CHAPTER 11

Police Officers Retirement System

ARTICLE 1

South Carolina Police Officers Retirement 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 9‑11‑10.** Definitions.

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

(1) “Accumulated additional contributions” means a member’s aggregate additional contributions, together with regular interest on the contributions.

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

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

(4) “Actuarial equivalent” means a benefit of equal value when computed on the basis of the tables and regular interest rate last adopted by the board, as provided in Section 9‑11‑30.

(5) “Aggregate additional contributions” means the sum of all the contributions made by a member pursuant to Section 9‑11‑210 in effect before July 1, 1974, and any amounts transferred from another fund which are treated as additional contributions pursuant to Section 9‑11‑210 in effect before July 1, 1974, or Section 9‑11‑210(6) as amended as of that date.

(6) “Aggregate contributions” means the sum of all the amounts deducted from the compensation of a member and credited to the member’s individual account in the system, including any amounts transferred from another fund to the system as provided in Section 9‑11‑210(6).

(7)(a) “Average final compensation” after July 1, 1986, for Class One and Class Two members means the average annual compensation of a member during the twelve consecutive quarters of the member’s creditable service on which regular contributions as a member were made to the system producing the highest 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 his term of office.

(b) “Average final compensation” for 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.

(8) “Beneficiary” means a person in receipt of a retirement allowance or other benefit provided by the system.

(9) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority acting through its Division of Retirement Systems.

(10) “Class one service” means credited service which is not class two service.

(11) “Class two service” means credited service after June 30, 1974, as a class two member, as defined in subsection (7) of Section 9‑11‑40, and credited service before July 1, 1974, or date of membership, if later, with respect to which contributions have been made by a member, or on the member’s behalf, under the supplemental allowance program or pursuant to subsection (2), (3), or (10) of Section 9‑11‑210.

(11A) “Class Three member” means an employee member of the system with an effective date of membership after June 30, 2012.

(12) “Compensation” means the total remuneration paid to a police officer for service rendered to an employer for his 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.

(13) “Credited service” means a member’s earned service and purchased service.

(14) “Date of establishment” means July 1, 1962.

(15) “Earned service” means:

(a) the paid employment of a member of the system with an employer participating in the system where the member makes regular retirement contributions to the system;

(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 9‑11‑50(F); or

(c) service with a participating employer in the system, the South Carolina 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.

(16) “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.

(17) “Employer” means:

(a) the State;

(b) a political subdivision, agency, or department of the State which employs police officers and which has been admitted to the system as provided in Section 9‑11‑40; and

(c) a service organization, the membership of which is composed solely of persons eligible to be members 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 contributions prescribed by this chapter are to be paid from the funds of the service organization.

(18) “Medical board” means the board provided for in Section 9‑11‑30(2).

(19) “Member” means a person included in the membership of the system, as provided in this chapter.

(20) “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.

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

(22) “Other fund” means:

(a) the South Carolina Retirement System; or

(b) the Police Insurance and Annuity Fund of the State of South Carolina.

(23) “Police officer” means a person who receives his salary from an employer and who is:

(a) required by the terms of his employment, either by election or appointment, to give his time to the preservation of public order, the protection of life and property, and the detection of crimes in this State; or

(b) an employee after January 1, 2000, of the South Carolina Department of Corrections, the South Carolina Department of Juvenile Justice, or the South Carolina Department of Mental Health who, by the terms of his employment, is a peace officer as defined by Section 24‑1‑280.

Notwithstanding prior duties performed by a person who is a police officer as defined in this item, the provisions of Section 9‑11‑40(9) apply to a person who is or who becomes a member of the Police Officers Retirement System.

(24) “Public service” means service as an employee of the government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of these. The term “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.

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

(26) “Regular interest” means interest compounded annually at the rate or rates determined for a particular purpose by the board in accordance with Section 9‑11‑30.

(27) “Retirement allowance” means monthly payments for life under the system payable as provided in Section 9‑11‑160.

(28) “State” means the State of South Carolina.

(29) “Supplemental allowance program” means the supplemental allowance program established under the system as of July 1, 1966, and as in effect on June 30, 1974.

(30) “System” means the South Carolina Police Officers Retirement System.

HISTORY: 1962 Code Section 61‑331; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 42 Section 1; 1978 Act No. 408 Section 2; 1978 Act No. 430 Section 2; 1980 Act No. 448, Section 1, 2; 1984 Act No. 512, Part II, Section 27B; 1986 Act No. 540, Part II, Section 25B, effective June 18, 1986; 1999 Act No. 72, Section 3, eff June 11, 1999; 2000 Act No. 387, Part II, Section 67G, eff January 1, 2001; 2003 Act No. 12, Section 2, eff July 1, 2003; 2003 Act No. 77, Section 3, eff June 27, 2003; 2005 Act No. 14, Section 2, eff July 1, 2004; 2005 Act No. 153, Pt III, Section 3, eff July 1, 2005; 2012 Act No. 278, Pt III, Section 20, Pt IV, Subpt 2, Section 53, eff July 1, 2012; 2013 Act No. 69, Section 2.A, eff June 13, 2013.

Editor’s Note

2003 Act No. 12, Section 4, provides as follows:

“This act takes effect on the later of July 1, 2003, or the effective date of procedures adopted by the State Budget and Control Board pursuant to the requirements of Chapter 21, Title 9 of the 1976 Code as added by this act and applies for disputes arising on or after that date.”

Effect of Amendment

The 1986 amendment revised item (14) by making grammatical changes; by substituting “Average final compensation after July 1, 1986” for “Average final compensation”; 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 1999 amendment, in item (6), made language changes; inserted the sub‑item (a) designation and deleted a provision allowing the Board to determine whether a person is a police officer in case of doubt; added sub‑item (b) relating to employees of the Department of Corrections or Department of Juvenile Justice; and made Section 9‑11‑40(9) apply to members of the Police Officers Retirement System.

The 2000 amendment rewrote this section.

The first 2003 amendment, by Act No. 12, Section 2, in subsection (23)(b), added “or the Department of Mental Health”.

The second 2003 amendment, by Act No. 77, Section 3, in item (15), 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 (24), added the third sentence relating to student employment.

The second 2005 amendment, in item (18), substituted “[Reserved]” for “ ‘Medical board’ means the board provided for in Section 9‑11‑30(2)”.

The 2012 amendment rewrote items (7) and (9) and added item (11A).

The 2013 amendment, in subsection (18), which was formerly reserved, added the definition for “Medical board”.

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.

Attorney General’s Opinions

An active law enforcement officer, including a municipal police officer, sheriff or deputy sheriff, may be appointed by you, pursuant to section 9‑4‑10(B)(1)(b). The ex officio exception to dual office holding is applicable here, and thus dual office holding would not be present. Op.Atty.Gen. (September 19, 2012) 2012 WL 4459270.

**SECTION 9‑11‑15.** 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 6, eff January 1, 1991.

**SECTION 9‑11‑20.** System created; corporate powers; name; Director.

(1) A retirement system is hereby created and placed under the administration of the Board to provide retirement allowances and other benefits for police officers. The System shall begin operation as of July 1, 1962. It shall have the power and privileges of a corporation and shall be known as the South Carolina Police Officers 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.

(2) There is hereby created an office to be known as Director of the South Carolina Police Officers Retirement System. The Director of the South Carolina Retirement System shall serve as Director of this System.

HISTORY: 1962 Code Section 61‑332; 1962 (52) 1933; 1974 (58) 2032.

LIBRARY REFERENCES

70 C.J.S., Pensions Sections 3, 4.

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 (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2384

**SECTION 9‑11‑25.** Retirement of probate judges.

Probate judges may elect to participate in the South Carolina Police Officers Retirement System or they may elect to remain under regular state retirement.

HISTORY: 1988 Act No. 678, Part IV, Section 5, eff January 1, 1989; 1992 Act No. 336, Section 4, eff May 4, 1992.

Effect of Amendment

The 1992 amendment deleted provisions specifying the requirements applicable to judges who elect to participate in police officer retirement systems.

**SECTION 9‑11‑27.** Magistrates’ participation in the South Carolina Police Officers Retirement System.

(A) On and after January 1, 2001, any person who is a magistrate appointed pursuant to Section 22‑1‑10 shall participate in the South Carolina Police Officers Retirement System for his service as a magistrate.

(B) From July 1, 2000, to January 1, 2001, a magistrate who elects to transfer credited service received under the South Carolina Retirement System to the South Carolina Police Officers Retirement System may do so upon payment of the accumulated employer and employee contributions and interest in the South Carolina Retirement System plus five percent of his annual salary in effect as of June 30, 2000, for each year of service prorated for periods of less than a year. After January 1, 2001, a magistrate may elect to transfer credited service received under the South Carolina Retirement System to the South Carolina Police Officers Retirement System as provided in Section 9‑11‑40(9).

HISTORY: 2000 Act No. 226, Section 3, eff July 1, 2000.

Editor’s Note

2000 Act No. 226 Section 1, effective July 1, 2000, reads as follows:

“This act is known and may be cited as the ‘Magistrates Court Reform Act of 2000’.”

**SECTION 9‑11‑30.** State Budget and Control Board shall administer System; powers and duties.

(1) 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.

(2) The board shall designate a medical board composed of three physicians who are not members of the system. If required, other physicians who are not members of the system may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all matters referred to it.

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

(4) The Board shall designate an actuary who shall be the technical adviser of the Board on matters regarding the operation of the System and shall perform such other duties as are required in connection therewith and shall be a member of the American Academy of Actuaries.

(5) At least once in each five‑year period following the date of establishment, 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.

(6) 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.

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

(8) The Board shall determine from time to time the rate or rates of regular interest for use in all calculations.

(9) 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.

(10) The Board shall keep a record of all its proceedings under this article which shall be open to public inspection. It shall publish an annual 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. Notwithstanding any other provisions of law governing the System, all persons employed by the Board and the expenses of the Board to carry out the provisions of this chapter shall be paid from the interest earnings of the System.

HISTORY: 1962 Code Section 61‑333; 1962 (52) 1933; 1974 (58) 2032; 1981 Act No. 178 Part II Section 17; 2005 Act No. 153, Pt III, Section 4, eff July 1, 2005; 2012 Act No. 278, Pt IV, Subpt 2, Section 54, eff July 1, 2012; 2013 Act No. 69, Section 2.B, eff June 13, 2013.

Effect of Amendment

The 2005 amendment substituted “[Reserved]” for the text of subsection (2) requiring designation of a medical board.

The 2012 amendment substituted “board” for “State Budget and Control Board” in item (1), and made other nonsubstantive changes.

The 2013 amendment added text in subsection (2), which was formerly reserved.

CROSS REFERENCES

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

“Medical board” defined, see Section 9‑11‑10.

Regulations pertaining to the Police Officers’ Retirement System, see S.C. Code of Regulations R. 19‑933 et seq.

**SECTION 9‑11‑35.** Confidentiality of member records.

All records of all active, retired, and inactive members maintained by the South Carolina Police Officers Retirement System 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 38, eff June 4, 2008.

**SECTION 9‑11‑40.** Application to become an employer under System; membership in System; classification of members; transfer of contributions and credited service to South Carolina Retirement System; continuation of membership in correlated systems.

(1)(a) A county, municipality, or other political subdivision of the State, and an agency or department of a political subdivision or service organization referred to in Section 9‑11‑10(17)(c) in its discretion, may become an employer by applying to the board for admission to the system and by complying with the requirements of this section and the rules and regulations of the board. The application must set forth the requested date of admission, which must be the January first, or the April first, or the July first, or the October first next following receipt by the board of the application, except that in the case of any applications received before January 1, 1963, the requested date of admission may be July 1, 1962.

(b) Notwithstanding the foregoing, if such application is received prior to July 1, 1966, the requested date of the admission shall be July 1, 1962; provided that contributions are made to the System within the calendar year 1966, in such manner as the Board deems reasonable, by the political subdivision seeking such admission and each and every police officer in its employ who will become a member following such admission, in amounts respectively equal to the total contributions which they would have made had such political subdivision become an employer as of July 1, 1962.

