**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4196**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Brannon, Harrell, Patrick, Pitts, Wood, Gambrell, Pope and Tallon

Document Path: l:\council\bills\bbm\10928htc13.docx

Introduced in the House on May 22, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: SC Retirement System, SCRS and SCPORS disability retirement benefits

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/22/2013 House Introduced and read first time ([House Journal‑page 52](file:///h:\HJ%20Archive\2013\05-22-13.docx))

5/22/2013 House Referred to Committee on **Ways and Means** ([House Journal‑page 52](file:///h:\HJ%20Archive\2013\05-22-13.docx))

**VERSIONS OF THIS BILL**

[5/22/2013](file:///p:\pprever\2013-14\4196_20130522.docx)

**A** **BILL**

TO AMEND SECTIONS 9‑1‑1540, 9‑1‑1560, 9‑1‑1570, AND 9‑11‑80, ALL AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ELIGIBILITY, CALCULATION OF BENEFITS, AND PERIODIC REVIEWS FOR DISABILITY RETIREMENT BENEFITS FOR MEMBERS OF THE SOUTH CAROLINA RETIREMENT SYSTEM (SCRS) AND THE SOUTH CAROLINA POLICE OFFICERS RETIREMENT SYSTEM (SCPORS), SO AS TO DELETE PROVISIONS OTHERWISE TAKING EFFECT JANUARY 1, 2014, THAT MAKE ELIGIBILITY FOR SCRS AND SCPORS DISABILITY RETIREMENT BENEFITS CONTINGENT UPON A MEMBER BEING ELIGIBLE FOR SOCIAL SECURITY DISABILITY AND DELETE CHANGES MADE IN THE CALCULATION OF SCRS AND SCPORS DISABILITY BENEFITS AND REVIEW OF ELIGIBILITY OTHERWISE SCHEDULED TO APPLY TO PERSONS APPLYING FOR SCRS AND SCPORS DISABILITY RETIREMENT AFTER DECEMBER 31, 2013.

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

SECTION 1. Section 9‑1‑1540 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑1‑1540. ~~(A)~~ Upon the application of a member in service or of the member’s employer ~~that is received by the system before January 1, 2014~~, a member in service on or after July 1, 1970, who has the earned service required pursuant to Section 9‑1‑1510 for the member’s class, or a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of the member’s duties regardless of length of membership on or after July 1, 1985, may be retired by the board not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. For purposes of this section, a member is considered to be in service on the date the application is filed if the member is not retired and the last day the member was employed by a covered employer in the system occurred not more than ninety days prior to the date of filing.

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

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

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

SECTION 2. Section 9‑1‑1560 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑1‑1560. (A) ~~Except as provided in subsection (E) of this section,~~ Upon retirement for disability on or after July 1, 1976, a Class One member shall receive a service retirement allowance if he has attained the age of sixty‑five years. Otherwise he shall receive a disability retirement allowance which shall be computed as follows:

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

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

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

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

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

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

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

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

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

SECTION 3. Section 9-1-1570 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑1-1570. ~~(A)~~ Once each year during the first five years following the retirement of a member on a disability retirement allowance and once in every three‑year period thereafter the board may, and upon his application, require any disability beneficiary who has not yet attained the age of sixty‑five years to undergo a medical examination to be made at the place of residence of the beneficiary or other place mutually agreed upon by a physician designated by the board. If any disability beneficiary who has not yet attained the age of sixty‑five years refuses to submit to at least one medical examination in any such year by a physician designated by the board the member’s disability retirement allowance may be discontinued until the member’s withdrawal of refusal and if the member’s refusal continues for one year, all the member’s rights in and to the member’s disability retirement allowance may be revoked by the board.

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

SECTION 4. Section 9‑11‑80 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑11‑80. (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 shall be either Class One service or Class Two 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 or Class Two service depending upon the classification of the member at the time of retirement.~~

(3)~~(A)~~ Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three‑year period thereafter, the Board may 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.

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

SECTION 5. This act takes effect January 1, 2014, and applies for applications for disability retirement benefits under the South Carolina Retirement System and the South Carolina Police Officers Retirement System after December 31, 2013.

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