority, and therefore did not obligate the Ports Authority to correct erroneous records which reflected allegedly discriminatory classification practices of the Ports Authority prior to July 30, 1969. Simmons v. South Carolina State Ports Authority (D.C.S.C. 1980) 495 F.Supp. 1239, affirmed 694 F.2d 63. Civil Rights 1706

In an action by black employees of the South Carolina State Ports Authority alleging prior discrimination in classification of employees resulting in discrimination in retirement benefits, relief under Section 9‑1‑1670 would be denied where the alleged discrimination had been perpetrated by the Ports Authority and not the South Carolina Retirement System, the records statute is not addressed to the Ports Authority but only to the Retirement System, and no claim was made of discrimination in the correcting of retirement records. Simmons v. South Carolina State Ports Authority (D.C.S.C. 1980) 495 F.Supp. 1239, affirmed 694 F.2d 63.

Whether Department of Corrections employees originally enrolled in the South Carolina Retirement System (SCRS) and subsequently enrolled in the Police Officers Retirement System (PORS) were entitled to retroactive enrollment in PORS presented a question of law, as their right to relief turned on whether they met statutory definition of police officer prior to time that they were enrolled in the PORS, and remedy sought was provided in error correction provision of the SCRS. Harvey v. South Carolina Dept. of Corrections (S.C.App. 2000) 338 S.C. 500, 527 S.E.2d 765, rehearing denied. Public Employment 385; States 64.1(7)

**SECTION 9‑1‑1680.** Exemption from taxation and legal process; exceptions; assignment.

Except as provided in Section 9‑18‑10, and related sections, Article 11, Chapter 17, Title 63 and Section 8‑1‑115 and subject to the doctrine of constructive trust ex maleficio, and subject to income tax levies imposed pursuant to state or federal law and distributions made pursuant to the federal Pension Protection Act of 2006, the right of a person to an annuity or a retirement allowance or to the return of contributions, an annuity, or retirement allowance itself, any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and the monies of the system created under the provisions of this chapter or any private retirement system operated by a municipality, are exempted from any state or municipal tax, except the taxes imposed pursuant to Chapters 6 and 16 of Title 12, and exempted from levy and sale, garnishment, attachment, or any other process and are unassignable except as specifically otherwise provided in this chapter. This section does not apply to any authorized deduction from a retirement allowance.

HISTORY: 1962 Code Section 61‑116; 1952 Code Section 61‑116; 1945 (44) 212; 1949 (46) 424; 1988 Act No. 297, eff February 2, 1988; 1989 Act No. 189, Part II, Section 39C, eff for taxable years beginning after 1988 and with respect to estates of decedents dying after 1988 (became law on June 8, 1989, without the Governor’s signature); 2001 Act No. 16, Section 2, eff April 10, 2001; 2008 Act No. 311, Section 8, eff June 4, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference added in 2008 in the first sentence to “Section 20‑7‑1315” was changed to “Article 11, Chapter 17, Title 63”. Article 11 of Title 63 (Sections 63‑17‑1410 et seq.) is entitled “Income Withholding to Enforce Child Support”.

Effect of Amendment

The 1988 amendment added a reference to “provisions of this chapter or any private retirement system operated by a municipality”, and made minor grammatical changes.

The 1989 amendment inserted “except the taxes imposed pursuant to Chapters 7, 15, and 16 of Title 12,”.

The 2001 amendment inserted “Except as provided in Section 8‑1‑115 and subject to the doctrine of constructive trust ex maleficio” and made corresponding punctuation changes, and substituted “Chapters 6” for “Chapters 7, 15,”.

The 2008 amendment added exceptions in the first sentence and added the second sentence excepting authorized deductions from a retirement allowance.

CROSS REFERENCES

As to the application of this section to the creation, assignment, recognition, or enforcement of a right to any benefit payable under a retirement system with respect to a member or retired member pursuant to a non‑qualified domestic relations order, see Section 9‑18‑20.

LIBRARY REFERENCES

85 C.J.S., Taxation Section 247.

RESEARCH REFERENCES

ALR Library

34 ALR, Federal 316 , Retirement Fund Benefits or Refund of Retirement Fund Contributions as “Property” of Debtor Passing, Under Section 70(A)(5) of Bankruptcy Act (11 U.S.C.A. Section 110(A)(5)), to Trustee, in Bankruptcy.

52 ALR 5th 221 , Enforcement of Claim for Alimony or Support, or for Attorneys’ Fees and Costs Incurred in Connection Therewith, Against Exemptions.

Encyclopedias

S.C. Jur. Assignments Section 25, Public Employment Wages and Benefits.

S.C. Jur. Constitutional Law Section 106, Laws Impairing Obligations of Contract.

S.C. Jur. Limitation of Actions Section 54, General Rule.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Tax law. 43 S.C. L. Rev. 166 (Autumn 1991).

Attorney General’s Opinions

State retirement funds are not assignable. 1983 Op Atty Gen, 83‑29, p. 46.

NOTES OF DECISIONS

In general 1

Actions and proceedings 2

Validity 1/2

1 2. Validity

Changes to statute that made retirement benefits to state employees exempt from state taxes, which changes removed the exemption but increased the amount of benefits by a percentage that fairly offset the tax, were changes that were reasonable and necessary to legitimate the state purpose of complying with federal case law declaring such state tax exemption to be in violation of the doctrine of intergovernmental immunity, and therefore, state retiree taxpayer’s impairment of contract claim was precluded. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Constitutional Law 2725(6); Taxation 3433

Even assuming that prior version of a statute that made retirement benefits to state employees exempt from state taxes was a “contract,” the later version that removed the exemption but increased the benefits by a percentage that fairly offset the tax did not create a substantial impairment to the contract, as a required for state retiree taxpayer to establish an impairment of contract claim under federal constitution. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Constitutional Law 2725(6); Taxation 3433

Prior version of a statute that granted a state tax exemption on retirement benefits to state employees did not contain contractually‑significant language, and was a tax law subject to modification, and thus, did not create a “contract,” as a required for taxpayer to establish impairment of contract claim under federal constitution, after changes to the statute removed the exemption. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Constitutional Law 2725(2); Taxation 3433

Prior version of statute, which made retirement benefits to state employees exempt from state taxes, did not create a contract, and therefore, taxpayer did not have a legitimate property interest in the law remaining unchanged such that changes to the statute removing the exemption did not violate the takings clause of the Fifth Amendment or taxpayer’s substantive due process rights. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Constitutional Law 4170; Eminent Domain 81.1; Taxation 3433

1. In general

Section 9‑1‑1680 expresses a legislative intent to exempt contributions to teachers’ retirement funds from execution and the fact that it is stated in a statute relating to the property it exempts, rather than in the state bankruptcy statute, does not affect the clarity of the legislative purpose. Hovis v. Wright (C.A.4 (S.C.) 1985) 751 F.2d 714.

Anti‑alienation requirement of the South Carolina Retirement System (SCRS), which provided that the right of a person to an annuity or a retirement allowance was unassignable except as authorized by statute, applied to domestic relations order that was not qualified pursuant to the Qualified Domestic Relations Orders (QDRO) statutory scheme. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 406

Domestic relations order’s irrevocable designation of university professor’s former wife as beneficiary of professor’s pre‑retirement death benefits under the South Carolina Retirement System (SCRS) was akin to an assignment of those benefits and, thus, was void under the SCRS’s anti‑alienation provision, where domestic relations order was not qualified under the Qualified Domestic Relations Orders (QDRO) statutory scheme. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(3); Public Employment 398

South Carolina Retirement System (SCRS) benefits are statutorily exempted from any process such as assignment, garnishment, or levy except as provided in the statutes. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Exemptions 49

Irrevocable designation of a beneficiary is akin to an assignment, for purposes of the South Carolina Retirement System’s (SCRS) anti‑alienation provision. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 390

Former wife of professor was required to follow administrative procedure for determining whether domestic relations order, under which professor designated former wife as beneficiary of his pre‑retirement death benefits under the South Carolina Retirement System (SCRS), was a qualified domestic relations order (QDRO) that entitled her to professor’s pre‑retirement death benefits from the SCRS. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

Absent a determination by the retirement system administrator or designee for South Carolina Retirement System (SCRS) that an order is a qualified domestic relations order, the rights of a member to his benefits cannot be assigned or transferred. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 406

Since Section 20‑7‑1315, which provides for the withholding of certain types of income, including retirement benefits from a State agency, is both more specific and more recent than Section 9‑1‑1680, which exempts retirement payments from garnishment and attachment, garnishment or attachment of income from a State retirement account is available in a proper case. Lloyd v. Lloyd (S.C. 1988) 295 S.C. 55, 367 S.E.2d 153.