(c) When such application is received after June 30, 1966 and prior to April 1, 1974, the requested date of such admission may be July 1, 1962, without loss or prejudice to their affected employees’ claims to prior service credits but such electing employers and their employees shall be subject to the payment of such contributions, if any, as the Board may determine to be necessary to avoid any possible discrimination as against employers and employees coming under the terms hereof at an earlier date.

(d) An employer whose requested date of admission is on or after July 1, 1974, shall agree to make contributions on account of all service before the date of admission rendered by members in its employ who make contributions with respect to such service.

(2) In no event will admission as an employer be allowed unless a majority of all persons then employed as police officers by the prospective employer elect irrevocably to become members of the System as of the requested date of admission.

(3) Any employer participating in the System as of June 30, 1974 which is not participating in the Supplemental Allowance Program may elect as of July 1, 1974 or as of July 1 of any year thereafter to provide Class Two membership for police officers in its employ and thereby enable them to qualify for benefits based on Class Two service. Any such employer who so elects shall agree to pay the increased rate of employer contributions applicable to Class Two members with respect to police officers in its employ who become Class Two members. The police officers in the employ of any such employer which does not make such election shall be entitled only to the benefits herein provided with respect to Class One service.

(4) All persons who become employed as police officers by the State or other employer after the employer’s date of admission to the system under the provisions of this section must become members, as a condition of their employment.

Notwithstanding the provisions of this subsection, no person shall become a member on or after July 1, 1963 unless his employer certifies to the system that his service as a police officer requires at least one thousand six hundred hours a year of active duty and that the person’s salary for the service is at least two thousand dollars a year. If in any year after this certification the member does not render at least one thousand six hundred hours of active duty as a police officer, or if the member does not receive at least two thousand dollars in salary, his membership ceases and the provisions of Section 9‑11‑100 apply.

(5) Notwithstanding any other provision of law, no person shall be eligible to participate in the System as a member and in another fund with respect to the same position nor shall any person be entitled to receive duplicate benefits for the same period of service in the same position.

(6) All persons who are employed as police officers by an employer at the date of the employer’s admission to the System shall become members as of such date unless, within a period of one month following such date, they shall 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 duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the System.

(7) Each member shall be classified as either a Class One member or a Class Two member, as hereinafter provided, and shall make the contributions and be eligible for the benefits provided for his class. Each member who is a participant in the Supplemental Allowance Program as of June 30, 1974 shall be a Class Two member. Any other police officer who became a member prior to July 1, 1974 and who is employed by the State or by an employer which is participating in the Supplemental Allowance Program as of June 30, 1974 or which elects to provide Class Two membership for police officers in its employ may elect by written notice filed with the Board within 60 days after July 1, 1974 to become a Class Two member as of said date, provided that any such member who is not in service as of July 1, 1974 may make such election within 60 days after his return to service. Any police officer becoming a member on or after July 1, 1974 who is employed by the State or by an employer which has elected to provide Class Two membership for police officers in its employ shall become a Class Two member. Any member employed by an employer whose date of admission is on or after July 1, 1974 shall be a Class Two member. Any member who is not a Class Two member shall be a Class One member.

(8) Should any member of the System withdraw his accumulated contributions or die or retire under the provisions hereof, he shall thereupon cease to be a member. The membership of any police officer entering the Armed Service of the United States shall be continued during such period in the Armed Service if he does not withdraw his contributions, and such member shall be considered to have accrued service credit during such period in the Armed Service if he returns to service as a police officer for an employer within ninety days after first becoming eligible for a discharge from such Armed Service and if, within one year following such return, he makes the contributions which he would have made had he continued in service as a police officer during such period.

(9) As used in this item, “correlated system” shall mean one or more of the following:

(a) South Carolina Retirement System;

(b) South Carolina Police Officers Retirement System;

(c) 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 such 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 is not 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.

A member of the South Carolina Police Officers Retirement System may transfer credited service he received under the South Carolina Retirement System to the South Carolina Police Officers Retirement System on payment of accumulated employer and employee contributions and interest in the South Carolina Retirement System plus five percent of current compensation for each year of service prorated for periods of less than a year.

Service transferred under this subsection that was earned in the South Carolina Retirement System is “earned service” and counts toward the required five or more years of earned service necessary for benefit eligibility. With respect to service transferred to the system under this subsection, compensation earned while participating in the South Carolina Retirement System is not earnable compensation under the system and shall not be used in calculating a member’s average final compensation.

(10) Notwithstanding any other provision of law, any county, municipality or other political subdivision of the State, and any agency or department thereof which is participating in the South Carolina Retirement System with respect to firemen in its employ, may become an employer under the South Carolina Police Officers Retirement System with respect to such firemen by applying to the Board for admission to the System and complying with the rules and regulations of the Board. Such application shall set forth the requested date of admission which shall be July 1, 1976, or any subsequent July first, next following receipt by the Board of such application.

In no event will admission as an employer under this subsection be allowed unless a majority of all persons then employed as firemen by the prospective employer elect irrevocably to become members of the System as of the requested date of admission.

All persons who are employed as firemen by such employer at the date of the employer’s admission to the System shall become members as of such date unless, within a period of one month following such date, they shall 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.

All persons who become employed as firemen by the State or other employer after the employer’s date of admission to the System under the provisions of this subsection shall become members, as a condition of their employment.

Notwithstanding the provisions of this subsection, no fireman shall become a member on or after July 1, 1976, unless the member’s employer certifies to the system that his service as a fireman requires at least one thousand, six hundred hours a year of active duty and that the member’s salary for the service is at least two thousand dollars a year. If in any year after this certification the member does not render at least one thousand, six hundred hours of active duty as a fireman, or if the member does not receive at least two thousand dollars in salary, his membership ceases and the provisions of Section 9‑11‑100 apply.

Each fireman who becomes a member of the System as provided in this subsection shall be classified as a Class Two member and shall make the contributions and be eligible for the benefits provided for Class Two members. With respect to his service while a member of the System, any fireman who becomes a member of the System pursuant to this subsection shall be subject to all of the provisions of this article which would be applicable if he were a police officer.

If a fireman is a member of the South Carolina Retirement System at the time he becomes a member of the South Carolina Police Officers Retirement System his membership in the South Carolina Retirement System shall be continued so long as his membership in the South Carolina Police Officers System continues. Service credited to the member under the provisions of the South Carolina Retirement System shall be considered credited service for the purpose of determining eligibility for benefits, but not the amount thereof, under the South Carolina Police Officers 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.

HISTORY: 1962 Code Section 61‑334; 1962 (52) 1933; 1963 (53) 70; 1966 (54) 2424; 1967 (55) 252; 1970 (56) 1947; 1974 (58) 2032; 1976 Act No. 586 Section 2; 1980 Act No. 448, Section 3; 1986 Act No. 529, Section 5, eff June 18, 1986; 1988 Act No. 658, Part II, Section 47, eff June 8, 1988; 1989 Act No. 123, Section 1, eff May 30, 1989; 2000 Act No. 387, Part II, Sections 67H, 67I, 67J, eff January 1, 2001; 2003 Act No. 77, Section 4, eff June 27, 2003.

Effect of Amendment

The 1986 amendment revised the second paragraph of subsection (9) 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”.

The 1988 amendment in subsection (9) added at the end the paragraph authorizing the transfer of credited service from the state retirement system to the state police officers’ retirement system.

The 1989 amendment in the last paragraph of (a), replaced “the full cost as determined by the actuary” with all that material beginning with “accumulated employer . . .”

The 2000 amendment, in subsection (1)(a), substituted “Section 9‑11‑10(17)(c)” for “item five of Section 9‑11‑10”, in subsection (1)(d), deleted “as provided in Section 9‑11‑210(4)” from the end, in subsection (4) in the second paragraph “Notwithstanding the provisions of the subsection” for “Notwithstanding the foregoing” and at the end deleted the reference to “Section 9‑11‑50(2)”, in subsection (10), in the fifth paragraph substituted “Notwithstanding the provisions of this subsection” for “Notwithstanding the foregoing” and made grammatical changes throughout.

The 2003 amendment, in subsection (9), added the last undesignated paragraph relating to service transferred under subsection (9) being applied to the earned service necessary for benefit eligibility.

CROSS REFERENCES

Eligibility of firemen for membership in Police Officers Retirement System, see Section 9‑1‑660.

Requiring members of local retirement system to become members of South Carolina Retirement System, see Section 9‑11‑45.

Transfer of local retirement system for firefighters to Police Officers’ Retirement System, see Section 9‑11‑48.

LIBRARY REFERENCES

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

Attorney General’s Opinions

Police officers given no choice between municipal and State retirement systems. In the absence of any statute giving police officers a choice between membership in a retirement system operated by a municipality and the State Retirement System, such officers are not eligible for membership in the State Retirement System. 1965‑66 Op Atty Gen, No 2145, p 275.

NOTES OF DECISIONS

In general 1

1. In general

Correspondence from the state Police Officers Retirement System to a claimant could not constitute a contractual offer for benefits since neither the claimant nor the system have the authority to convert the statutory right to benefits to a contractual one. McKinney v. South Carolina Police Officers Retirement System (S.C. 1993) 311 S.C. 372, 429 S.E.2d 797. Public Employment 385

**SECTION 9‑11‑45.** Employer may require members of local retirement system to become members of South Carolina Police Officers’ Retirement System; maintenance of local system.

Notwithstanding the provisions of Section 9‑11‑40, an employer who maintains a local retirement system for police officers prior to the date of admission may require all active members of that system to become members of this System on the date of admission. If this option is exercised, all assets of the local retirement system including accumulated member contributions, if any, not needed to meet the local retirement system’s retiree liability, if any, must be transferred to this System as of the date of admission. Any actuarial accrued liabilities realized by the System on account of the transfer, as determined by the Board’s actuary and not met by transferred assets, must be paid by the employer in a lump sum or in installments over a period not to exceed ten years, as the Board under uniform rules may determine. The asset transfer and employer payment, if required by this subsection, is in lieu of any other payments that would otherwise be required by this section.

The Board’s actuary shall determine, for the protection of the current retirees of the local system, the amount of retainage necessary by the employer to meet this retiree liability and to have adequate revenue therefor; and the same must be retained and escrowed by the employer which will have the continuing responsibility to see that all retirement payments continue at present levels for current retirees until the death of the last survivor, including any costs of living increases in future years provided for in the local system plan.

HISTORY: 1985 Act No. 175, Section 1.

**SECTION 9‑11‑48.** Transfer of local retirement system for firefighters to state system.

Notwithstanding the provisions of Section 9‑11‑40, an employer who maintains a local retirement system for firefighters before the date of admission to the Police Officers’ Retirement System may transfer the local system to the Police Officers’ Retirement System by meeting the requirements of one of the following items:

(1)(a) The employer may require all active members and retirees or their beneficiaries of that local system to become members or beneficiaries of the South Carolina Police Officers’ Retirement System on the date of admission. The date of admission is April 1, 1989, or at the beginning of any quarter thereafter. If this option is exercised, all assets of the local retirement system must be transferred to this system as of the date of admission. Any actuarial accrued liabilities realized by the system on account of the transfer, including retiree liability, as determined by the board’s actuary and not met by transferred assets, must be paid by the employer in a lump sum or in installments over a period not to exceed ten years, as the board under uniform regulations may determine. The asset transfer and employer payment, if required by this subitem, is in lieu of any other payments that would otherwise be required by this subitem.

(b) Retirees or their beneficiaries transferred to this system shall receive benefits equal to those they received under the former local retirement system plus increases provided by law for beneficiaries of this system on or after the date of admission.

(c) If a retiree on the date of transfer is employed in employment covered by the system, the earnings limitation of Section 9‑11‑150(4) does not apply while the retiree remains in the same covered employment.

