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Indicates New Matter

COMMITTEE REPORT

March 31, 2022

**H. 3106**

Introduced by Reps. Bannister, G.R. Smith, Dillard, Elliott, Hosey and Willis

S. Printed 3/31/22--H. [SEC 4/1/22 3:29 PM]

Read the first time January 12, 2021.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3106) to amend Sections 9‑1‑1085 and 9‑11‑225, Code of Laws of South Carolina, 1976, both relating to employer and employee contribution rates under, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. A. Section 9‑1‑1085 of the 1976 Code is amended by adding a new subsection (E) at the end to read:

“(E) In lieu of the deductions from compensation required by Sections 9‑1‑1020 and 9‑1‑1160, an employer may elect, no later than July first, to pick up all or a portion of the employee contributions required by this section for the following fiscal year without a reduction or offset from its employees’ compensation. Employee contributions picked up without such reduction or offset from the employee’s compensation must be treated as employer contributions in determining federal tax treatment under Section 414(h)(2) of the United States Internal Revenue Code, but must be credited as employee contributions for the purposes of the system. An employer making the election provided by this subsection is considered to have taken formal action to provide that the contributions on behalf of its employees, although designated as employee contributions, must be paid by the employer in lieu of employee contributions. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The employee, however, may not be given any option of choosing to receive the contributed amount of the pick ups directly instead of having them paid by the employer to the retirement system. An employer’s election to pick up contributions without a reduction or offset from its employees’ compensation pursuant to this subsection may not be changed during the fiscal year, but may be changed for future fiscal years.”

B. Section 9‑11‑225 of the 1976 Code is amended by adding a new subsection (E) at the end to read:

“(E) In lieu of the deductions from compensation required by Section 9‑11‑210, an employer may elect, no later than July first, to pick up all or a portion of the employee contributions required by this section for the following fiscal year without a reduction or offset from its employees’ compensation. Employee contributions picked up without such reduction or offset from the employee’s compensation must be treated as employer contributions in determining federal tax treatment under Section 414(h)(2) of the United States Internal Revenue Code, but must be credited as employee contributions for the purposes of the system. An employer making the election provided by this subsection is considered to have taken formal action to provide that the contributions on behalf of its employees, although designated as employee contributions, must be paid by the employer in lieu of employee contributions. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The employee, however, may not be given any option of choosing to receive the contributed amount of the pick ups directly instead of having them paid by the employer to the retirement system. An employer’s election to pick up contributions without a reduction or offset from its employees’ compensation pursuant to this subsection may not be changed during the fiscal year, but may be changed for future fiscal years.”

SECTION 2. A. Section 9‑1‑10(8) of the 1976 Code is amended by adding an appropriately lettered subitem at the end to read:

“( ) Employee contributions picked up by an employer pursuant to Section 9‑1‑1085(E) without a reduction or offset from the member’s compensation are not earnable compensation for the purposes of the system.”

B. Section 9‑11‑10(12) of the 1976 Code is amended to read:

“(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. Employee contributions picked up by an employer pursuant to Section 9‑11‑225(E) without a reduction or offset from the member’s compensation are not compensation for the purposes of the system.”

SECTION 3. A. Section 9‑1‑10(1) of the 1976 Code is amended to read:

“(1) ‘Accumulated contribution’ means the sum of all the amounts either deducted from the compensation of a member or paid by the employer in lieu of employee contributions pursuant to Section 9‑1‑1085(E), and credited to the ~~members~~ member’s individual account in the employee annuity savings fund, together with regular interest on the account, as provided in Article 9 of this chapter.”

B. Section 9‑11‑10(2) and (6) of the 1976 Code is amended to read:

“(2) ‘Accumulated contributions’ means the sum of all the amounts either deducted from the compensation of a member or paid by the employer in lieu of employee contributions pursuant to Section 9‑11‑225(E), 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.