2. Actions and proceedings

Statutory changes that removed state tax exemptions on state retirement benefits did not amount to a continuing breach that would start a new limitations period each year, in taxpayer’s impairment of contract action challenging the statutory changes; the cause of action arose with the enactment of the changes. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 58(6)

State department of revenue did not waive statute of limitations defense to taxpayer’s impairment of contract claim by failing to assert the defense in taxpayer’s prior action, which action was dismissed without prejudice, where the prior dismissal allowed the department opportunity to assert any available defenses, including a limitations defense, when the action was re‑filed. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 180(6)

Taxpayer’s cause of action challenging statutory changes removing state tax exemptions on state retirement benefits accrued, and three‑year limitations period began to run, when the statute changed, and not when the taxpayer began receiving retirement benefits as state employee; taxpayer had a vested interest in his retirement plan prior to the statutory changes. Anonymous Taxpayer v. South Carolina Dept. of Revenue (S.C. 2008) 377 S.C. 425, 661 S.E.2d 73. Limitation Of Actions 58(6)

**SECTION 9‑1‑1690.** Credit of State is not pledged for payments; rights in case of termination of System or discontinuance of contributions.

All agreements or contracts with members of the System pursuant to any of the provisions of this chapter shall be deemed solely obligations of the Retirement System and the full faith and credit of this State and of its departments, institutions and political subdivisions and of any other employer is not, and shall not be, pledged or obligated beyond the amounts which may be hereafter annually appropriated by such employers in the annual appropriations act, county appropriation acts and other periodic appropriations for the purposes of this chapter. In case of termination of the System, or in the event of discontinuance of contributions thereunder, the rights of all members of the System to benefits accrued to the date of such termination or discontinuance of contributions, to the extent then funded, are nonforfeitable.

HISTORY: 1962 Code Section 61‑117; 1952 Code Section 61‑117; 1945 (44) 212; 1949 (46) 424; 1970 (56) 1939.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 10.

Notes of Decisions

Immunity 1

1. Immunity

A judgment in favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2384

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTIONS 9‑1‑1700 to 9‑1‑1730.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑1700 was entitled “Out‑of‑state service defined” and was derived from 1962 Code Section 61‑118; 1960 (51) 1535; 1970 (56) 1949; 1971 (57) 92; 1974 (58) 2217.

Former Section 9‑1‑1710 was entitled “Lump‑sum contribution by member with out‑of‑state service; special employee annuity and additional creditable service for such member” and was derived from 1962 Code Section 61‑119; 1960 (51) 1535; 1966 (54) 2600; 1970 (56) 1949; 1974 (58) 2217; 1975 (59) 53; 1986 Act No. 461, Section 1, eff June 2, 1986; 1991 Act No. 64, Section 3, eff May 27, 1991; 1993 Act No. 166, Section 5, eff June 16, 1993; 1998 Act No. 419, Part II, Section 28D, eff June 30, 1998.

Former Section 9‑1‑1720 was entitled “Special employer annuities for members with out‑of‑state service” and was derived from 1962 Code Section 61‑120; 1960 (51) 1535; 1974 (58) 2217; 1975 (59) 53.

Former Section 9‑1‑1730 was entitled “Rights of beneficiaries of members with out‑of‑state service; no duplication of benefits; rules for administration” and was derived from 1962 Code Section 61‑121; 1960 (51) 1535.

**SECTION 9‑1‑1740.** Increase in benefits for persons who were receiving benefits prior to July 1, 1966.

Effective July 1, 1967, the monthly benefits, inclusive of the supplemental allowances payable under the provisions of Sections 9‑1‑1910, 9‑1‑1920 and 9‑1‑1930, for persons who commenced receiving benefits from the System prior to July 1, 1966, shall be increased as follows:

If benefits commenced July 1, 1965 to June 30, 1966, the increase shall be five percent. An additional one percent shall be added for each preceding fiscal year in which benefits commenced until July 1, 1945, at which time the increase shall be twenty‑five percent.

The minimum increase pursuant to this section, inclusive of the increase in the supplemental allowances, shall be five dollars per month. However, if an optional benefit has been elected, the minimum shall be reduced actuarially as determined by the Board, and shall be applicable to the retired member or his designated beneficiary under the option elected.

HISTORY: 1962 Code Section 61‑122; 1967 (55) 56.

**SECTION 9‑1‑1750.** Increase in benefits for persons who were receiving benefits prior to July 1, 1967 and subsequent to June 30, 1966.

Effective July 1, 1968, the monthly benefits, inclusive of the supplemental allowances payable under the provisions of Sections 9‑1‑1910, 9‑1‑1920 and 9‑1‑1930, for persons who commenced receiving benefits from the System prior to July 1, 1967 and subsequent to June 30, 1966 shall be increased by five percent, and such monthly benefits to persons who commence receiving benefits in each fiscal year thereafter through the fiscal year ending June 30, 1970, shall be increased by five percent provided that there is sufficient investment income in excess of the valuation interest assumption to fund such increases or a proportionate part thereof on a lifetime basis, as determined by the actuary.

The minimum increase pursuant to this section, inclusive of the increase in the supplemental allowances, shall be five dollars per month. However, if an optional benefit has been elected, the minimum shall be reduced actuarially as determined by the Board, and shall be applicable to the retired member or his designated beneficiary under the option elected.

HISTORY: 1962 Code Section 61‑123; 1968 (55) 2855; 1970 (56) 1939.

**SECTION 9‑1‑1760.** Increase in benefits for persons who retired prior to July 1, 1972.

All members of the State Retirement System who retired prior to July 1, 1972, shall have their service retirement allowance increased eleven percent. The computation of such increase shall commence on and include July 1, 1974, and the increase shall be paid from the General Fund of the State.

HISTORY: 1962 Code Section 61‑123.1; 1974 (58) 2608.

**SECTION 9‑1‑1765.** Additional increase in benefits for persons who retired prior to July 1, 1972.

In addition to the increase in the service retirement allowance for members of the State Retirement System who retired prior to July 1, 1972, provided in Section 9‑1‑1760, all such members shall receive an additional increase in their service retirement allowance of four percent per year computed and commencing on and including October 1, 1976.

HISTORY: 1976 Act No. 709 Part II Section 9.

**SECTION 9‑1‑1766.** Further additional increase in benefits for persons who retired prior to July 1, 1972.

In addition to the increase in the service retirement allowance for members of the State Retirement System who retired prior to July 1, 1972, provided in Section 9‑1‑1760 and Section 9‑1‑1765, all such members shall receive an additional increase in their service retirement allowance of five percent per year computed and commencing on and including January 1, 1978.

HISTORY: 1977 Act No. 219 Pt II Section 23.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 5.

**SECTION 9‑1‑1767.** Increase of benefits payable due to retirement before July 1, 1988.

Effective July 1, 1988, the benefits payable due to retirement before July 1, 1988, must be increased by ten percent.

Effective July 1, 1989, the benefits payable due to retirement before July 1, 1989, must be increased by seven percent.

HISTORY: 1988 Act No. 475, Section 3, eff July 1, 1988; 1989 Act No. 189, Part II, Section 60C, eff July 1, 1989 (became law without the Governor’s signature).

Effect of Amendment

The 1989 amendment added the second undesignated paragraph, increasing retirement benefits by seven percent.

Attorney General’s Opinions

S.C. Retirement System may legally make downward adjustments in monthly retirement payment of members who retired pursuant to provisions of Option 4 of Section 9‑1‑1620. 1993 Op Atty Gen No. 93‑15.

NOTES OF DECISIONS

In general 1

1. In general

Federal retirees were not required to exhaust administrative remedies before seeking declaratory judgment that statute unconstitutionally eliminates tax exemption for state retirees and simultaneously increases the pension benefits for state retirees to offset the increased tax liability. Ward v. State (S.C. 2000) 343 S.C. 14, 538 S.E.2d 245, rehearing denied. Declaratory Judgment 44

**SECTION 9‑1‑1770.** Preretirement Death Benefit Program; post‑retirement benefit payment.

(A) There is created the Preretirement Death Benefit Program for all employers under the system except counties, municipalities, other political subdivisions, and those state departments, agencies, or other institutions which pay directly to the system the total employer contributions for the participating members in their employ.

(B) The program is available to those employers exempted in subsection (A) by written application of the employer. An application is an irrevocable commitment to participate under the program. Applications are effective July first next following the date of receipt by the system of the application.

(C)(1) Upon receipt of proof, satisfactory to the board, of the death of: (a) a contributing member in service who had completed at least one full year of membership in the system or of the death of a contributing member as a result of an injury arising out of and in the course of the performance of his duties regardless of length of membership, as of the effective date of his employer’s participation, or (b) a retired contributing member of the system, there must be paid to the person he nominated for the refund of his accumulated contributions, unless he has nominated a different beneficiary by written designation filed with the board, in the event of his death pursuant to Section 9‑1‑1650, if the person is living at the time of the member’s death, otherwise to the member’s estate, a death benefit equal to the annual earnable compensation of the member at the time his death occurs. The death benefit is payable apart and separate from the payment of the member’s accumulated contributions on his death pursuant to Sections 9‑1‑1650 or 9‑1‑1660.