(2)(a) The employer may require all active members of the local retirement system for firefighters to become members of the South Carolina Police Officers’ Retirement System on the date of admission. The date of admission is April 1, 1990, or at the beginning of any quarter thereafter. If this option is exercised, all assets of the local retirement system including accumulated member contributions, if any, not needed to meet the local retirement system’s retiree liability, if any, must be transferred to this system as of the date of admission. Any actuarial accrued liabilities realized by the system on account of the transfer, as determined by the board’s actuary and not met by transferred assets, must be paid by the employer in a lump sum or in installments over a period not to exceed ten years, as the board under uniform rules may determine. The asset transfer and employer payment, if required by this subitem, is in lieu of any other payments that would otherwise be required by this subitem.

(b) The board’s actuary shall determine the amount of assets necessary to be retained to provide the funds to meet retiree liability. The amount determined must be retained and escrowed by the employer. The employer has the continuing responsibility to insure that retirement benefits of current retirees continue at current levels, including cost‑of‑living increases in future years as provided in the local retirement system, until the death of the last survivor.

HISTORY: 1989 Act No. 84, Section 1, eff May 17, 1989; 1990 Act No. 506, Section 1, eff May 29, 1990.

Effect of Amendment

The 1990 amendment divided this section into items and subitems, and added the provisions of item (2) relating to an alternative method of transfer for active members.

**SECTION 9‑11‑50.** Establishing service credit by making payments into the system; reestablishment of service credits; employer payments; credit for unused sick leave; rules and regulations.

(A) An active member may establish service credit for any period of paid public 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 sixteen percent of the member’s current salary or career highest fiscal year salary, whichever is greater, for each year of credit purchased. 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 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. 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. 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. 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. 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. 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 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 is not earnable compensation under the system and shall not 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 shall be 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. 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 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) 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.

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

(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 61‑335; 1962 (52) 1933; 1963 (53) 70; 1966 (54) 2424; 1970 (56) 1947; 1972 (57) 2207; 1974 (58) 2032, 2332; 1985 Act No. 76 Section 1; 1986 Act No. 461, Section 3, eff June 2, 1986; 1988 Act No. 658, Part II, Section 48B, eff June 8, 1988; 1989 Act No. 189, Part II, Section 49B, eff June 8, 1989 (became law without the Governor’s signature); 1991 Act No. 87, Section 2, eff May 27, 1991; 1991 Act No. 170, Section 2, eff June 28, 1991; 1994 Act No. 420, Section 4, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit; 1998 Act No. 439, Section 3, eff June 16, 1998; 2000 Act No. 387, Part II, Section 67K, eff January 1, 2001; 2003 Act No. 77, Section 5, eff June 27, 2003; 2008 Act No. 311, Section 39, eff June 4, 2008; 2012 Act No. 278, Pt III, Section 21.A, eff January 2, 2013; 2016 Act No. 202 (S.381), Section 3, 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 revised subsection (6) by substituting “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 an unnumbered paragraph following subsection (6) providing that merchant marine seamen and civil service crew members may establish service credit for certain periods of service.

The 1989 amendment, in subsection (4), 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 2, changed “1945” to “1947” in the unnumbered paragraph following subsection (6).

The 1991 amendment by Act No. 87 Section 2, added subsection (7).

The 1994 amendment in subsection (5) increased the cost for establishing pregnancy leave, from ten percent to twelve percent of the annual salary; in subsection (6), designated the two paragraphs as “(a)” and “(b)” and in paragraph (a) replaced “The member payment may not be less than ten percent” with “The member payment must not be less than twelve percent”; and made grammatical changes.

The 1998 amendment, in subsection (4), substituted “one year” for “two years” in the first sentence and “member’s current employer” for “State” in the third sentence, made other nonsubstantive changes, and added the sixth and seventh sentences relating to active military duty including service in the national guard and prohibition on duplication of benefits, and, in subsection (6)(a) deleted “other” in 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” and “actuary for the board, based on the member’s current age and service credit,” for “board,” in subsections (A)‑(F); and, inserted “Class One or Class Two” in subsection (L).

2016 Act No. 202, Section 3, added (O), relating to the purchase of service credit.

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

1. In general

A public employee was entitled to retirement credit for work he performed as a school bus driver before his sixteenth birthday, even though that employment had been illegal because he was underage, since it was undisputed that he had rendered service to the school district. McKinney v. South Carolina Police Officers Retirement System (S.C. 1993) 311 S.C. 372, 429 S.E.2d 797. Public Employment 400

Correspondence from the state Police Officers Retirement System to a claimant could not constitute a contractual offer for benefits since neither the claimant nor the system have the authority to convert the statutory right to benefits to a contractual one. McKinney v. South Carolina Police Officers Retirement System (S.C. 1993) 311 S.C. 372, 429 S.E.2d 797. Public Employment 385

**SECTION 9‑11‑55.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑11‑55 was entitled “Additional creditable service for prior nonpolice service” and was derived from 1987 Act No. 77 Section 1, eff May 14, 1987; 1994 Act No. 420, Section 5, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit.

**SECTION 9‑11‑60.** Retirement allowances; retirement after age fifty‑five; purchases of additional service credit.

(1) A 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:

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

(b) attained the age of fifty‑five years or has twenty‑five or more years of credited service, or twenty‑seven or more years of such service for a Class Three member; and

(c) separated from service.

(2) Upon service retirement on or after July 1, 1989, the member shall receive a service retirement allowance which is equal to the sum of (a), (b), and (c) below:

(a) a monthly retirement allowance equal to ten dollars and ninety‑seven cents multiplied by the number of years of his Class One service;

(b) a monthly retirement allowance equal to one‑twelfth of two and fourteen hundredths percent of his average final compensation multiplied by the number of years of his Class Two or Class Three service;

(c) an additional monthly retirement allowance which is the actuarial equivalent of the member’s accumulated additional contributions.

The sum of the retirement allowances computed under (a) and (b) above may not be less than the allowance which would have been provided under (a) if all of the member’s credited service were Class One service. For a police officer who became a member before July 1, 1974, and who was a participant in the Supplemental Allowance Program, the portion of his service retirement allowance not provided by his accumulated contributions may not be less than it would have been if the provisions of the System in effect on June 30, 1974, had continued in effect until his date of retirement.

HISTORY: 1962 Code Section 61‑336; 1962 (52) 1933; 1969 (56) 25; 1970 (56) 1938; 1971 (57) 66; 1973 (58) 106; 1974 (58) 2032; 1975 (59) 154; 1977 Act No. 42 Section 2; 1986 Act No. 450, Section 2, eff May 26, 1986; 1988 Act No. 424, Section 1, eff July 1, 1988 (effective for members of the South Carolina Police Officers Retirement System retiring after June 30, 1988, and for contributions made after June 30, 1988); 1989 Act No. 189, Part II, Section 60F, eff July 1, 1989 (became law without the Governor’s signature); 2000 Act No. 387, Part II, Section 67L, eff January 1, 2001; 2012 Act No. 278, Pt III, Section 22, eff July 1, 2012.

Editor’s Note

1988 Act No. 424, Section 4, provides as follows:

“The amendments to Sections 9‑11‑60 and 9‑11‑70 of the 1976 Code contained in this act are effective for members of the South Carolina Police Officers Retirement System retiring after June 30, 1988, and for contributions made after June 30, 1988.”

Effect of Amendment

The 1986 amendment added the provisions relative to elections to receive additional service credit by persons less than fifty‑five years of age who have at least twenty‑five years of creditable service.

The 1988 amendment in paragraph (2)(a) replaced nine dollars with ten dollars and twenty‑five cents, in (2)(b) replaced one and three‑fourths percent with two percent, designated the last paragraph as paragraph (3), in (3) deleted the words “With respect to any retirement system provided for by law in this State for which it is provided by law that any”, and made grammatical changes throughout.

The 1989 amendment in subsection (2), inserted “on or after July 1, 1989,” in the opening paragraph, in item (a), replaced twenty‑five cents with ninety‑seven cents, and in item (b), inserted “and fourteen hundredths”.

The 2000 amendment rewrote subsection (1) and substituted “Reserved” for the text of subsection (3).

The 2012 amendment inserted “or eight or more years of such service for a Class Three member” in subsection (1)(a); inserted “or has twenty‑five or more years of credited service, or twenty‑seven or more years of such service for a Class Three member” in subsection (1)(b); inserted “or Class Three” in subsection (2)(c); and deleted subsection (3).

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.

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

Notes of Decisions

Construction and application 1

1. Construction and application

“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

**SECTION 9‑11‑65.** Repealed by 1994 Act No. 420, Section 8, eff May 25, 1994.

Editor’s Note

Former Section 9‑11‑65 was entitled “Optional method for purchase of additional service credit” and was derived from 1988 Act No. 6332, Section 2.

**SECTIONS 9‑11‑70, 9‑11‑75.** Repealed by 2012 Act No. 278, Pt III, Section 29, eff July 1, 2012.

Editor’s Note

Former Section 9‑11‑70 was entitled “Retirement allowances; early retirement” and was derived from 1962 Code Section 61‑337; 1962 (52) 1933; 1970 (56) 1938; 1974 (58) 2032; 1977 Act No. 42 Section 3; 1979 Act No. 82 Section 1; 1984 Act No. 384, Section 5; 1988 Act No. 424, Section 2; 2000 Act No. 387, Part II, Section 67M.

Former Section 9‑11‑75 was entitled “Authorization to adjust employer and employee contributions to equal actuarial cost” and was derived from 1988 Act No. 424, Section 5.

**SECTION 9‑11‑80.** Retirement allowances; disability retirement; periodic reexaminations; discontinuation or reduction of allowances.

(1) On the application of a member in service or the member’s employer, a member who has the years of earned service required for the member’s class pursuant to Section 9‑11‑60(1) or any 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, may be retired by the retirement 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 before 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 system. 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.

(2)(A) Upon disability retirement based upon an application received by the system before January 1, 2014, the member shall receive a disability retirement allowance which shall be equal to a service retirement allowance computed on the basis of his average final compensation, his years of credited service and his accumulated additional contributions at the date of his disability retirement; provided, however, that, at disability retirement, his disability retirement allowance shall be determined on the basis of the number of years of credited service the member would have completed had he remained in service until attaining age fifty‑five and on the basis of the average final compensation. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(B) Upon disability retirement based upon an application received by the system after December 31, 2013, the member shall receive a disability retirement allowance which is equal to a service retirement allowance computed on the basis of the member’s average final compensation, the member’s years of credited service, and the member’s accumulated additional contributions at the date of the member’s disability retirement. However, at disability retirement, the member’s disability retirement allowance must be determined on the basis of the member’s average final compensation at retirement and on the basis of the number of years of credited service the member would have completed had the member remained in service until attaining age fifty‑five or until attaining twenty‑five years of credited service, whichever is less. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(3) 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 require any disability beneficiary who has not yet attained the age of fifty‑five years to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by the system. If a disability beneficiary who has not yet attained the age of fifty‑five years refuses to submit to any such medical examination, the member’s retirement allowance may be discontinued until the member’s withdrawal of such refusal, and if the refusal continues for one year, all the member’s rights in and to the member’s retirement allowance may be revoked, but upon revocation any unexpended portion of the member’s accumulated contributions to date of retirement shall be returned to the member.

(4) If the system certifies that the member’s disability has been removed and that the member has regained earning capacity, the member’s disability retirement allowance may be discontinued, or if the disability has been partly removed and the member’s earning capacity regained in part, the disability retirement allowance may be reduced proportionately as provided pursuant to Section 9‑1‑1580. The determination of the board as to any disputed question, after due consideration accorded to the member, is conclusive. If the retirement allowance of any member retired for disability is discontinued or reduced, and if the member again suffers disability within five years of the date of the member’s recovery and again loses earning capacity, the member is entitled to apply to the board for a restoration of the original retirement allowance, and the board may restore all or part of the member’s original retirement allowance. At the expiration of the five‑year period, if the retirement allowance has not been restored, all rights in and to the member’s disability retirement allowance are revoked. The member then is entitled to a deferred early retirement allowance as provided in Section 9‑11‑70 based upon the member’s average final compensation and credited service at the member’s date of disability retirement.

(5) After age fifty‑five, a disability retiree is subject to the same earnings limitation as a service retiree.