(2) For purposes of this subsection, a member described in item (1)(a) is considered to be in service at the date of his death if the last day the member was employed in a continuous, regular pay status, while earning regular or unreduced wages and regular or unreduced retirement service credit, whether the member was physically working on that day or taking continuous accrued annual leave or sick leave while receiving a full salary, occurred not more than ninety days before the date of his death and he has not retired.

(3) For purposes of this subsection, a member described in (1)(b) is considered a retired contributing member if the last day the member was employed in a continuous, regular pay status, while earning regular or unreduced wages and paying retirement system contributions whether the member was physically working on that day or taking continuous accrued annual leave or sick leave while receiving a full salary, occurred not more than ninety days before the date of his death.

(D) RESERVED

(E) Upon the death of a retired member who is not a retired contributing member after December 31, 2000, there must be paid to the designated beneficiary or beneficiaries, if living at the time of the retired member’s death, otherwise to the retired member’s estate, a benefit of two thousand dollars if the retired member had ten years of creditable service but less than twenty years, four thousand dollars if the retired member had twenty years of creditable service but less than twenty‑eight, and six thousand dollars if the retired member had at least twenty‑eight years of creditable service at the time of retirement, if the retired member’s most recent employer, before the member’s retirement, is covered by the preretirement Death Benefit Program.

HISTORY: 1962 Code Section 61‑124; 1968 (55) 2497; 1972 (57) 2207; 1973 (58) 169; 1974 (58) 2176; 1977 Act No. 26 Section 2; 1984 Act No. 386, Section 1; 1985 Act No. 201, Part II, Section 51A; 1990 Act No. 412, Section 8, eff January 1, 1991; 1991 Act No. 171, Part II, Section 44A, eff June 12, 1991; 1996 Act No. 458, Part II, Section 46A, eff June 19, 1996; 2001 Act No. 1, Part II, Section 2A5, eff January 1, 2001; 2001 Act No. 1, Part II, Section 2B2, eff July 1, 2000; 2005 Act No. 153, Pt II, Section 6, eff July 1, 2005; 2010 Act No. 176, Section 1, eff May 19, 2010.

Editor’s Note

2010 Act No. 176, Section 8, provides:

“This act takes effect upon approval by the Governor and applies for death benefits payable based on member deaths occurring after June 30, 2010.”

Effect of Amendment

The 1990 amendment, effective January 1, 1991, revised the fifth paragraph, allowing for the designation of more than one beneficiary.

The 1991 amendment in the third undesignated paragraph, added the provision allowing payment of accumulated contributions of a deceased member to a beneficiary designated in writing and filed with the budget and control board.

The 1996 amendment revised the third undesignated paragraph.

The 2001 amendment, in Part II, Section 2.A.5., in the fifth undesignated paragraph, substituted “December 31, 2000” for “July 1, 1985”, substituted “twenty‑eight” for “thirty” in two places, substituted “life insurance benefit” for “death benefit”, and made language changes; and in Part II, Section 2.B.2., added a new sixth undesignated paragraph relating to life insurance benefits in the case of the death of a retired member after June 30, 2000.

The 2005 amendment designated subsections (A) to (E) and made various revisions.

The 2010 amendment deleted the text in subsection (D) relating to group life insurance, and reserved the subsection; and in subsection (E) deleted references to life insurance.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑1‑1085.

Ineligibility for benefit under this section upon exercise of option by nominee of deceased member to receive monthly allowance for life in lieu of deceased member’s accumulated contributions, see Section 9‑1‑1660.

NOTES OF DECISIONS

In general 1

1. In general

For purposes of the state’s retirement act, the decedent earned service credit during her short term disability; consequently, the decedent was eligible for Pre‑retirement Death Benefits where she died less than 90 days after her short term disability ended. King v. South Carolina Retirement Systems (S.C. 1995) 319 S.C. 373, 319 S.C. 822, 461 S.E.2d 822.

**SECTION 9‑1‑1775.** Death Benefit Plan.

(A) The Death Benefit Plan for members of the South Carolina Retirement System, hereinafter referred to as the “plan”, is established for the purpose of providing for the payment of the benefits provided by Section 9‑1‑1770.

(B) A separate fund, to be known as the Death Benefit Plan Reserve Fund, is established within the South Carolina Retirement System, hereinafter referred to as the “retirement system”, to be held in trust by the board. The fund shall consist of all contributions paid by the employers and other monies received and paid into the fund for death benefit purposes, and of the investment earnings on these monies, and must be used only to pay the death benefits prescribed by subsection (C). Concurrent with the determination of the initial liability of the plan for the balance of the fiscal year on and after the effective date of the benefit, for the death benefit provided and to be paid for pursuant to this plan, there must be segregated and transferred from the Employer Annuity Accumulation Fund of the retirement system to the reserve fund created by this section the amounts determined by the actuary to be necessary to pay anticipated death benefit claims. Subsequent segregations and transfers must be made as required to pay the death benefit prescribed by subsection (C) from the reserve fund provided by this section.

(C) At the death of a member who has met the eligibility requirements set forth in Section 9‑1‑1770, a benefit equal to the death benefit provided by Section 9‑1‑1770 must be paid to the person nominated by the member in accordance with the provisions of Section 9‑1‑1770 or to the member’s estate.

(D) The actuary shall investigate the claim experience of the plan as provided by Section 9‑1‑250. On the basis of these investigations and upon the recommendation of the actuary, as provided in Section 9‑1‑1210, the board shall certify the contribution rates necessary to fund the death benefit authorized to be paid by the plan. As soon as practicable after the close of each fiscal year, the board shall determine the contribution which the employers participating in the plan are required to pay into the reserve fund to discharge the obligations of the plan for the past fiscal year.

(E) Each qualified member of the retirement system is to be covered as provided in this section effective commencing as of June 19, 1973.

HISTORY: 2008 Act No. 311, Section 34, eff June 4, 2008; 2010 Act No. 176, Section 2, eff May 19, 2010.

Editor’s Note

2010 Act No. 176, Section 8, provides:

“This act takes effect upon approval by the Governor and applies for death benefits payable based on member deaths occurring after June 30, 2010.”

Effect of Amendment

The 2010 amendment rewrote the section.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑1‑1085.

**SECTION 9‑1‑1780.** Recomputation allowances of certain persons having thirty‑five or more years of creditable service.

Effective July 1, 1969, any monthly retirement allowance which commenced prior to such date to or on account of a Class Two member who, at retirement or earlier death, had completed thirty‑five or more years of creditable service but had not reached his sixty‑fifth birthday shall be recomputed to reflect the deletion as of July 1, 1969 of the five‑twelfths of one percent reduction previously applicable. Commencing July 1, 1969 the recomputed allowance, modified to reflect the election, if any, of an optional benefit under Section 9‑1‑1620, shall be payable.

HISTORY: 1962 Code Section 61‑125; 1969 (56) 259.

**SECTION 9‑1‑1790.** Amount which may be earned upon return to covered employment.

(A)(1) A retired member of the system who has been retired for at least thirty consecutive calendar days may be hired and return to employment covered by this system or any other system provided in this title and earn up to ten thousand dollars without affecting the monthly retirement allowance the member is receiving from the system. If the retired member continues in service after earning ten thousand dollars in a calendar year, the member’s allowance must be discontinued during his period of service in the remainder of the calendar year. If the employment continues for at least forty‑eight consecutive months, the provisions of Section 9‑1‑1590 apply. If a retired member of the system returns to employment covered by this system or any other system provided in this title sooner than thirty days after retirement, the member’s retirement allowance is suspended while the member remains employed by the participating employer. If an employer fails to notify the system of the engagement of a retired member to perform services, the employer shall reimburse the system for all benefits wrongly paid to the retired member.

(2) The earnings limitation imposed pursuant to this item does not apply if the member meets at least one of the following qualifications:

(a) the member retired before January 2, 2013;

(b) the member has attained the age of sixty‑two years at retirement; or

(c) compensation received by the retired member from the covered employer is for service in a public office filled by the appointment of the Governor and with confirmation by the Senate, by appointment or election by the General Assembly, or by election of the qualified electors of the applicable jurisdiction.

(B) An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full‑time or part‑time employee or a temporary or permanent employee. If an employer who is obligated to the system pursuant to this subsection fails to pay the amount due, as determined by the system, the amount must be deducted from any funds payable to the employer by the State.

(C) A retired member shall pay to the system the employee contribution as if the member were an active contributing member if an employer participating in the system employs the retired member. The retired member does not accrue additional service credit in the system by reason of the contributions required pursuant to this subsection and subsection (B) of this section.