(6) 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.

HISTORY: 1962 Code Section 61‑338; 1962 (52) 1933; 1971 (57) 66; 1974 (58) 2032; 1979 Act No. 102 Section 2; 1979 Act No. 140 Section 1; 1980 Act No. 408; 1981 Act No. 32 Section 4; 1982 Act No. 466 Part II Section 23B; 1984 Act No. 383, Section 3; 1985 Act No. 74 Section 3; 1986 Act No. 529, Section 7, eff June 18, 1986; 1993 Act No. 166, Section 2, eff June 16, 1993; 2000 Act No. 387, Part II, Section 67N, eff January 1, 2001; 2010 Act No. 162, Section 3, eff May 12, 2010; 2012 Act No. 278, Pt III, Section 24, eff July 1, 2012; 2013 Act No. 69, Section 1, eff June 13, 2013.

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.”

2010 Act No. 162, Section 4, provides:

“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.”

Section 9‑11‑70, referenced in item (4), was repealed by 2012 Act No. 278.

Effect of Amendment

The 1986 amendment revised the first paragraph of subsection (1) by making grammatical changes and by substituting “nine months” for “six months”.

The 1993 amendment added subsection (6) concerning disability retirement allowance for retirements after October 15, 1992.

The 2000 amendment, in subsection (1), substituted “earned service” for “credited service”.

The 2010 amendment in subsection (1), added the last sentence relating to determining when a member is considered to be in service.

The 2012 amendment rewrote the section.

The 2013 amendment, in subsections (2)(A), substituted “must be either Class One service, Class Two service, or Class Three service” for “shall be either Class One service, or Class Two service”; in subsection (2)(B), substituted “Class One service, Class Two service, or Class Three service” for “Class One service or Class Two service”; deleted subsection designator (A) in subsection (3); and deleted former subsection (3)(B) relating to continuing receipt of disability retirement allowance.

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.

NOTES OF DECISIONS

Member in service 1

1. Member in service

Firefighter who had been terminated due to an alleged on‑the‑job injury was not eligible for disability retirement, since she was not a “member in service” at time she applied for disability retirement, under Police Officers Retirement System (PORS) disability retirement statute; firefighter could not be retired from agency she was no longer working for. Lazicki‑Thomas v. South Carolina Budget and Control Bd. (S.C. 2008) 378 S.C. 72, 661 S.E.2d 374. Municipal Corporations 200(5); Public Employment 389(2)

**SECTION 9‑11‑90.** Effect of restoring beneficiary to service; retirement after return to service.

(1) 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 retirement allowance shall be adjusted in accordance with the provisions of Section 9‑11‑80(4).

(2) Should a disability beneficiary under the age of fifty‑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, 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 9‑11‑210(1). Any credited service to which he was entitled when he retired shall be restored to him, and upon subsequent retirement his allowance shall be based on his compensation and credited service before and after the period of prior retirement. The average final compensation in subsections (1) and (2) of this section may be increased up to ten percent annually to adjust for inflation.

(3) 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 credited service to which he was entitled when he retired must be restored to him, and upon subsequent retirement his allowance must be based on his compensation and credited service before and after the period of prior retirement. 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 the period of restoration up to the date the contribution is made. Upon the completion of the payment, this period must also be credited to him as membership service. In no event must 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 9‑11‑310 had he not been restored to service.

(4)(a)(i) Notwithstanding the provisions of subsections (1) and (2) of this section, 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 system provided in this title and may earn up to ten thousand dollars without affecting the monthly retirement allowance the member is receiving from this system. If the retired member continues in service after having earned ten thousand dollars in a calendar year, the member’s retirement allowance must be discontinued during the member’s 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 9‑11‑90(3) apply. If a retired member of the system returns to employment covered by the South Carolina Police Officers Retirement System or any other system provided in this title sooner than thirty consecutive calendar days after retirement, the member’s retirement allowance is suspended while the member remains employed by a participating employer of any of these systems. 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.

(ii) 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 fifty‑seven 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 item and item (b) of this subsection.

(d) A retired member of the Police Officers Retirement System who is not a member of the South Carolina Retirement System, but is employed in a position that would otherwise be covered by the South Carolina Retirement System, shall not join the South Carolina Retirement System but, notwithstanding any other provision of law, that member is deemed a retired contributing member of the Police Officers Retirement System and shall remit the employee contributions required under item (c) of this subsection to the Police Officers Retirement System and the employer shall remit to the Police Officers Retirement System the employer contribution required by item (b). An employer who hires a retiree of the Police Officers Retirement System pursuant to this subsection shall elect to participate as an employer in the Police Officers Retirement System.

(5) Notwithstanding the provisions of subsection (3), a retired member who has been restored to active employment by virtue of election to the office of sheriff is restored as a member of the system upon taking office and electing to cease receiving a retirement allowance. Credited service to which the sheriff was entitled when he retired is restored to the sheriff and upon subsequent retirement the allowance must be based on the sheriff’s compensation and credited service before and after the period of prior retirement. The allowance must not be less than the amount of his allowance previously payable plus any increases which would have been payable under Section 9‑11‑310 had he not been restored to service.

HISTORY: 1962 Code Section 61‑339; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 43 Section 2; 1978 Act No. 428 Section 2; 1979 Act No. 199 Part II Section 24B; 1980 Act No. 517 Part II, Section 19B; 1981 Act No. 32 Section 5; 1981 Act No. 178 Part II Section 33; 1982 Act No. 466 Part II Section 41B; 1983 Act No. 151 Part II, Section 50B; 1984 Act No. 512, Part II, Section 50B; 1985 Act No. 201, Part II, Section 42B; 1986 Act No. 540, Part II, Section 43B, effective June 18, 1986, and became law without the Governor’s signature; 1987 Act No. 170, Part II, Section 38B, eff June 22, 1987 (became law without Governor’s signature); 1988 Act No. 500, Section 3, eff May 9, 1988; 1988 Act No. 658, Part II, Section 40B, eff June 8, 1988; 1989 Act No. 189, Part II, Section 50B, eff June 8, 1989 (became law without the Governor’s signature); 1998 Act No. 419, Part II, Section 51B, eff June 30, 1998; 1999 Act No. 100, Part II, Section 27, eff July 1, 1999; 2001 Act No. 25, Section 2; 2002 Act No. 356, Section 12, eff July 1, 2002; 2005 Act No. 153, Pt II, Section 9, eff July 1, 2005; 2012 Act No. 278, Pt III, Section 25.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.

1998 Act No. 419, Section 51C, effective June 30, 1998, provides as follows:

“Subsection A takes effect July 1, 1998. Subsection B takes effect upon approval by the Governor but applies only with respect to service credit earned pursuant to active service as a sheriff on and after that date.”

Section 9‑11‑310, referenced in items (3) and (5), was repealed by 2012 Act No. 278.

Effect of Amendment

The 1986 amendment revised subsection (4) by substituting “eight thousand dollars” for “seven thousand five hundred dollars”.

The 1987 amendment revised subsection (4) by substituting “eight thousand five hundred dollars” for “eight thousand dollars”.

The first 1988 amendment in subsection (3) changed from mandatory to optional the provision that reemployed persons receiving retirement benefits cease receiving benefits and become a member of the system, and made grammatical changes.

The second 1988 amendment revised subsection (4) by substituting “nine thousand dollars” for “eight thousand five hundred dollars”.

The 1989 amendment, in subsection (4), increased the amount a retired member who returns to covered employment may earn without affecting his benefits from $9,000 to $9,500.

The 1998 amendment added subsection (5).

The 1999 amendment, in subsection (4), designated the existing text as item (a), in item (a), substituted “twenty‑five thousand dollars” for “nine thousand five hundred dollars” and added the last sentence relating to notification and added item (b).

The 2001 amendment, in subsection (4)(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, substituted “9‑11‑90(3)” for “9‑1‑1590”, 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 2002 amendment rewrote subsection (4)(a).

The 2005 amendment added paragraphs (4)(c) and (d).

The 2012 amendment rewrote subsection (4)(a).

CROSS REFERENCES

Application of this section to adjustment of benefit or 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.

Attorney General’s Opinions

The procedure for the appointment of certain magistrates who will soon be retiring. S.C. Op.Atty.Gen. (March 16, 2015) 2015 WL 1382882.

Notes of Decisions

Contributions 1

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1. Contributions

South Carolina Law Enforcement Division (SLED) did not improperly deduct retirement system contributions from retired employees rehired under retirement/rehire program, but rather properly paid retirement system contributions for rehired retired employees as required by law, despite isolated phrase in form noting a salary reduction “to cover the amount it will cost SLED to pay the employer portion of retirement,” where employees agreed to be rehired at salary a percentage less than previous base salary, pay stubs showed that no funds were deducted under the “retirement” category, SLED Chief stated that he reduced the salaries by the amount of the employer retirement contribution to provide some degree of savings to taxpayers, and Director of Administration confirmed that the employer’s retirement contribution “is not included within the salary of the employee, and therefore is not deducted from the salary of the employee.” Grimsley v. South Carolina Law Enforcement Div. (S.C. 2015) 415 S.C. 33, 780 S.E.2d 897. States 64.1(4)

Employees had a cognizable property interest in the percentage of their salary that was deducted by South Carolina Law Enforcement Division (SLED) in violation of statute governing the police retirement system, so as to support a takings claim against SLED; employees did not claim that they were entitled to a particular salary level, as SLED suggested, rather, their takings claim was predicated on their entitlement to retain the percentage of their salary that was used to pay the employer portion of the retirement contributions. Grimsley v. South Carolina Law Enforcement Div. (S.C. 2012) 396 S.C. 276, 721 S.E.2d 423, on remand 2012 WL 6057386. Eminent Domain 81.1

State was not estopped from requiring working retirees from making contributions to Police Officers Retirement System based on representations by its agents to retirees that they would not be required to make such contributions upon their return to work; although System provided forms which indicated that working retirees would not make contributions to System, terms of participation in working retiree program derived from retirement statute, which was subject to amendment, working retirees did not justifiably rely on representations, in that retirees were presumed to know law, and any reliance on such representations did not cause prejudicial change in working retirees’ position, in that monetary benefit of having five years’ additional service credit by not retiring was minimal compared to effect of simultaneously receiving salary and retirement benefits as member of working retiree program. Ahrens v. State (S.C. 2011) 392 S.C. 340, 709 S.E.2d 54, rehearing denied. Estoppel 62.2(2); Municipal Corporations 187(4); Public Employment 516(4)

2. Exhaustion of remedies

Employees were not required to exhaust administrative remedies under Retirement Act prior to filing declaratory judgment action seeking determination that South Carolina Law Enforcement Division’s (SLED) reduction of their salaries violated statute governing the police retirement system; administrative remedies provided by the Retirement Act required an administrative decision by a retirement system, and instant dispute was between employees and employer. Grimsley v. South Carolina Law Enforcement Div. (S.C. 2012) 396 S.C. 276, 721 S.E.2d 423, on remand 2012 WL 6057386. Declaratory Judgment 44

3. 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

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 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

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 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

4. Summary judgment

Genuine issue of material fact existed as to whether employees of South Carolina Law Enforcement Division (SLED), rehired as retirees, were rehired at their pre‑retirement salaries or at pre‑retirement salaries less statutorily mandated retirement contribution percentage, precluding summary judgment on employees’ claim that SLED imposed requirement in statutorily authorized retirement program that was contrary to law. Grimsley v. South Carolina Law Enforcement Division (S.C.App. 2014) 408 S.C. 38, 757 S.E.2d 542, rehearing denied, reversed 415 S.C. 33, 780 S.E.2d 897. Judgment 181(27)

**SECTION 9‑11‑100.** Members who stop police work may withdraw contributions.

Should a member cease to render service as a police officer to an employer, except by reason of his death or retirement, he shall be paid the amount of his accumulated contributions within six months after his demand therefor, but not less than ninety days after ceasing to be a police officer.

HISTORY: 1962 Code Section 61‑340; 1962 (52) 1933; 1967 (55) 507; 1974 (58) 2032.