(D) A retired member of the South Carolina Retirement System who is not a member of the Police Officers Retirement System, but is employed in a position that would otherwise be covered by the Police Officers Retirement System, shall not join the Police Officers Retirement System but, notwithstanding any other provision of law, that member is deemed a retired contributing member of the South Carolina Retirement System and shall remit the employee contributions required under subsection (C) of this section to the South Carolina Retirement System and the employer shall remit to the South Carolina Retirement System the employer contribution required by subsection (B). An employer who hires a retiree of the South Carolina Retirement System pursuant to this subsection shall elect to participate as an employer in the South Carolina Retirement System.

HISTORY: 1962 Code Section 61‑126; 1969 (56) 272; 1973 (58) 167; 1974 (58) 2066; 1975 (59) 49; 1977 Act No. 43 Section 1; 1978 Act No. 428 Section 1; 1979 Act No. 199 Part II Section 24A; 1980 Act No. 517 Part II, Section 19A; 1981 Act No. 178 Part II Section 33; 1982 Act No. 466 Part II Section 41A; 1983 Act No. 151 Part II Section 50A; 1984 Act No. 512, Part II, Section 50A; 1985 Act No. 201, Part II, Section 42A; 1986 Act No. 540, Part II, Section 43A, effective June 18, 1986, and became law without the Governor’s signature; 1987 Act No. 170, Part II, Section 38A, eff June 22, 1987 (became law without Governor’s signature); 1988 Act No. 658, Part II, Section 40A, eff June 8, 1988; 1989 Act No. 189, Part II, Section 50A, eff June 8, 1989 (became law without the Governor’s signature); 1999 Act No. 100, Part II, Section 27, eff July 1, 1999; 2001 Act No. 25, Section 1, eff July 1, 2001; 2005 Act No. 153, Pt II, Section 7, eff July 1, 2005; 2012 Act No. 278, Pt I, Section 14.A, eff January 2, 2013.

Editor’s Note

1990 Act No. 612, Part I, paragraphs 129.55 and 129.56 increased earnings limitations from $9,500 to $10,000.

1999 Act No. 100, Part II, Section 27A, provides as follows:

“The General Assembly finds that:

“(1) educational improvement is the primary issue in this State and that teaching experience is one of the keys to educational improvement;

“(2) South Carolina is faced with a teacher shortage;

“(3) incentives, and funding for these incentives, for rewarding and retaining experienced teachers are vital to maintaining a professional teaching corps;

“(4) other areas within state and local government also can benefit from the retention of experienced professional employees.”

Effect of Amendment

The 1986 amendment substituted “eight thousand dollars” for “seven thousand five hundred dollars”.

The 1987 amendment permits a retired member of the System to earn “eight thousand five hundred dollars” rather than “eight thousand dollars” before benefits are affected.

The 1988 amendment increased the amount which can be earned upon return to covered employment from eight thousand five hundred to nine thousand dollars.

The 1989 amendment increased the amount a retired member who returns to covered employment may earn without affecting his benefits from $9,000 to $9,500.

The 1999 amendment designated the existing text as subsection (A), in subsection (A), substituted “twenty‑five thousand dollars” for “nine thousand five hundred dollars” and added the last sentence relating to notification; and added subsection (B).

The 2001 amendment, in subsection (A), inserted “who has been retired for at least sixty days” in the first sentence, changed “twenty‑five thousand dollars” to “fifty thousand dollars” in two places, deleted an exclusion for mandatory retirees pursuant to Section 9‑1‑1530, and inserted the penultimate sentence relating to those who return to employment sooner than sixty days after retirement.

The 2005 amendment rewrote subsection (A), deleting the second sentence requiring discontinuance of the allowance upon earning fifty thousand dollars; and added subsections (C) and (D).

The 2012 amendment rewrote subsection (A).

CROSS REFERENCES

Retirement of members at age 60 or after 28 years’ service, see Section 9‑1‑1510.

LAW REVIEW AND JOURNAL COMMENTARIES

Layman v. State: The South Carolina Supreme Court’s Response to Retroactive Legislation and the Establishment of a New Principle on Statutorily Created Employment and Retirement Contracts. 58 S.C. L. Rev. 477 (Spring 2007).

Attorney General’s Opinions

A retired city attorney may receive full retirement benefits unaffected by the fact that he also receives compensation as a member of a private law firm which is retained by a city to render those services normally rendered by city attorney. 1970‑71 Op Atty Gen, No 3210, p 191.

Retired employees who work full time as permitted by Section 9‑1‑1790, are eligible for health insurance coverage under the active employees classification. 1983 Op Atty Gen, No. 83‑44, p. 65.

Whether individual is entitled to draw state retirement during period of time he is receiving compensation under contract depends largely upon particular facts involved. 1985 Op Atty Gen, No. 85‑132, p 360.

NOTES OF DECISIONS

In general 1

Immunity 2

1. In general

“Election of Non‑Membership” forms signed by retirees who elected to return to work following retirement, which provided that working retiree took “this action under the provisions of the Retirement Act with full knowledge that [retiree] would not be credited with retirement service for this period of employment since [retiree] elected nonmembership, and as such, [retiree] will not be making retirement contributions,” did not “fill up the details” of working retiree statutes, so as to create binding contract between State and working retirees that State subsequently breached by amending statute to require working retirees to contribute to Police Officers Retirement System without accruing additional service credit; retirees were under no obligation to return to work but had option of doing so, subject to State’s discretion to rehire them, and statute did not contain explicit guarantee that retirement contributions would not be required. Ahrens v. State (S.C. 2011) 392 S.C. 340, 709 S.E.2d 54, rehearing denied. Municipal Corporations 187(4); Public Employment 392

Prior working retiree statute, which allowed retired members of the South Carolina Retirement System to return to employment and earn up to $50,000 per year without affecting their retirement allowance, did not evidence an intent by the legislature to be bound to any terms related to the old working retiree program, and thus, the prior statute did not create a binding contract between old working retirees and the State that prohibited the State from altering the statute exempting old working retirees from further contributions to the retirement system. Layman v. State (S.C. 2006) 368 S.C. 631, 630 S.E.2d 265, rehearing denied, on remand 2007 WL 4966163. Public Employment 392; States 64.1(4)

2. Immunity

Ex parte Young exception to Eleventh Amendment sovereign immunity, permitting a federal court to issue prospective, injunctive relief against a state officer to prevent ongoing violations of federal law, did not apply to allow claims for prospective injunctive relief brought by retired members of pension trust plans for employees of the State of South Carolina and its political subdivisions against individual officials of the entity that administered the plan, arising from state law requiring the retired members to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, where state officials named as defendants had no connection with the enforcement of the challenged statute. U.S.C.A. Const.Amend. 11; S.C.Code 1976, Sections 9‑1‑1790(C), 9‑11‑90(4)(c). Hutto v. South Carolina Retirement System (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2377; Federal Courts 2384

Eleventh Amendment barred claims for monetary damages brought by retired members of pension trust plans for employees of the State of South Carolina and its political subdivisions against individual officials of the entity that administered the plan, arising from state law requiring the retired members to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, where the entity itself was an arm of the state and thus immune from suit under the Eleventh Amendment. Hutto v. South Carolina Retirement System (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2384

The Eleventh Amendment barred claims for monetary damages brought by retired members of pension trust plans for employees of the State of South Carolina and its political subdivisions against individual officials of the entity that administered the plan, arising from state law requiring the retired members to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, where the entity itself was an arm of the state and thus immune from suit under the Eleventh Amendment. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

Entity that managed pension trust plans for employees of the State of South Carolina and its political subdivisions was involved with State concerns as distinct from non‑State concerns, thus supporting determination that the entity had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; the entity had members throughout the State, a judgment for the retired members could have repercussions on other members throughout the State, the State of South Carolina, as an employer and as a guarantor of the funds’ fiscal soundness, contributed to the funding of the retirement system, making the entity a truly State‑wide concern. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

Entity that managed pension trust plans for employees of the State of South Carolina and its political subdivisions was treated as an arm of the state, thus supporting determination that the entity had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; statutory scheme governing the entity suggested a close relationship between the State and the entity in terms of its administration, its operation and its State‑wide purpose, and the South Carolina Supreme Court had viewed the entity as a State agency for the purposes of the state action statute allowing successful plaintiffs to collect attorney fees when the losing party was a state or a political subdivision of the state. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

A judgment on favor of retired members of pension trust plans for employees of the State and its political subdivisions, in their action challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit, had the potential to impact the State’s treasury, thus supporting determination that entity that administered the plans was an arm of the State and therefore immune from suit under the Eleventh Amendment; although the plans were part of a fundamentally member‑funded retirement system, the State was constitutionally required to appropriate funds to protect the fiscal integrity of the system, the entity also received funds directly from the State when, as an employer, it made its annual appropriation, and if a monetary judgment created a shortfall in the entity’s funds, the State may have to make up the difference. Hutto v. South Carolina Retirement System, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑1‑1795.** Employment of certain retired teachers without loss of retirement benefits; procedure by which retired teachers may be employed.