**SECTION 9‑11‑110.** Lump sum shall be paid in event of death.

(1) Upon the death of any member prior to retirement, a lump‑sum amount shall be paid to such person as he shall have nominated by written designation, duly acknowledged and filed with the Board, otherwise to his estate. If the member is in service at the time of his death, such lump‑sum amount shall be equal to the sum of (a) and (b) below:

(a) His accumulated contributions, excluding any additional contributions, or one thousand dollars, whichever is greater; and

(b) His accumulated additional contributions. If the member is not in service at the time of his death, such lump‑sum amount shall be the amount of his accumulated contributions.

(2) 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.

(3) An active contributing member making the nomination provided under subsection (1) of 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 subsection (1) of this section and Section 9‑11‑130, if applicable.

HISTORY: 1962 Code Section 61‑341; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 29 Section 1; 1984 Act No. 384, Section 6; 1995 Act No. 139, Section 5, eff June 28, 1995; 2000 Act No. 387, Part II, Section 67U, eff January 1, 2001.

Effect of Amendment

The 1995 amendment added subsection (3).

The 2000 amendment rewrote subsection (2).

CROSS REFERENCES

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.

Provision that death benefits under the Accidental Death Benefit Program are payable separate and apart from benefits payable upon death under this section, see Section 9‑11‑140.

Right of nominee under this section to elect to receive monthly allowance for life upon death of member before retirement, in lieu of lump sum otherwise payable under this section, see Section 9‑11‑130.

**SECTION 9‑11‑120.** Preretirement Death Benefit Program; post‑retirement death benefit payment.

(A) There is created the Preretirement Death Benefit Program for all employers under the system except counties, municipalities, and other political subdivisions, as well as those state departments, agencies, or 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 the preceding subsection by written application of the employer. Applications are 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 proof satisfactory to the board of the death of: (a) a contributing member in service after completion of at least one full year of membership 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, whose employer is participating in the program; 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, pursuant to Section 9‑11‑110, 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 compensation of the member at the time his death occurs. The death benefit is payable apart and separate from the payment of the amount provided by Section 9‑11‑110.

(2) For purposes of this section a member described in item (1)(a) of this subsection 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 section, a member described in item (1)(b) of this subsection 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) Notwithstanding any other provision of law, contributions to support the Preretirement Death Benefit Program must be made by participating employers to a separate account. The contributions commence on the July first following the effective date of coverage and must equal to one percent of the compensation of eligible members, provided that this rate of contribution is subject to periodic adjustment on the basis of actual experience and the recommendation of the actuary. All death benefit payments made under this program are a charge against this account.

(E) RESERVED

(F) Upon the death of a retired member on or after July 1, 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‑five or less than twenty‑seven for a Class Three member, and six thousand dollars if the retired member had at least twenty‑five years of creditable service or at least twenty‑seven years of such service for a Class Three member, at the time of retirement, if the retired member’s most recent employer before retirement is covered by the preretirement death benefit program.

HISTORY: 1962 Code Section 61‑341.1; 1968 (55) 2818; 1972 (57) 2207; 1973 (58) 169; 1974 (58) 2032; 1977 Act No. 26 Section 1; 1984 Act No. 386, Section 3; 1985 Act No. 201, Part II, Section 51D; 1990 Act No. 412, Section 11, eff January 1, 1991; 1991 Act No. 170, Section 3, eff June 28, 1991; 1991 Act No. 171, Part II, Section 44C, eff June 12, 1991; 1996 Act No. 458, Part II, Section 46B, eff June 19, 1996; 2001 Act No. 1, Part II, Section 2B5, eff July 1, 2000; 2005 Act No. 153, Pt II, Section 10, eff July 1, 2005; 2010 Act No. 176, Section 5, eff May 19, 2010; 2012 Act No. 278, Pt III, Section 23, eff July 1, 2012.

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 sixth paragraph, allowing for the designation of more than one beneficiary.

The 1991 amendment by Act No. 171, Part II, Section 44C, added in the third undesignated paragraph, 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 1991 amendment by Act No. 170 Section 3, in the sixth undesignated paragraph, increased the death benefits for police officers.

The 1996 amendment revised the third undesignated paragraph.

The 2001 amendment, in the last undesignated paragraph, substituted “life insurance benefits” for “death benefits”, and increased the amounts to be paid for retired members with twenty years or more of creditable service.

The 2005 amendment rewrote this section.

The 2010 amendment deleted the text in subsection (E) relating to life insurance, and reserved the subsection, and deleted references to life insurance in subsection (F).

The 2012 amendment inserted “or less than twenty‑seven for a Class Three member” and “or at least twenty‑seven years of such service for a Class Three member,” and made other nonsubstantive changes in subsection (F).

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑11‑225.

Provision that death benefits under the Accidental Death Benefit Program are payable separate and apart from benefits payable upon death under this section, see Section 9‑11‑140.

**SECTION 9‑11‑125.** Death Benefit Plan.

(A) The Death Benefit Plan for members of the South Carolina Police Officers Retirement System, hereinafter referred to as the “plan”, is established for the purpose of providing for the payment of the benefits provided by Section 9‑11‑120.

(B) A separate fund, to be known as the Death Benefit Plan Reserve Fund, is established within the South Carolina Police Officers 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 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 9‑11‑120 a benefit equal to the death benefit provided by Section 9‑11‑120 must be paid to the person nominated by the member in accordance with the provisions of Section 9‑11‑120 or to the member’s estate.

(D) The actuary shall investigate the experience of the plan as provided by Section 9‑11‑30. On the basis of the investigations and upon the recommendation of the actuary, as provided in Section 9‑11‑120, the board shall certify the contribution rates computed to be necessary to fund the death benefits authorized to be paid by the plan. As soon as practicable after the close of each fiscal year, the board shall determine the contribution rates 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 42, eff June 4, 2008; 2010 Act No. 176, Section 6, 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 9‑11‑225.

**SECTION 9‑11‑130.** Survivor may elect to receive allowance for life in lieu of lump‑sum payment.

(1) The person nominated by a member pursuant to Section 9‑11‑110 to receive a lump sum amount if the member dies before retirement may, if the member:

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

(b) dies in service; and

(c) has either attained age fifty‑five or has accumulated fifteen years of creditable service, elect to receive in lieu of the lump sum amount otherwise payable under Section 9‑11‑110(1)(a) an allowance for life in the same amount as if the deceased member had retired at the time of his death and had named the person as beneficiary under an election of Option B pursuant to Section 9‑11‑150(A).

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

(2) The person nominated may also elect to receive in lieu of the member’s accumulated additional contributions, or a portion of it, an allowance for life which must be the actuarial equivalent of the amount of those contributions left on deposit under the System.

(3) 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 9‑11‑60 or Section 9‑11‑70, the person nominated by a member pursuant to Section 9‑11‑110 to receive a lump sum amount if the member dies before retirement may elect to receive, in lieu of the lump sum amount otherwise payable, 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 under Section 9‑11‑150(A).

(4) If a member has designated more than one beneficiary pursuant to Section 9‑11‑110 to receive a lump sum amount 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 lump sum amount otherwise payable.

HISTORY: 1962 Code Section 61‑341.2; 1971 (57) 66; 1974 (58) 2032; 1978 Act No. 644 Part II Section 33; 1981 Act No. 133, Section 3; 1983 Act No. 26, Section 3; 1985 Act No. 201, Part II Section 48F; 2000 Act No. 387, Part II, Section 67O, eff January 1, 2001; 2012 Act No. 278, Pt III, Section 26, Pt IV, Subpt 3, Section 66.B, eff July 1, 2012.

Effect of Amendment

The 2000 amendment rewrote subsection (1).

The 2012 amendment rewrote item (1) and added items (3) and (4).

CROSS REFERENCES

Provision that death benefits under the Accidental Death Benefit Program are payable separate and apart from benefits payable upon death under this section, see Section 9‑11‑140.

**SECTION 9‑11‑140.** Accidental Death Benefit Program.

Effective July 1, 1962, there is created the Accidental Death Benefit Program, effective as of that date to all employers under the system except counties, municipalities, and other political subdivisions, as well as those state departments, agencies, or institutions which pay directly to the system the total employer contributions for the participating members in their employ. The benefit paid pursuant to this Accidental Death Benefit Program must not be treated as a life insurance benefit for the beneficiary or beneficiaries set out below.

The Program shall be available to those employers exempted in the preceding paragraph by written application of such employer. Applications shall be an irrevocable commitment to participate under the Program. For applications received by the System prior to October 1, 1971, the effective date of the coverage shall be July 1, 1962. For all other applications the effective date shall be July first next following the date of receipt by the System of the application. Members of the System whose employers participate under the Program and contribute under this section shall be considered eligible members for purposes hereof.

Upon receipt of the proper proofs of death of an eligible member in service whose death was a natural and proximate result of an injury by external accident or violence incurred while undergoing a hazard peculiar to the member’s employment while in the actual performance of duty, provided that the death was without wilful negligence on the part of the deceased and upon the finding and certification by the board that the death occurred, there must be paid to the member’s surviving spouse, a pension of fifty percent of the member’s compensation at the time of death. If there is no surviving spouse, or if the surviving spouse dies before the youngest child of the deceased member has attained the age of eighteen, the pension is paid to the children, divided in a manner as the board determines to continue for the benefit of the children until every child dies or attains the age of eighteen. If there is no surviving spouse or children under the age of eighteen years living at the death of the member, the pension must be paid to the member’s surviving father or mother, or both, as the board may direct to continue for life. If the member at the time of his death does not leave a surviving spouse, or children under the age of eighteen, or surviving parents, no death benefit is payable under this section. The death benefit is payable apart and separate from the payment of any other benefits payable on the member’s death pursuant to the provisions of Sections 9‑11‑110, 9‑11‑120, and 9‑11‑130.

Notwithstanding any other provision of law, contributions to support the Accidental Death Benefit Program shall be made by participating employers to a separate account. The contributions shall commence on the July first following the effective date of coverage or July 1, 1972, if later, and shall be equal to thirty‑five one hundredths of one percent of the compensation of eligible members, provided that such rate of contribution shall be subject to periodic adjustment on the basis of actual experience and the recommendation of the actuary. All accidental death benefit payments made under this Program shall be a charge against this account.

The monthly allowance any beneficiary is receiving under this program on July 1, 1980, shall be increased by ten percent effective on such date, provided the beneficiary was receiving a benefit on July 1, 1979.

The monthly allowance any beneficiary is receiving under this program on July 1, 1988, must be increased by ten percent effective on July 1, 1988, if the beneficiary was receiving a benefit on July 1, 1987.

The monthly allowance a beneficiary is receiving under this program on July 1, 1992, must be increased by ten percent effective on July 1, 1992, if the beneficiary was receiving a benefit on July 1, 1991.

Benefits payable under this section must be adjusted to reflect increases in the Consumer Price Index in the manner provided in Section 9‑11‑310.

HISTORY: 1962 Code Section 61‑341.3; 1971 (57) 470, 996; 1972 (57) 2764; 1974 (58) 2032; 1975 (59) 171; 1980 Act No. 380, Section 1; 1984 Act No. 380; 1985 Act No. 73; 1988 Act No. 658, Part II, Section 39, eff June 8, 1988; 1992 Act No. 502, Section 1, eff July 1, 1992; 1995 Act No. 145, Part II, Section 101, eff June 29, 1995; 1998 Act No. 337, Section 1, eff July 1, 1998; 2010 Act No. 176, Section 7, 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.”

Section 9‑11‑310, referenced in the text, was repealed by 2012 Act No. 278.

Effect of Amendment

The 1988 amendment added the sixth unnumbered paragraph providing for a ten percent increase in monthly allowance.

The 1992 amendment added the seventh unnumbered paragraph, pertaining to a ten percent increase effective July 1, 1992.

The 1995 amendment revised the third paragraph, to provide for benefits under the program to a surviving spouse rather than an officer’s widow.

The 1998 amendment added the last paragraph requiring benefit adjustments to reflect increases in the Consumer Price Index.