(A) A retired member of the system may return to employment covered by the system without affecting the monthly retirement allowance he is receiving from the system if the retired member is a certified teacher and is employed by a school district to teach in the classroom in his area of certification in a critical academic need area or geographic need area as defined by the State Board of Education.

(B) For the provisions of this section to apply, the Department of Education must review and approve, from the documentation provided by the school district, that no qualified, nonretired member is available for employment in the position, and that the member selected for employment meets the requirements of this section. However, a school district may not consider a member of the system for employment before May thirty‑first of each year. After approval is received from the Department of Education, school districts must notify the State Board of Education of the engagement of a retired member as a teacher and the department must notify the State Retirement System of their exemption from the earnings limitation. If the employing district fails to notify the department of the engagement of a retired member as a teacher, the district shall reimburse the system for all benefits wrongly paid to the retired member.

(C) A school district shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the district, regardless of whether the retired member is a full‑time or part‑time employee, a temporary or permanent employee. If a district which is obligated to the system pursuant to this subsection fails to pay the amount due, as determined by the system, the amount must be deducted from any funds payable to the district by the State.

(D) Beginning July 1, 2001, any retired certified school teacher or certified employee may be employed in a school or school district which is in a critical geographic need area or has received a ‘below average’ or ‘unsatisfactory’ academic performance rating pursuant to the Education Accountability Act without penalty from the South Carolina Retirement System.

HISTORY: 1999 Act No. 100, Part II, Section 82, eff July 1, 1999; 2000 Act No. 387, Part II, Section 11A, eff July 1, 2000; 2000 Act No. 393, Section 17, eff August 1, 2000; 2001 Act No. 64, Section 1, eff June 28, 2001.

Editor’s Note

1999 Act No. 100, Part II, Section 82A, provides as follows:

“The General Assembly finds that:

“(1) educational improvement is the primary issue in this State and that teaching experience is one of the keys to educational improvement;

“(2) South Carolina is faced with a teacher shortage; and

“(3) incentives, and funding for these incentives, for rewarding and retaining experienced teachers are vital to maintaining a professional teaching corps.”

Effect of Amendment

The first 2000 amendment (by Act No. 387, Part II), in subsection (B), substituted in the second sentence “May 31” for “July 15” and made other nonsubstantive changes.

The second 2000 amendment (by Act No. 393) made identical changes.

The 2001 amendment added subsection (D).

**SECTION 9‑1‑1800.** Recalculation of benefits for certain persons who retired prior to July 1, 1964.

Effective July 1, 1969, the monthly benefits payable to or on account of any member who retired from service prior to July 1, 1964 and who, had he remained in service thereafter would have been a Class Two member, shall be recalculated in accordance with the provisions of the System applicable to Class Two members retired on or after July 1, 1964, including any adjustment thereto which would be applicable under Section 9‑1‑1740. The benefit so determined shall be compared with the monthly benefit payable to or on account of the member under the System as in effect on June 30, 1969 inclusive of the supplemental allowances payable under the provisions of Sections 9‑1‑1910 and 9‑1‑1920, as amended, effective July 1, 1969, and Section 9‑1‑1930 and the increase, if any, in the monthly benefit shall be paid from the general fund of the State.

HISTORY: 1962 Code Section 61‑127; 1969 (56) 444.

**SECTION 9‑1‑1810.** Repealed by 2012 Act No. 278, Pt I, Section 16, eff July 1, 2012.

Editor’s Note

Former Section 9‑1‑1810 was entitled “Increase in allowances based on Consumer Price Index” and was derived from 1962 Code Section 61‑128; 1970 (56) 1939; 1980 Act No. 407, Section 7; 1982 Act No. 368, Section 1; 1984 Act No. 382, Section 1; 1986 Act No. 309 Section 7; 2001 Act No. 1, Part II, Section 2A6; 2005 Act No. 153, Pt II, Section 8; 2008 Act No. 311, Section 1.

**SECTION 9‑1‑1812.** Revision of sections upon certain conditions.

If all or any portion of Sections 1 and 2 of Act 311 of 2008, for any reason, is held to be unconstitutional, invalid, or unenforceable, either in whole or in part, or if any of the amendments made to Section 9‑1‑1810 of the 1976 Code by Act 153 of 2005, for any reason, are held to be unconstitutional, invalid or unenforceable, either in whole or in part, then effective at the time of that holding:

(1) Section 9‑1‑1810 of the 1976 Code is amended to the version of that section in effect before the enactment of Act 153 of 2005; and

(2) Section 9‑11‑310 of the 1976 Code is amended to the version of Section 9‑11‑310 in effect before the enactment of Act 311 of 2008.

HISTORY: 2008 Act No. 311, Section 57, eff June 4, 2008.

Editor’s Note

Sections 9‑1‑1810 and 9‑11‑310, referenced in the text, were repealed by 2012 Act No. 278.

**SECTION 9‑1‑1814.** Revision of sections upon certain conditions.

If for any reason, an assumed annual rate of return on the investments of the assets of the South Carolina Retirement System and the South Carolina Police Officers Retirement System of less than eight percent is approved or otherwise takes effect, then effective at that time the provisions of Section 9‑1‑1812 apply and Section 9‑1‑1810 of the 1976 Code is amended to the version of that section in effect before the enactment of Act 311 of 2008.

HISTORY: 2008 Act No. 311, Section 58, eff June 4, 2008.

Editor’s Note

Section 9‑1‑1810, referenced in the text, was repealed by 2012 Act No. 278.

**SECTION 9‑1‑1815.** Retirement allowance adjustments.

Effective beginning July 1, 2012, and annually thereafter, the retirement allowance received by retirees and their surviving annuitants inclusive of supplemental allowances payable pursuant to the provisions of Sections 9‑1‑1910, 9‑1‑1920, and 9‑1‑1930, must be increased by the lesser of one percent or five hundred dollars. Only those retirees and their surviving annuitants in receipt of an allowance on July first preceding the effective date of the increase are eligible to receive the increase. Any increase in allowance granted pursuant to this section must be included in the determination of any subsequent increase.

HISTORY: 2012 Act No. 278, Pt I, Section 2.A, eff July 1, 2012.

Attorney General’s Opinions

Cost of living adjustments or benefit adjustments are not contractual, particularly where it is necessary that they be altered to preserve fiscal soundness. S.C. Op.Atty.Gen. (August 29, 2016) 2016 WL 4698867.

**SECTION 9‑1‑1820.** Repealed by 1986 Act No. 309, Section 10, eff February 4, 1986.

Editor’s Note

Former Section 9‑1‑1820 was entitled “Post‑retirement increase special fund” and was derived from 1980 Act. No. 407, Section 8.

**SECTION 9‑1‑1830.** Payment and transfer of funds to the employer annuity accumulation fund.

Starting July 1, 1981, there must be paid to the system, and credited to the post‑retirement increase special fund, contributions by the employers in an amount equal to two‑tenths of one percent of the earnable compensation of each member employed by each employer. In addition, the board, on the recommendation of the actuary, shall transfer a portion of the monies as are received pursuant to Section 9‑1‑1050 that are available due to actuarial gains in the system if the transfers do not adversely affect the funding status of the system. Starting July 1, 1986, all contributions previously credited to the post‑retirement increase special fund must be diverted and credited to the employer annuity accumulation fund.

HISTORY: 1980 Act No. 407, Section 9; 1986 Act No. 309 Section 8, eff February 4, 1986; 2012 Act No. 278, Pt IV, Subpt 2, Section 44, eff July 1, 2012.

Editor’s Note

1986 Act No. 309, Section 9, provides as follows:

“Any assets of the post‑retirement increase special fund remaining as of June 30, 1986, are to be transferred to the employer annuity accumulation fund.”

Effect of Amendment

The 1986 amendment revised the first sentence by changing “shall” to must” and “such” to “the”, deleting “from time to time” after the word “available” in the second sentence, and adding a new sentence at the end of the section concerning the employer annuity accumulation fund.

The 2012 amendment substituted “board” for “State Budget and Control Board”; inserted “shall” before “a portion of the monies”; and made other nonsubstantive changes.

CROSS REFERENCES

Employer annuity accumulation fund, see Sections 9‑1‑1050, 9‑1‑1130.

**SECTION 9‑1‑1840.** Repealed by 1993 Act No. 166, Section 6, eff June 16, 1993.

Editor’s Note

Former section 9‑1‑1840 dealt with former employees’ election to receive prior service credit for service rendered as employee of United States and was derived from 1984 Act No. 486, Section 1.

**SECTION 9‑1‑1850.** Purchases of additional service credit by members with at least twenty‑five years of creditable service.