The 2010 amendment added the last sentence relating to life insurance to the first undesignated paragraph, in the last undesignated paragraph changed the section reference from 9‑1‑1810 to 9‑11‑310, and made other nonsubstantive changes.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑11‑225.

Retirement allowance adjustment, see Section 9‑11‑312.

**SECTION 9‑11‑150.** Optional forms of retirement 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 9‑11‑80, 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 61‑342; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 29 Section 2; 1982 Act No. 369, Section 3; 1984 Act No. 381, Section 3; 1985 Act No. 201, Part II, Section 65B; 1986 Act No. 540, Part II, Section 23C, effective June 18, 1986, and became law without the Governor’s signature; 1990 Act No. 412, Section 3, eff January 1, 1991, except Option 3 which became eff July 1, 1990; 1992 Act No. 336, Sections 5, 7, eff May 4, 1992; 1996 Act No. 458, Part II, Section 47C, eff June 19, 1996; 2000 Act No. 387, Part II, Section 67T, eff January 1, 2001; 2008 Act No. 311, Sections 19 and 40, eff June 4, 2008; 2015 Act No. 27 (S.373), Section 2, 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 last unnumbered paragraph pertaining to options available after divorce.

The 1990 amendment revised this section.

The 1992 amendment, by Section 5, added the last two sentences in the second paragraph; and by Section 7, added the third or last paragraph.

The 1996 amendment revised the second undesignated paragraph.

The 2000 amendment rewrote this section.

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

2015 Act No. 27, Section 2, rewrote (B)(1).

CROSS REFERENCES

Application of earnings limitations of this section to firefighter who retired under system transferred to Police Officers’ Retirement System, see Section 9‑11‑48.

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.

Effect, upon the lump sum payment to a retired member’s designee upon the retired member’s death, of the sum of retirement allowance payments made to the member under Options 1, 2, and 4 of this section, see Section 9‑11‑110(2).

**SECTION 9‑11‑155.** 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 rollover 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 will 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 20, eff June 4, 2008.

**SECTION 9‑11‑160.** Allowances shall be paid monthly.

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 9‑11‑150, any allowance payable to a survivor beneficiary commences in the month after the death of the retired member.

HISTORY: 1962 Code Section 61‑343; 1962 (52) 1933; 1974 (58) 2032; 2001 Act No. 1, Part II, Section 2B6, eff July 1, 2000.

Effect of Amendment

The 2001 amendment rewrote provisions relating to payments upon the death of the retired member.

**SECTION 9‑11‑170.** Supplemental Allowance Program.

(1) Effective July 1, 1966, there is hereby established a Supplemental Allowance Program to be administered by the Board as part of the System and to provide supplemental allowances for eligible members as hereinafter provided.

(2) The State shall participate in the Supplemental Allowance Program as outlined in this section as of July 1, 1966. Any other employer may, in its discretion, participate in the Supplemental Allowance Program by making application to the Board to so participate and by complying with the requirements of this section and the rules and regulations adopted by the Board for its implementation. Such application shall be made and the employer’s participation in the program shall be effective in a manner similar to that provided for applications for and admission to the System as set forth in Section 9‑11‑40, except item (2).

(3)(a) Any member who is employed as a police officer by a participating employer on the employer’s participation date and whose rate of salary or compensation on such date exceeds four hundred dollars per month, shall become a participant in the program on that date, shall be eligible for a supplemental allowance as outlined in this section and shall make supplemental contributions pursuant to item (9) below; except that such member in the employ of a participating employer on such employer’s participation date may, within a period of one month following such date, irrevocably elect not to participate in such program by filing with the Board, on a form prescribed by it, a notice of his election not to make such supplemental contributions and a duly executed waiver of the supplemental allowance which would otherwise be payable to him pursuant to this section.

(b) Any member who is employed as a police officer by a participating employer on the employer’s participation date and whose salary or compensation on such date is not in excess of four hundred dollars per month shall become a participant in this program as of the first day of the calendar month in which his rate of salary or compensation first exceeds four hundred dollars per month.

(c) Any person who is first employed as a police officer by a participating employer after the employer’s participation date shall, as a condition of his employment, become a participant in this program as of the first day of the calendar month in which his rate of salary or compensation first exceeds four hundred dollars per month.

(4) Upon retirement, a member who has participated in the Supplemental Allowance Program will receive a supplemental allowance which shall be a monthly retirement allowance equal to the sum of (a) and (b) below:

(a) An allowance which is the actuarial equivalent of the member’s accumulated supplemental contributions; and

(b) An amount equal to the allowance provided in (a) above.

(5) Upon the death of a member prior to his retirement and prior to his withdrawal of contributions on his ceasing to be a police officer under item (7) below, the amount of his accumulated supplemental contributions, if any, shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board, otherwise to his estate.

(6) Upon the death of a beneficiary who has not elected an optional form of allowance in accordance with item (8) below, a lump sum amount shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board, otherwise to his estate. Such lump sum amount shall be equal to the excess, if any, of his total accumulated supplemental contributions at the time his allowance commenced over the sum of the supplemental allowance payments made to him during his lifetime.

(7) Should a member cease to render service as a police officer to an employer, except by reason of death or retirement, his aggregate supplemental contributions, if any, shall be paid to him in the manner and pursuant to the time limitations set forth in Section 9‑11‑100.

(8) Anything in this section to the contrary notwithstanding, a member who participates in the Supplemental Allowance Program may, in a manner similar to that set forth in Section 9‑11‑150, elect to convert the supplemental allowance otherwise payable on his account after his retirement into an allowance of equivalent actuarial value, in accordance with one of the options therein set forth.

(9) Each member participating in the Supplemental Allowance Program shall make monthly supplemental contributions equal to six percent of the portion of the monthly salary or compensation in excess of four hundred dollars received by him during his participation in the program.

In addition, each such member may irrevocably elect, within a period of one month following his date of participation, to contribute the amount which would have resulted had he, during each month of his credited service prior to his date of participation, made a contribution to the System equal to two percent of the portion of his rate of monthly salary or compensation in excess of four hundred dollars during the month immediately preceding his date of participation in the program and had such contributions been accumulated with interest at the rate of four percent per annum. If the member elects to make such additional voluntary contributions they shall be made within twelve months after his participation in the Supplemental Allowance Program commences, in such manner as the Board may deem reasonable.

(10) As of the employer’s participation date and as of each July first thereafter the Board shall certify to each employer participating in the Supplemental Allowance Program the amount of employer supplemental contribution due the System. The amount of employer contribution payable during the first such period shall be equal to an estimate of the total amount of supplemental contributions that will be made by the participating members employed by that employer during the ensuing period up to the subsequent July first. However, the portion of such members’ contributions which is in respect to service prior to the participation date shall be excluded from such estimate. The amount of employer contributions in any subsequent period shall be computed in a similar manner but the resulting amount shall be adjusted by the difference between the estimated amount of such member contributions and the amount of such contributions actually made. The estimate of the amount of contributions that will be made by the members during a period shall be based on the most recent payroll information available as of the date of the certification.

The participating employer shall make an additional level annual contribution for a period of ten years subsequent to its participation date. Such additional contributions shall, in total, be sufficient to liquidate an amount equal to the total contributions by its participating members with respect to their service prior to the employer’s participation date. For the purpose of calculating this additional contribution an interest rate of four percent per annum shall be used.

Any forfeitures shall be used to reduce the contributions otherwise payable by a particular participating employer, and will not be applied to increase the benefits of any participating member.

HISTORY: 1962 Code Section 61‑343.1; 1966 (54) 2424.

**SECTION 9‑11‑175.** 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 Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code 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 Internal Revenue Code 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 will 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 21, eff June 4, 2008.

**SECTION 9‑11‑180.** Department of Public Safety authorized to pay certain moneys into System on behalf of active highway patrol member employees; use of such moneys.

The Department of Public Safety is hereby authorized to pay into the Police Officers’ Retirement System fund prior to July 1, 1967, on behalf of active highway patrol member employees, an amount equal to the sum such members would be required to contribute to the fund for creditable prior service pursuant to Section 9‑11‑170. The amounts paid into the fund shall be used for the payment of retirement benefits under the Police Officers’ Retirement System or shall be refunded to the Department of Public Safety. None of the moneys paid into the fund pursuant to this section shall be disbursed in any other manner to patrol member employees upon termination of employment with the department nor shall any such funds be paid to a patrol member employee’s surviving beneficiary as a residual credit to any patrol member employee’s account which may have existed upon his death. Provided, however, that the interest accruing after July 1, 1967 on the amount paid into the fund may be credited to the patrol member employee’s account just as if he had made the contribution for creditable prior service for his account. Any time that the Police Officers’ Retirement System closes the account of an active patrol member employee because of death or termination of employment with the department the System shall refund to the department the amount that it has paid into the fund on behalf of patrol member employees for creditable prior service under the Supplemental Allowance Program of the System.

HISTORY: 1962 Code Section 61‑343.2; 1967 (55) 362; 1993 Act No. 181, Section 79, eff July 1, 1993.

Effect of Amendment

The 1993 amendment revised this section by substituting “Department of Public Safety” for “State Highway Department”.

CROSS REFERENCES

The State Highway Department, generally, see Sections 57‑3‑10 et seq.

**SECTION 9‑11‑190.** Certain moneys shall be paid into System from State’s general fund on behalf of active member employees; use of such moneys.

There shall be paid out of the State’s general fund into the Police Officers’ Retirement System fund (the fund) prior to July 1, 1967, on behalf of active member employees, an amount equal to the sum such members would be required to contribute to the fund for creditable prior service pursuant to Section 9‑11‑170. The amounts paid into the fund shall be used for the payment of retirement benefits under the Police Officers’ Retirement System or shall be refunded to the State’s general fund. None of the moneys paid into the fund pursuant to this section shall be disbursed in any other manner to member employees upon termination of employment with the State nor shall any such funds be paid to a member employee’s surviving beneficiary as a residual credit to any member employee’s account which may have existed upon his death. Provided, however, that the interest accruing after July 1, 1967 on the amount paid into the fund may be credited to the member employee’s account just as if he had made the contribution for creditable prior service for his account. Any time that the Police Officers’ Retirement System closes the account of an active member employee because of death or termination of employment with the State the System shall refund to the State’s general fund the amount that it has paid into the fund on behalf of member employees for creditable prior service under the Supplemental Allowance Program of the System.

HISTORY: 1962 Code Section 61‑343.3; 1967 (55) 608.

**SECTION 9‑11‑200.** Certain moneys may be paid into System by employers on behalf of active member employees; use of such moneys.

Any employer under the South Carolina Police Officers’ Retirement System may pay into the Police Officers’ Retirement System fund, on behalf of active member employees, an amount equal to the sum such members would be required to contribute to the fund for creditable prior service pursuant to Section 9‑11‑170. The amounts paid into the fund shall be used for the payment of retirement benefits under the Police Officers’ Retirement System or shall be refunded to the employer. None of the moneys paid into the fund pursuant to this section shall be disbursed in any other manner to member employees upon termination of employment with the department nor shall any such funds be paid to a member employee’s surviving beneficiary as a residual credit to any member employee’s account which may have existed upon his death. Provided, however, that the interest accruing on the amount paid into the fund may be credited to the member employee’s account just as if he had made the contribution for creditable prior service for his account. Any time that the Police Officers’ Retirement System closes the account of an active member employee because of death or termination of employment with the employer the System shall refund to the employer the amount that it has paid into the fund on behalf of member employees for creditable prior service under the supplemental allowance program of the System.

HISTORY: 1962 Code Section 61‑343.4; 1968 (55) 2348.

**SECTION 9‑11‑210.** Contributions of members; employer to pay required member contributions on earnings after July 1, 1982; tax treatment; funding; retirement treatment.

(1) Each Class One member shall contribute to the system twenty‑one dollars a month during his service after becoming a member. Each Class Two and Class Three member shall contribute to the system a percentage of the member’s earnable compensation as provided pursuant to Section 9‑11‑225.

(2) Any police officer who is a participant in the Supplemental Allowance Program on June 30, 1974 and has not made contributions under said Program with respect to his credited service prior to his date of participation therein may elect, by written notice filed with the Board within ninety days after July 1, 1974, to establish credit for such service as Class Two service by making a special contribution equal to the amount which would have resulted had he, during each month of such service, made contributions to the System equal to two percent of the portion of his monthly compensation in excess of four hundred dollars during the month immediately preceding his participation in the Supplemental Allowance Program and had such contributions been accumulated with interest at the rate of four percent per annum to July 1, 1974 and at regular interest as determined by the Board thereafter to the date of payment. Such contribution shall be paid within twelve months following the filing of the aforesaid notice.

(3) Any Class Two member, other than a member who makes the election provided in subsection (2) of this section, who has credited service which does not qualify as Class Two service may elect by written notice filed with the Board at any time prior to retirement to establish credit for such service as Class Two service by making a special contribution prior to retirement equal to the excess of (a) five percent of his monthly rate of compensation at the time such contribution is made, over (b) sixteen dollars, multiplied by (c) the number of months of such credited service.

(4) Reserved.

(5) The Board shall prescribe by appropriate rules and regulations the manner in which the contributions provided in subsections (2), (3) and (4) of this section shall be made.

(6) Each member who was, immediately prior to his becoming a member, a participant in another fund shall, and is hereby authorized and required to, cause the amount of his full contributions made under such other fund to be transferred to the System within two months of the date of his membership, provided that the service credited to him under such other fund is includable in his credited service under the System. If the amount so transferred exceeds the amount which would have been transferable from the Police Insurance and Annuity Fund had the member made all required contributions thereto in connection with service prior to July 1, 1962 before becoming a member, plus the amount which the member would have been required to contribute to the System on account of service after said date and prior to his actual date of membership, the Board shall under uniform rules and regulations determine the amount of such excess and treat it as an additional contribution which upon his retirement shall be used to provide an additional retirement allowance. If, however, a deficiency exists, the Board shall require that such deficiency be made up by the member within such period of time as the Board may deem reasonable. This subsection shall not apply to a member transferred from a correlated system to whom the provisions of Section 9‑11‑40(9) are applicable.

(7) The collection of members’ contributions is as follows:

Each employer must cause to be deducted on each and every payroll of a member the contributions payable by the member. In determining the amount to be deducted in a payroll period, the employer may consider the rate of compensation of the member on the first day of the payroll period as continuing throughout the payroll period and it may omit deduction from compensation for any period less than a full payroll period if a police officer was not a member on the first day of the payroll period. The chief fiscal officer of each employer shall transmit the amounts deducted to the System together with a schedule of the contributions, on forms prescribed by the Board, to reach the Retirement System on or before the last day of each month for the preceding month. If any employer fails to do so, or if arrears should at any time exist in making monthly payroll reports and remittances as required hereunder and by the rules and regulations of the Board, the 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 in each instance of failure to make the reports and remittances until all reports and remittances required hereunder and by the rules and regulations of the Board 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.

Any person failing to transmit, in the manner and within the period herein required, the contributions deducted is guilty of a misdemeanor and must be punished by fine or imprisonment, or both, in the discretion of the court.

(8) Every member shall be deemed to consent and agree to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or 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 payment, except as to the benefits provided under the System.

(9) Each of the amounts so deducted shall be credited to the individual account of the member from whose compensation the deduction was made.

(10) Any employer may pay to the System on behalf of the members in its employ the amounts which such members would otherwise be required to contribute pursuant to subsection (2) or (3) of this section in order to establish credit as Class Two service for any period of credited service prior to the date on which such members became eligible for Class Two membership or for participation in the Supplemental Allowance Program or any amounts which such members would otherwise be required to contribute pursuant to subsection (4) of this section in order to establish credit for any period of service prior to the date on which such members became eligible for membership. Such amounts contributed by an employer shall not be credited to the members’ accumulated contributions, but in the event that a member’s accumulated contributions are returned to him upon termination of his membership or are paid to the person designated by him upon his death prior to retirement, any amount contributed by the employer on behalf of the member pursuant to this subsection (10) shall be returned to said employer.

(11) 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 pickups 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 prior to the date picked up.

(12) 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. This item does not apply to bonus payments paid to certain categories of employees annually during their work careers. Bonus or special payments applied only during the “Average Final Compensation” period are excluded as compensation. Not including Class Three members, 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 members eligible to have unused annual leave included in that calculation.

HISTORY: 1962 Code Section 61‑344; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 219 Pt II Section 26; 1982 Act No. 315, Section 4; 1982 Act No. 349, Section 4; 1982 Act No. 372, Section 3; 1985 Act No. 201, Part II, Sections 47F, and 48G; 1986 Act No. 529, Section 3, eff June 18, 1986; 1988 Act No. 424, Section 3, eff July 1, 1988; 1994 Act No. 420, Section 6, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit; 2000 Act No. 387, Part II, Section 67P, eff January 1, 2001; 2005 Act No. 14, Section 4, eff July 1, 2004; 2008 Act No. 311, Section 22, eff June 4, 2008; 2012 Act No. 278, Pt III, Section 27, eff July 1, 2012.

Effect of Amendment

The 1986 amendment revised subsection (12) 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 provisions that this item does not apply to bonus payments paid to certain categories of employees annually during their work careers, that bonus or special payments applied only during the “Average Final Compensation” period are excluded as compensation, and that contributions are deductible on pay for unused annual leave.

The 1988 amendment in subsection (1) replaced “sixteen” with “twenty‑one”, “per” month with “a” month, and “five” with “six and one‑half”.

The 1994 amendment in subsection (4) increased the contribution rate to establish prior police service from sixteen to twenty‑one dollars a month for class one service and from five to six and one‑half percent of monthly compensation.

The 2000 amendment substituted “Reserved” for the text of subsection (4).

The 2005 amendment, in subdivision (12), in the fourth sentence added “up to and including forty‑five days termination” and added the fifth and sixth sentences.

The 2008 amendment, in subsection (11), deleted the clause at the end of the first sentence referring to the Internal Revenue Code and added the second and fifth sentences.

The 2012 amendment inserted “and Class Three” and substituted “a percentage of the member’s earnable compensation as provided pursuant to Section 9‑11‑225” for “six and one‑half percent of his compensation” in item (1); and in item (12) inserted “Not including Class Three members,” and “for members eligible to have unused annual leave included in that calculation”.

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑11‑225.

Identical provisions as to payment of required member contributions by employer on earnings after July 1, 1982, see Sections 9‑1‑1020, 9‑1‑1160, 9‑8‑130, 9‑9‑120.

Requirement that contributions be made under this section by disability beneficiary under age 55 restored to active service, see Section 9‑11‑90.

LIBRARY REFERENCES

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

NOTES OF DECISIONS

In general 1

Immunity 2

1. In general

The written notice and payment requirement in Section 9‑11‑210(3) are directory rather than mandatory. The purpose of Section 9‑11‑210 is to enable a retirees to upgrade their retirement benefits. This purpose would be inconsistent with mandatory language which would make it more difficult for retirees to increase their retirement benefits. In addition, the language of the statute is devoid of mandatory words such as “shall” or “must.” Furthermore, a failure of strict performance would not result in an injury or prejudice to the substantial rights of interested parties. Thus, a municipal employer erred in refusing to contribute its share to the South Carolina Police Officers Retirement System to enable an employee to upgrade his retirement benefits on the grounds that the employee had failed to file a written request and pay his special contribution prior to retirement in strict compliance with Section 9‑11‑210(3). South Carolina Police Officers Retirement System v. City of Spartanburg (S.C. 1990) 301 S.C. 188, 391 S.E.2d 239.

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 9‑11‑220.** Contributions of employers.

(1) Commencing as of July 1, 1974, each employer shall contribute to the system seven and one‑half percent of the compensation of Class One members in its employ and a percentage of compensation for all other members in its employ as provided pursuant to Section 9‑11‑225.

(2) In addition, the employer of a member who makes a special contribution pursuant to subsection (2), (3) or (4) of Section 9‑11‑210 to establish credit as Class Two service for credited service which would otherwise be Class One service or to establish credit for service not otherwise credited and an employer who makes a special contribution on behalf of a member pursuant to subsection (10) of Section 9‑11‑210 in lieu of a contribution pursuant to said subsection (2), (3) or (4) shall make a contribution with respect to such service, determined as follows:

(a) Reserved.

(b) If the special contribution is made pursuant to Section 9‑11‑210(3), the employer contribution shall be equal to two and one‑half percent of the member’s monthly rate of compensation at the time such special contribution is made multiplied by the number of months of credited service to be established as Class Two service, except that with respect to any such service rendered prior to July 1, 1974, and after the effective date of the employer’s admission to the System such employer contribution shall be based on a rate of one and one‑half percent of such compensation.

(c) If the special contribution is made pursuant to Section 9‑11‑210(4), the employer contribution shall be equal to a percentage of the member’s monthly rate of compensation at the time such special contribution is made multiplied by the number of months of service for which credit is to be established. Such percentage shall be seven and one‑half percent in the case of a Class One member and ten percent in the case of a Class Two member. The employer contribution required by this subsection shall be paid by the current employer.

The contributions payable by employers under this subsection (2) shall be paid in a lump sum or in installments over such period, not to exceed ten years, as the Board may, under uniform rules, determine.

HISTORY: 1962 Code Section 61‑345; 1962 (52) 1933; 1974 (58) 2032; 1982 Act No. 367, Section 2; 2000 Act No. 387, Part II, Section 67Q, eff January 1, 2001; 2012 Act No. 278, Pt III, Section 28, eff July 1, 2012.

Effect of Amendment

The 2000 amendment substituted “Reserved” for the text of subsection (2)(a).

The 2012 amendment rewrote subsection (1).

CROSS REFERENCES

Employer and employee contribution rates, see Section 9‑11‑225.

Attorney General’s Opinions

The Budget and Control Board has the authority to rescind its recent action lowering the rate of employer contributions to the Police Officers Retirement System by about three percent (3%) or to delay putting such a change in effect. 1987 Op Atty Gen, No. 87‑74, p 189.

If the State Budget and Control Board should decide to rescind its June 23, 1987 action, which reduced employer contribution rates to the Police Officers Retirement System, and reinstate the previous employer contribution rate, counties and municipalities would be legally obligated to make contributions consistent with the Board’s revised rate of contribution. 1987 Op Atty Gen, No. 87‑76, p 196.

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 9‑11‑225.** Employer and employee contribution rates.

(A) As provided in Sections 9‑11‑210 and 9‑11‑220, 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 | 16.24 | 9.75 |
|  | 2018‑2019 | 17.24 | 9.75 |
|  | 2019‑2020 | 18.24 | 9.75 |
|  | 2020‑2021 | 19.24 | 9.75 |
|  | 2021‑2022 | 20.24 | 9.75 |
|  | 2022‑2023 | 21.24 | 9.75 |
|  | 2023‑2024 | 21.24 | 9.75 |
|  | 2024‑2025 | 21.24 | 9.75 |
|  | 2025‑2026 | 21.24 | 9.75 |
|  | 2026‑2027 and after | 21.24 | 9.75 |

The employer contribution rate set out in this schedule includes contributions for participation in the incidental death benefit plan provided in Sections 9‑11‑120 and 9‑11‑125 and for participation in the accidental death benefit program provided in Section 9‑11‑140. The employer contribution rate for employers that do not participate in these programs 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 and three quarters of one percent and any contribution increase required by this item after the employee contribution rate equals nine and three quarters of one percent must be an increase in the employer contribution rate.

HISTORY: 2012 Act No. 278, Pt III, Section 19.B, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. I, Section 2, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. I, Section 2, 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

Contributions of employers, see Section 9‑11‑220.

Contributions of members, employer to pay required member contributions on earnings after July 1, 1982, tax treatment, funding, retirement treatment, see Section 9‑11‑210.

**SECTION 9‑11‑230.** Contributions shall be paid monthly; State funds may be withheld if records or money not received on time.