A member who has at least twenty‑five years of creditable service may elect to receive up to three years of additional service credit as though the additional service credit were rendered by the member as an employee or member upon paying into the member’s retirement system, during the ensuing number of years the member wishes to purchase in the manner the Comptroller General shall direct, the employer and employee contributions that would be due for the position that the member presently holds at the salary level in effect during those years. If the position is consolidated or eliminated after the member’s retirement, the member shall pay the employer and employee contributions during the remaining required years at a level equal to what these contributions were for the position before its consolidation or elimination. The member also shall pay the employer and employee cost for health and dental insurance in effect during the ensuing years the member wishes to purchase. The additional service credit qualifies the member for retirement and the member must terminate employment within ninety days after electing the option provided by this section. The salary level of the position the member presently holds, during the ensuing years the member pays the employer and employee contributions, is attributable to the member for purposes of determining the member’s average final compensation.

The retirement benefits of the member shall not commence until the time benefits would have been paid when the member had completed twenty‑eight years of service.

The option allowed by this section cannot be exercised if the member has purchased nonqualified service pursuant to Section 9‑1‑1140(E).

HISTORY: 1986 Act No. 450, Section 1, eff May 26, 1986; 1988 Act No. 632, Section 1, eff June 7, 1988; 1993 Act No. 166, Section 3A, eff June 16, 1993; 1994 Act No. 420, Section 3, eff May 25, 1994 and applies with respect to payments made pursuant to Section 9‑1‑1850(A) of the 1976 Code after June 30, 1994; 2001 Act No. 1, Part II, Section 2A7, eff January 1, 2001.

Editor’s Note

1993 Act No. 166, Section 3B, effective June 16, 1993, provides as follows:

“B. (A) This section takes effect upon approval by the Governor and applies with respect to payments made after December 31, 1992.

“(B) Employer share payments made by employees after December 31, 1992, must be refunded upon application to the Division of Insurance Services of the State Budget and Control Board.”

Effect of Amendment

The 1988 amendment designated the first paragraph as subsection (A), and added subsection (B); and made grammatical changes.

The 1993 amendment, in subsection (A), pertaining to costs for health and dental insurance, added “or until the date the member attains age sixty, at which time the member becomes eligible for employer‑paid health and dental insurance”.

The 1994 amendment rewrote subsection (A), among other things providing a schedule of rates for a member with at least twenty‑five years service establishing credit for up to five years additional service.

The 2001 amendment deleted the former subsection (A) and (B) designations; reduced from five to three the maximum number of years of service credit which can be purchased, substituted “twenty‑eight” for “thirty”, and added the last undesignated paragraph relating to nonqualified service purchases.

CROSS REFERENCES

Authority for public institutions of higher learning to implement early retirement plans paying actuarial costs required by this section, see Section 59‑103‑150.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 5.

**SECTION 9‑1‑1860.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑1‑1860 was entitled Election to receive prior service credit for service rendered as employee of municipality not member of system and was derived from 1988 Act No. 658, Part II, Section 24, eff June 8, 1988.

**SECTION 9‑1‑1870.** Beneficiaries receiving Medicaid (Title XIX) sponsored nursing home care; effect on benefits; exception.

Notwithstanding any other provision of law, except as provided below, retirees and beneficiaries under the State Retirement Systems receiving Medicaid (Title XIX) sponsored nursing home care as of June thirtieth of the prior fiscal year shall receive no increase in retirement benefits during the current fiscal year. However, a retired employee affected by the above prohibition may receive the scheduled increase if he is discharged from the nursing home and does not require admission to a hospital or nursing home within six months. The Department of Health and Human Services, the Department of Social Services, and the State Retirement Systems must share the information needed to implement this section.

HISTORY: 2002 Act No. 356, Section 1, Pt IX.E(1), eff July 1, 2002.

ARTICLE 15

Supplemental Allowances for Certain Members

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑1910.** Minimum allowance for persons retiring with twenty or more years of service, generally.

A member with five or more years of earned service, eligible for service retirement, who has twenty or more years of creditable service must be paid from the general fund of the State, a monthly sum in addition to the retirement allowance due the member under this chapter sufficient to provide the member a minimum eighty dollars a month, plus one dollar a month for each completed year of creditable service in excess of twenty years. If the teacher or employee elects to receive a reduced retirement allowance as provided in this chapter, the teacher or employee must be paid under the provisions of this section only the amount as would be paid under the section had the teacher or employee not elected the optional allowance.

Any person who retired prior to October 1, 1956, under the provisions of the South Carolina Retirement Act, while in service as such teacher or employee and who furnishes proper proof that he is not receiving primary Federal Social Security payments as a result of such employment, shall, effective July 1, 1969, be paid twenty‑five dollars per month in addition to any payments otherwise payable under this section.

Effective July 1, 1972, any person who has retired or may retire under the provisions of the South Carolina Retirement Act while in service as a teacher or employee, who has twenty or more years of creditable service and whose annual average final compensation is at least fifteen hundred dollars shall be paid from the South Carolina Retirement System a monthly sum, in addition to the retirement allowance he may receive under the act and any amount provided from the general fund of the State under the previous paragraphs, to provide a minimum of one hundred and fifty dollars per month, plus one dollar per month for each completed year of creditable service in excess of twenty years. If such person’s effective date of retirement is on or after July 1, 1972, and he has not attained age sixty‑five nor completed thirty‑five years of creditable service at the time of his service retirement the gross minimum amount shall be reduced by five‑twelfths of one per cent for each month by which his retirement date preceded the first day of the month coincident with or next following his sixty‑fifth birthday. If such person’s effective date of retirement is on or after July 1, 1972, and he retired on a deferred retirement allowance the amount payable at age sixty shall be seventy‑five per cent of the gross minimum amount otherwise determined. Provided, however, that should such teacher or employee elect to receive a reduced retirement allowance as provided in the act, he shall be paid under the provisions of this section only such amount as would be paid under the section had he not elected such optional allowance. Provided, further, that the fifteen hundred dollars average final compensation required by this paragraph shall not apply to full‑time lunchroom employees who retire no later than July 1, 1974.

HISTORY: 1962 Code Section 61‑211; 1954 (48) 1524; 1955 (49) 611; 1956 (49) 2968; 1958 (50) 1721; 1961 (52) 288, 539; 1962 (52) 1905; 1964 (53) 1843; 1966 (54) 2424; 1969 (56) 444; 1972 (57) 2590; 1974 (58) 2094; 2000 Act No. 387, Part II, Section 67F, eff January 1, 2001.

Effect of Amendment

The 2000 amendment rewrote the first paragraph of this section.

CROSS REFERENCES

Retirement allowance adjustments, see Section 9‑1‑1815.

**SECTION 9‑1‑1920.** Minimum allowance for certain persons who retired prior to July 1, 1945.

Any public school teacher, State employee, or employee of an employer covered by the South Carolina Retirement System who retired prior to July 1, 1945, in service with twenty or more years of such service and who has reached age sixty, shall be eligible for the minimum allowance of eighty dollars per month for the remainder of his life, such benefits to be paid from the general fund of the State. Notwithstanding the foregoing, effective July 1, 1972, the minimum allowance shall be one hundred and fifty dollars per month, plus one dollar per month for each completed year of service in excess of twenty years.

HISTORY: 1962 Code Section 61‑212; 1954 (48) 1524; 1955 (49) 611; 1956 (49) 2968; 1959 (51) 370; 1961 (52) 288, 539; 1962 (52) 1905; 1964 (53) 1843; 1969 (56) 444; 1972 (57) 2590.

CROSS REFERENCES

Retirement allowance adjustments, see Section 9‑1‑1815.

**SECTION 9‑1‑1930.** Minimum allowance for certain persons whose membership became effective on or after January 1, 1953.

Notwithstanding any other provision of law, any person whose membership in the South Carolina Retirement System became effective on or after January 1, 1953, and who had twenty or more years creditable service performed prior to July 1, 1945, shall receive the benefits and come under the provisions of Section 9‑1‑1910. The provisions of this section shall become effective as of May 18, 1959, or as of the effective date of the member’s retirement or withdrawal from the South Carolina Retirement System, whichever is the later date.

HISTORY: 1962 Code Section 61‑213; 1962 (52) 1964.

CROSS REFERENCES

Retirement allowance adjustments, see Section 9‑1‑1815.

**SECTION 9‑1‑1940.** Minimum allowance for certain persons whose membership became effective on or after January 1, 1951.

Notwithstanding any other provision of law, any person whose membership in the South Carolina Retirement System became effective on or after January 1, 1951, and who had twenty or more years creditable service performed prior to July 1, 1945, shall receive the benefits and come under the provisions of Section 9‑1‑1920, Code of Laws of South Carolina, 1976, as amended.

HISTORY: 1962 Code Section 61‑213.1; 1966 (54) 2622.