(1) At the beginning of each year commencing on the first day of July, the Board shall certify to each employer other than the State the amount of employer contribution due the System. It is the duty of the chief fiscal officer of each employer to transmit funds to reach the System on or before the last day of each month on account of each member of the System employed by the employer for the preceding month an amount to cover the monthly contribution of the employer as so certified. The employer’s contributions must be included in the budget of the employer and levied and collected in the same manner as any other taxes are levied and collected for the payment of salaries of members. Delinquent payments under this section and Section 9‑11‑210 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 the Board of Governors of the Federal Reserve System. The adjusted prime rate must be the adjusted prime rate charged by the bank during March of that year.

(2) If within ninety days after request therefor by the Board any employer has not provided the System with the records and other information required hereunder or if within thirty days after the last due date, as herein provided, the full accrued amount of the employer contributions due on account of members employed by an employer has not been received by the System from the chief fiscal officer of the employer, then upon notification by the Board to the State Treasurer and Comptroller General as to the default of the employer as herein provided, 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 61‑345.1; 1962 (52) 1933; 1974 (58) 2032; 1977 Act No. 219 Pt II Section 26; 1985 Act No. 201, Part II, Section 47G.

Attorney General’s Opinions

This chapter does not relieve a county or municipality from its obligation under former Code 1962 Section 61‑311, even when such county or municipality elects to come under its provisions. 1962‑63 Op Atty Gen, No 1576, p 145.

**SECTION 9‑11‑240.** Repealed by 2005 Act No. 153, Pt. IV Section 1.C, eff July 1, 2005.

Editor’s Note

Former Section 9‑11‑240 was entitled “Board shall be trustee of funds; powers with respect to securities and other investments; Board members or employees not to have personal financial interest in moneys” and was derived from 1962 Code Section 61‑345.2; 1962 (52) 1933; 1974 (58) 2032; 1998 Act No. 371, Section 6, eff May 26, 1998.

**SECTION 9‑11‑250.** Repealed.

HISTORY: Former Section, titled State Treasurer shall be custodian of funds; disbursement; cash shall be kept available, had the following history: 1962 Code Section 65‑345.3; 1962 (52) 1933; 1974 (58) 2032. Repealed by 2017 Act No. 13, Pt. V, Section 17, eff July 1, 2017.

**SECTION 9‑11‑260.** Deposit of assets.

(1) All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts; namely, the members’ account and the accumulation account.

(2) The members’ account shall be the account in which shall be held the contributions deducted from the compensation of members, together with the interest credited thereon. Upon the retirement of a member, or upon the death of a member if an allowance is payable to his beneficiary pursuant to Section 9‑11‑130, the amount of his accumulated contributions shall be transferred to the accumulation account.

(3) The accumulation account shall be the account in which shall be held all reserves for the payment of the part of all retirement allowances and other benefits payable from contributions made by the employers, and from which shall be paid all retirement allowances payable under the System. All interest and dividends earned on the funds of the System shall be credited to the accumulation account. The amounts required to allow regular interest on the members’ accumulated contributions shall be transferred to the members’ account from the accumulation account. If a beneficiary is restored to membership, the part of his contributions then standing to his credit shall be transferred from the accumulation account to the members’ account.

HISTORY: 1962 Code Section 61‑345.4; 1962 (52) 1933; 1974 (58) 2032.

**SECTION 9‑11‑265.** 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 41, eff June 4, 2008; 2012 Act No. 278, Pt V, Section 69.D, eff July 1, 2012.

Effect of Amendment

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

**SECTION 9‑11‑270.** Allowances and other rights exempt 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 retirement allowance or to the return of contributions, a retirement allowance itself, any optional or death benefit, or any other right accrued or accruing to a person under the provisions of this chapter, and the monies of the system 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 61‑345.5; 1962 (52) 1933; 1974 (58) 2032; 1989 Act No. 189, Part II, Section 39F, eff for taxable years beginning after 1988 and with respect to estates of decedents dying after 1988 (approved by the Governor June 8, 1989); 2001 Act No. 16, Section 5, eff April 10, 2001; 2008 Act No. 311, Section 23, eff June 4, 2008.

Code Commissioner’s Note

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

Effect of Amendment

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 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.

**SECTION 9‑11‑280.** Contracts with members shall be obligations of System only; rights of members upon termination of System or discontinuation of contributions.

All agreements or contracts with the members of the System pursuant to any of the provisions of this chapter shall be deemed solely obligations of the System and the full faith and credit of the 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 supply acts and other periodic appropriations for the purpose of this chapter. In case of termination of the System, or in the event of discontinuance of contributions hereunder, 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 non‑forfeitable.

HISTORY: 1962 Code Section 61‑345.6; 1962 (52) 1933; 1970 (56) 1938; 1974 (58) 2032.

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

**SECTION 9‑11‑290.** Property of System is exempt from State and local taxes.

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

HISTORY: 1962 Code Section 61‑345.7; 1962 (52) 1933; 1974 (58) 2032.

LIBRARY REFERENCES

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

**SECTION 9‑11‑300.** Increase in retirement allowances as of July 1, 1974.

For all retirement allowances due on or after July 1, 1974, the retirement allowance payments to any member retired prior to said date or his beneficiary designated under an optional benefit or to any other beneficiary in receipt of an allowance prior to said date, exclusive of payments under the Supplemental Allowance Program, shall be recomputed as though the provisions of Section 9‑11‑60(2), (a) of this chapter had been in effect at the time of his most recent retirement. Any such benefits payable under the Supplemental Allowance Program shall be increased by ten percent effective July 1, 1974. This section shall not, however, be applicable to the part of any retirement allowance derived from a member’s accumulated additional contributions.

Benefits payable due to retirement prior to July 1, 1988, shall be increased by fourteen and three‑tenths percent effective July 1, 1988.

Benefits payable due to retirement before July 1, 1989, must be increased by seven percent effective July 1, 1989.

HISTORY: 1962 Code Section 61‑346; 1969 (56) 25; 1971 (57) 66; 1973 (58) 106; 1974 (58) 2032; 1988 Act No. 424, Section 6, eff July 1, 1988; 1989 Act No. 189, Part II, Section 60G, eff July 1, 1989 (became law without the Governor’s signature).

Effect of Amendment

The 1988 amendment added the second unnumbered paragraph providing for the increase of retirement benefits for retirements prior to July 1, 1988.

The 1989 amendment added the third unnumbered paragraph, increasing benefits by seven percent.

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 9‑11‑310.** Repealed by 2012 Act No. 278, Pt II, Section 29, eff July 1, 2012.

Editor’s Note

Former Section 9‑11‑310 was entitled “Cost‑of‑living adjustment to be based on Consumer Price Index” and was derived from 1962 Code Section 61‑347; 1974 (58) 2032; 1982 Act No. 368, Section 2; 1984 Act No. 382, Section 2; 2001 Act No. 1, Part II, Section 2A8; 2008 Act No. 311, Section 2.

**SECTION 9‑11‑312.** Retirement allowance adjustment.

Effective July 1, 2012, and annually thereafter, the retirement allowance received by retirees and their surviving annuitants pursuant to the provisions of this chapter, inclusive of Section 9‑11‑140 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 III, Section 19.A, eff July 1, 2012.

**SECTION 9‑11‑315.** 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 Police Officers Retirement System 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(2), eff July 1, 2002.

**SECTION 9‑11‑320.** False statements and falsification of records.

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, upon conviction, shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding twelve months, or both in the discretion of the court.

HISTORY: 1962 Code Section 61‑345.8; 1962 (52) 1933; 1974 (58) 2032.

**SECTIONS 9‑11‑325, 9‑11‑330.** Repealed by 2000 Act No. 387, Part II, Section 67R, eff January 1, 2001.

Editor’s Note

Former Section 9‑11‑325 was entitled “Benefits for out‑of‑state service” and was derived from 1987 Act No. 43 Section 1, eff April 28, 1987; 1994 Act No. 420, Section 7, eff May 25, 1994 and applies with respect to payments made after June 30, 1995, to establish retirement system service credit.

Former Section 9‑11‑330 was entitled “Payroll deduction installment purchase plan for establishing credit” and was derived from 1991 Act No. 64, Section 2, eff May 27, 1991.

**SECTION 9‑11‑350.** Compensation used to determine 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 4, eff upon approval (became law without the Governor’s signature on May 18, 1995); 2008 Act No. 311, Section 24, 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 9‑11‑355.** 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 will be provided in accordance with Section 414(u) of the Internal Revenue Code.

HISTORY: 2008 Act No. 311, Section 25, eff June 4, 2008.

**SECTION 9‑11‑360.** 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 will be compensation as defined in Treasury Regulation Section 1.415(c)‑2(d)(3), or successor regulation; provided, 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 will 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 will apply:

(1) prior to January 1, 2009, cost‑of‑living adjustments under Section 9‑11‑310 will be taken into consideration when determining a member’s applicable limit;

(2) on and after January 1, 2009, with respect to a member who does not receive a portion of the member’s 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 under Section 9‑11‑310;

(b) to the extent the member’s annual benefit equals or exceeds the limit, the member is no longer eligible for cost‑of‑living increases until such time as the benefit plus the accumulated increases are less than the limit; and

(c) thereafter, in any subsequent limitation year, the member’s annual benefit including any automatic cost‑of‑living increase applicable under Section 9‑11‑310 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 9‑11‑310 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 Internal Revenue Code Section 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; or

(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 Internal Revenue Code Section 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 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 will 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 will 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 shall 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 shall 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 will 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; and

(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 Police Officers 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 26, eff June 4, 2008.

Editor’s Note

Section 9‑11‑310, referenced in subsection (C), was repealed by 2012 Act No. 278.

ARTICLE 3

Rights of Certain Participants in Former Police Insurance and Annuity Fund

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 9‑11‑510.** South Carolina Police Officers Retirement System shall pay certain retirement allowances and death benefits; appropriations.

All retirement allowances otherwise payable to police officers retired under such fund and in force on June 30, 1963, and all death benefits otherwise payable on account of such retired police officers shall become payable under the South Carolina Police Officers Retirement System effective as of July 1, 1973, the monthly benefits under the provisions of this section shall be one hundred forty percent of those payable prior to such date. Appropriations for this purpose shall be made annually in the general appropriations act.

HISTORY: 1962 Code Section 61‑326; 1963 (53) 70; 1970 (56) 1953; 1973 (58) 623; 1983 Act No. 27, Section 1.

**SECTION 9‑11‑520.** Rights of participants on June 30, 1963 in service of political subdivisions not members of South Carolina Police Officers Retirement System.

If a police officer is a participant in the Police Insurance and Annuity Fund at the termination of the fund as of June 30, 1963, and if he is then in the service of a political subdivision, agency or department of the State which has not then become an employer under the System, he shall be entitled to a refund of his aggregate contributions previously made by him to the fund. Such refund shall be made as promptly as possible following his application therefor and he shall not be entitled to any other credit or benefit on account of his participation in the fund nor shall he be a member of the System while his refund is being processed. Furthermore, he shall become a member of the South Carolina Retirement System as of July 1, 1963; provided, he is in the service of a political subdivision participating as an employer in such retirement system, but without credit for any service rendered prior to July 1, 1963; provided, further, that if such political subdivision has on or before July 1, 1963 established for its police officers a pension fund in which he is eligible, or required, to participate he shall be subject to the terms and provisions of such pension fund and shall not become a member of the South Carolina Retirement System as of July 1, 1963 unless such pension fund so permits or requires.

HISTORY: 1962 Code Section 61‑327; 1963 (53) 70.

**SECTION 9‑11‑525.** Increase in monthly benefits under Police Insurance and Annuity Fund.

Beneficiaries receiving benefits under the Police Insurance and Annuity Fund shall receive a fifty dollar a month increase in their monthly benefits effective July 1, 1994.

HISTORY: 1988 Act No. 658, Part II, Section 45, eff June 8, 1988; 1994 Act No. 497, Part II, Section 140, eff June 29, 1994.

Effect of Amendment

The 1994 amendment substituted “July 1, 1994” for “July 1, 1988”.