**SECTION 9‑1‑1950.** Minimum allowance for certain members of General Assembly.

Any member of the General Assembly who may retire under the provisions of the South Carolina Retirement Act and has twenty or more years of creditable service shall be paid in the same manner as provided in Section 9‑1‑1910 a monthly sum in addition to the retirement allowance he may receive under such act, to provide him a minimum of eighty dollars per month, plus one dollar per month for each completed year of such service in excess of twenty years. Should such member of the General Assembly elect to receive a reduced retirement allowance as provided in such act, he shall be paid under the provisions of this section only such amount as would be paid under this section had he not elected such optional allowance.

HISTORY: 1962 Code Section 61‑214; 1965 (54) 622.

**SECTION 9‑1‑1960.** Additional payments to certain members of the General Assembly effective July 1, 1972.

Effective July 1, 1972, any member of the General Assembly who has retired or may retire under the provisions of the South Carolina Retirement Act and has twenty or more years of creditable service shall be paid in the same manner as provided in Section 9‑1‑1910 a monthly sum in addition to the retirement allowance he may receive under such act, to provide him a gross minimum of one hundred and fifty dollars per month, plus one dollar per month for each completed year of such service in excess of twenty years. Should such member of the General Assembly elect to receive a reduced retirement allowance as provided in such act, he shall be paid under the provisions of this section only such amount as would be paid under this section had he not elected such optional allowance.

HISTORY: 1962 Code Section 61‑214.1; 1972 (57) 2590.

**SECTION 9‑1‑1970.** Compensation used for determining benefits to be subject to federal limitations.

Effective as of January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this retirement system is subject to the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986 and any regulations promulgated thereunder, as adjusted for any cost‑of‑living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. Annual compensation means compensation during the plan year or such other consecutive twelve‑month period over which compensation is otherwise determined under the retirement system hereinafter referred to as the determination period. The cost‑of‑living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. However, the limitation on compensation does not apply to the compensation of an individual who became a member of this retirement system before January 1, 1996.

HISTORY: 1995 Act No. 48, Section 1, eff upon approval (became law without the Governor’s signature on May 18, 1995); 2008 Act No. 311, Section 9, eff June 4, 2008.

Effect of Amendment

The 2008 amendment added the clause at the end of the first sentence starting with “, as adjusted”, added the second sentence defining “annual compensation” and added the third sentence relating to cost‑of‑living adjustments.

**SECTION 9‑1‑1975.** Compliance with USERRA.

Effective December 12, 1994, and notwithstanding any provision in this chapter to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

HISTORY: 2008 Act No. 311, Section 10, eff June 4, 2008.

**SECTION 9‑1‑1980.** Compliance with Internal Revenue Code Section 415.

(A) Effective as of July 1, 1989, member contributions paid to, and retirement benefits paid from, the system may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable shall be compensation as defined in Treasury Regulation Section 1.415(c)‑2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2), and for plan years beginning after December 31, 1997, compensation shall include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457, and, for plan years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4).

(B) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

(C) For purposes of applying the limits under Internal Revenue Code Section 415(b), hereinafter referred to as “limit”, the following shall apply:

(1) prior to January 1, 2009, cost‑of‑living adjustments under Section 9‑1‑1810, shall be taken into consideration when determining a member’s applicable limit;

(2) on or after January 1, 2009, with respect to a member who does not receive a portion of his annual benefit in a lump sum:

(a) a member’s applicable limit shall be applied to the member’s annual benefit in the first limitation year without regard to any automatic cost‑of‑living increases pursuant to Section 9‑1‑1810;

(b) to the extent the member’s annual benefit equals or exceeds the limit, the member shall no longer be eligible for cost‑of‑living increases until such time as the benefit plus the accumulated increases are less than the limit;

(c) thereafter, in a subsequent limitation year, the member’s annual benefit including any automatic cost‑of‑living increase applicable pursuant to Section 9‑1‑1810 shall be tested under the then applicable benefit limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder;

(3) on and after January 1, 2009, with respect to a member who receives a portion of the member’s annual benefit in a lump sum, a member’s applicable limit shall be applied taking into consideration automatic cost‑of‑living increases under Section 9‑1‑1810 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations;

(4) on and after January 1, 1995, in no event shall a member’s annual benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by adjusting the form of benefit to an actuarially equivalent straight life annuity benefit that is determined using the following assumptions and that take into account the death benefits under the form of benefit:

(a) for a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

(i) the annual amount of the straight life annuity, if any, payable to the member under the plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using (aa) a five percent interest assumption or the applicable statutory interest assumption and (bb) the applicable mortality table described in Treasury Regulation Section 1.417(e)‑1(d)(2) which is the mortality table specified in Revenue Ruling 98‑1 for years prior to 2003 or, for subsequent years, in Revenue Ruling 2001‑62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001‑62;

(b) for a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

(i) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using (aa) a five and one‑half percent interest assumption or the applicable statutory interest assumption and (bb) the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)‑1(d)(2) which is the mortality table specified in Revenue Ruling 98‑1 for years prior to 2003 or, for subsequent years, in Revenue Ruling 2001‑62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001‑62; or

(iii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using (aa) the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)‑1(d)(3) which, prior to July 1, 2007, is the thirty‑year treasury rate in effect for the month prior to retirement, and, on and after July 1, 2007, is the thirty‑year treasury rate in effect for the first day of the plan year with a one‑year stabilization period and (bb) the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)‑1(d)(2), which is the mortality table specified in Revenue Ruling 98‑1 for years prior to 2003 or, for subsequent years, in Revenue Ruling 2001‑62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001‑62, divided by 1.05; and

(5) The member’s annual benefit shall be adjusted as provided by Internal Revenue Code Section 415(b)(2)(B) and related Treasury regulations by taking into consideration after‑tax contributions and rollover and transfer contributions made by the member.

(D) Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

(1) if the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Internal Revenue Code Section 415(c) or 415(n);

(2) if payment pursuant to item (1) shall not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the system may either reduce the member’s contribution to an amount within the limits of that section or refuse the member’s contribution;

(3) effective for permissive service credit contributions made in years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, then the requirements of this section shall be treated as met only if:

(a) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b); or

(b) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

For purposes of applying subitem (a) the system will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this subsection (D), and for purposes of applying subitem (b) the system will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this subsection (D);

(4) for purposes of subsection (D), the term “permissive service credit” means service credit:

(a) recognized by the system for purposes of calculating a member’s benefit under the system;

(b) which such member has not received under the system; and

(c) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subitem (b), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system;

(5) the system will fail to meet the requirements of this subsection (D) if:

(a) more than five years of nonqualified service credit are taken into account for purposes of this subsection (D); or

(b) any nonqualified service credit is taken into account under this subsection (D) before the member has at least five years of participation under the system;

(6) for purposes of item (5), effective for permissive service credit contributions made in years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to:

(a) service including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3);

(b) service including parental, medical, sabbatical, and similar leave, as an employee other than as an employee described in subitem (a), of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed; provided, however, that in the case of a private or sectarian school, only teaching service will not be treated as nonqualified service;

(c) service as an employee of an association of employees who are described in subitem (a); or

(d) military service, other than qualified military service under Internal Revenue Code Section 414(u), recognized by such governmental plan.

In the case of service described in subitem (a), (b), or (c), such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan;

(7) in the case of a trustee‑to‑trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations of item (5) shall not apply in determining whether the transfer is for the purchase of permissive service credit;

(b) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts;

(8) for an eligible member, the limitation of Internal Revenue Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the South Carolina Retirement System as in effect on August 5, 1997. For purposes of this item (8), an eligible member is an individual who first became a member in the system before July 1, 1998.

HISTORY: 2008 Act No. 311, Section 11, eff June 4, 2008.

Editor’s Note

Section 9‑1‑1810, referenced in the text, was repealed by 2012 Act No. 278.

ARTICLE 17

Teacher and Employee Retention Incentive Program

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑1‑2210.** Teacher and Employee Retention Incentive Program; operation.

Repealed effective July 1, 2018.

(A) An active contributing member who is eligible for service retirement under this chapter and complies with the requirements of this article may elect to participate in the Teacher and Employee Retention Incentive Program (program). A member electing to participate in the program retires for purposes of the system. The program participant shall agree to continue employment with an employer participating in the system for a program period, not to exceed five years. The member shall notify the system before the beginning of the program period. Participation in the program does not guarantee employment for the specified program period.

(B) After June 30, 2005, and notwithstanding the provisions of Section 9‑1‑10(4), a payment for unused annual leave is not included in calculating a member’s deferred program benefit during the program period. The member’s average final compensation for the purpose of calculating the deferred program retirement benefit must be solely the average of the member’s highest twelve consecutive quarters of earnable compensation at the time the member enters the program. During the specified program period, receipt of the member’s normal retirement benefit is deferred. The member’s deferred monthly benefit must be placed in the system’s trust fund on behalf of the member. No interest is paid on the member’s deferred monthly benefit placed in the system’s trust fund during the specified program period.

(C) During the specified program period, the employer shall pay to the system the employer contribution for active members prescribed by law with respect to any program participant it employs, regardless of whether the program participant is a full‑time or part‑time employee, or a temporary or permanent employee. The program participant shall pay to the system the employee contribution as if the program participant were an active contributing member, but the program participant does not accrue additional service credit in the system for these employer and employee contributions. If an employer who is obligated to the system pursuant to this subsection fails to pay the amount due, as determined by the system, the amount must be deducted from any funds payable to the employer by the State.

(D) A program participant is retired from the retirement system as of the beginning of the program period. A program participant is not eligible to receive disability retirement benefits. Accrued annual leave and sick leave used in any manner in the calculation of the program participant’s retirement benefit is deducted from the amount of such leave accrued by the participant.

(E) A program participant is retired for retirement benefit purposes only. For employment purposes, a program participant is considered to be an active employee, retaining all other rights and benefits of an active employee except for grievance rights pursuant to Section 8‑17‑370, and is not subject to the earnings limitation of Section 9‑1‑1790 during the program period.

(F) Upon termination of employment either during or at the end of the program period, the member must receive the balance in the member’s program account by electing one of the following distribution alternatives:

(1) a lump‑sum distribution, paying appropriate taxes; or

(2) to the extent permitted under law, a tax sheltered rollover into an eligible plan.

For members who began participation in the program before July 1, 2005, the member also must receive the previously determined normal retirement benefits based upon the member’s average final compensation and service credit at the time the program period began, plus any applicable cost of living increases declared during the program period. The program participant is thereafter subject to the earnings limitation of Section 9‑1‑1790.

Upon termination of employment of members who began participation in the program after June 30, 2005, the Retirement Systems shall recalculate the average final compensation of the member to determine the benefit the member receives after participation in the program. The average final compensation calculated at the commencement of the program must be increased by an amount up to and including forty‑five days’ termination pay for unused annual leave received by the member at termination of employment, divided by three. The member’s benefit after participation in the program must be calculated in accordance with Section 9‑1‑1550, utilizing the recalculated average final compensation determined in this subsection, and the member’s service credit, including sick leave, as of the date the member began participation in the program, plus any cost‑of‑living increases declared during the program period with respect to the amount of the member’s deferred program benefit.

(G) If a program participant dies during the specified program period, the member’s designated beneficiary must receive the balance in the member’s program account by electing one of the following distribution alternatives:

(1) a lump‑sum distribution, paying appropriate taxes; or

(2) to the extent permitted under law, a tax sheltered rollover into an eligible plan.

In accordance with the form of system benefit selected by the member at the time the program commenced, the member’s designated beneficiary must receive either a survivor benefit or a refund of contributions from the member’s system account.

If a program participant who began participation in the program before July 1, 2005, elected either Option B or Option C under Section 9‑1‑1620, the average final compensation calculated when the member commenced the program must be used in determining the survivor benefit. If a program participant who began participation in the program after June 30, 2005, elected either Option B or C under Section 9‑1‑1620, then the designated survivor beneficiary shall receive a survivor benefit based on a recalculated average final compensation. The average final compensation calculated at the commencement of the program must be increased by an amount up to and including forty‑five days termination pay for unused annual leave received by the member’s legal representative at the member’s death, divided by three. The survivor benefit must be calculated in accordance with Section 9‑1‑1550, utilizing the recalculated average final compensation determined in this subsection, and the member’s service credit, including sick leave, as of the date the member began participation in the program, plus any cost‑of‑living increases declared during the program period with respect to the amount of the member’s deferred program benefit.

(H) A program participant shall terminate employment no later than the day before the fifth annual anniversary of the date the member commenced participation in the program.

(I) A member is not eligible to participate in the program if the member has participated previously in and received a benefit under this program or any other state retirement system. However, a member who has received a disability benefit, but who has been restored to active service and voided his optional benefit selection pursuant to Section 9‑1‑1590 and repaid any benefit received is eligible to participate in the program.

(J) Notwithstanding any other provision of this section, a member who begins participation after June 30, 2012, shall end his participation no later than the fifth anniversary of the date the member commenced participation in the program, or June 30, 2018, whichever is earlier. A member’s participation may not continue after June 30, 2018, under any circumstance.

HISTORY: 2001 Act No. 1, Part II, Section 2A1, eff January 1, 2001; 2005 Act No. 153, Pt II, Section 2, eff July 1, 2005; 2007 Act No. 112, Section 5, eff upon approval (became law without the Governor’s signature on June 27, 2007); 2012 Act No. 278, Pt I, Section 15, eff July 1, 2012.

Editor’s Note

2001 Act No. 1, Part II, Section 2.C., provides as follows:

“All local school district classroom teachers must provide to their employer notice of their intent to retire after December 31, 2000, and before the end of the 2000‑2001 school year. This notification must be submitted in writing no later than September 1, 2000. Employees electing to retire from the retirement system but choosing to stay employed under the Teacher and Employee Retention Incentive Program are exempt from this requirement.”

2012 Act No. 278, Part I, Section 16, provides in part:

“Section 9‑1‑2210 of the 1976 Code is repealed effective July 1, 2018, for all purposes except the distribution of program accounts existing on that date”.

Effect of Amendment

The 2005 amendment rewrote this section.

The 2007 amendment, in subsection (I), added the second sentence relating to members who have received a disability benefit.

The 2012 amendment added subsection (J).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 24, Appointment and Removal.

S.C. Jur. Colleges and Universities Section 26, Grievance Matters.

LAW REVIEW AND JOURNAL COMMENTARIES

Layman v. State: The South Carolina Supreme Court’s Response to Retroactive Legislation and the Establishment of a New Principle on Statutorily Created Employment and Retirement Contracts. 58 S.C. L. Rev. 477 (Spring 2007).

Attorney General’s Opinions

Continuing contract teachers who enter the TERI program retain, among other things, the right to have their contract renewed on an annual basis for the duration of the program period in accordance with the provisions of the Teacher Employment and Dismissal Act. S.C. Op.Atty.Gen. (Sept. 26, 2011) 2011 WL 4592372.

If an employer wishes to hire an individual who is a participant in the TERI program, that individual must be employed as a TERI participant or not employed at all. S.C. Op.Atty.Gen. (Sept. 26, 2011) 2011 WL 4592372.

The Legislature intended for a member to become a participant of the TERI program regardless of whether an employer was provided notice of and/or consented to the employee’s election to participate. S.C. Op.Atty.Gen. (Sept. 26, 2011) 2011 WL 4592372.

Participants in the Teacher and Employee Retention program may receive unemployment compensation if released prior to the end of the specified program period, which is not to exceed five years. S.C. Op.Atty.Gen. (Dec. 6, 2010) 2010 WL 5578960.

NOTES OF DECISIONS

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1. In general

Affidavit of State Retirement System director was not admissible as evidence of legislative intent underlying Teacher and Employee Retention Incentive (TERI) program, in state medical school’s action against employee who alleged that his participation in TERI program superseded terms of his agreement of resignation, under which employee irrevocably agreed to resign. Medical University of South Carolina v. Arnaud (S.C. 2004) 360 S.C. 615, 602 S.E.2d 747. Education 1097

Participation by state medical school’s employee in Teacher and Employee Retention Incentive (TERI) program did not supersede or alter terms of employee’s agreement of resignation with medical school, under which employee agreed to irrevocably resign; despite employee’s bare assertion that he had been informed that his participation in TERI program nullified his agreement of resignation, evidence established employee was informed several times that he was expected to honor agreement, even though he had entered TERI program. Medical University of South Carolina v. Arnaud (S.C. 2004) 360 S.C. 615, 602 S.E.2d 747. Education 1123(1); Public Employment 226

2. Post‑retirement employee rights

The prior version of the Teacher and Employee Retention Incentive Program (TERI), which allowed retiring State employees to continue working for up to five years after retirement without having to make further contributions to the retirement system out of their paycheck, created a contractual right; statute fixed obligations, required affirmative actions by both the State and the retiring employee, and contained contractually significant language. Layman v. State (S.C. 2006) 368 S.C. 631, 630 S.E.2d 265, rehearing denied, on remand 2007 WL 4966163. Public Employment 392; States 64.1(4)

3. Unilateral modification

Enactment of amendments to Teacher and Employee Retention Incentive Program (TERI), which amendments required retired State employees who chose to continue working to contribute a portion of their paycheck to the retirement system, constituted a breach of contract with old program participants; State could not unilaterally alter its agreement with program participants under the old TERI statute, which allowed retired employees to continue working without making retirement system contributions, by forcing the participants to contribute to the retirement system. Layman v. State (S.C. 2006) 368 S.C. 631, 630 S.E.2d 265, rehearing denied, on remand 2007 WL 4966163. Public Employment 392; States 64.1(4)