(6) ‘Aggregate contributions’ means the sum of all the amounts either deducted from the compensation of a member or paid by the employer in lieu of employee contributions pursuant to Section 9‑11‑225(E), 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).”

C. Section 9‑11‑260(2) of the 1976 Code is amended to read:

“(2) The members’ account shall be the account in which shall be held the contributions deducted from the compensation of members and amounts paid by the employer in lieu of employee contributions pursuant to Section 9‑11‑225(E), 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.”

SECTION 4. A. The fourth undesignated paragraph of Section 9‑1‑1020 is amended to read:

“Each ~~department and political subdivision~~ employer 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 Section 414(h)(2) of the United States Internal Revenue Code. For this purpose, ~~each department and political subdivision~~ employer 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~~ employee contributions, shall be paid by the employer in lieu of employee contributions. The ~~department and political subdivision~~ employer 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~~ employer may pick up these contributions by a reduction in the ~~cash salary of the employee~~ compensation or, if the employer makes an election authorized pursuant to Section 9‑1‑1085(E), it may pay the amount designated as an employee contribution without a reduction or offset from the employee’s compensation.”

B. Section 9‑1‑1160(B) of the 1976 Code is amended to read:

“(B) Each ~~department and political subdivision~~ employer shall pick up the employee contributions required by this section for all compensation paid on or after July 1, 1982, and the contributions picked up must be treated as employer contributions in determining federal tax treatment under Section 414(h)(2) of the United States Internal Revenue Code. ~~Each department and political subdivision shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service, or the federal courts, rule, pursuant to Section 414(h) of the United States Internal Revenue Code, that these contributions are not included as gross income of the employee until such time as they are distributed or made available.~~ For this purpose, each employer is considered to have taken formal action to provide that the contributions on behalf of its employees, although designated as employee contributions, must be paid by the employer in lieu of employee contributions. The ~~department and political subdivision~~ employer 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~~ employer may pick up these contributions by a reduction in the ~~cash salary~~ compensation of the employee or, if the employer makes an election authorized pursuant to Section 9‑1‑1085(E), it may pay the amount designated as an employee contribution without a reduction or offset from the employee’s compensation. Employee contributions picked up must be ~~treated~~ administered for all purposes of this section in the same manner and to the extent as employee contributions made before the date picked up.”

C. Section 9‑11‑210(11) of the 1976 Code is amended to read:

“(11) Each ~~department and political subdivision~~ employer 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 Section 414(h)(2) of the United States Internal Revenue Code. For this purpose, each ~~department and political subdivision~~ employer 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~~ employer 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~~ employer may pick up these contributions by a reduction in the ~~cash salary~~ compensation of the employee or, if the employer makes an election authorized pursuant to Section 9‑11‑225(E), it may pay the amount designated as an employee contribution without a reduction or offset from the employee’s compensation. The employee, however, must not be given ~~the~~ any 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~~ administered for all purposes of this section in the same manner and to the extent as employee contributions made prior to the date picked up.”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill allows an employer participating in the South Carolina Retirement System or the Police Officers Retirement System to elect to increase its employer contribution rate by a percentage no greater than the employee contribution rate for the fiscal year. This election must be made by July first of the fiscal year and cannot be changed during the year. The employee contribution rate for employees must be reduced by the same percentage that employer contributions were increased.

PEBA indicates that the bill charges the agency with additional accounting responsibilities, which may require additional programing expenses that can be managed with existing appropriations and allocations. Therefore, this bill will have no expenditure impact on the general fund, other funds, or federal funds of PEBA. However, PEBA indicates that the effective date of this legislation may not provide sufficient time to modify their existing computer system to implement and properly account for the modified remittance of the employer and employee contributions.

Additionally, Revenue and Fiscal Affairs anticipates no financial or actuarial impact on the retirement systems since the total amount of employer and employee contributions remitted to the retirement systems will remain the same as under current statutes.

Lastly, any increase in employer contributions by employers in the retirement systems electing to increase their contributions to pay employee contributions is undetermined given the permissive nature of this legislation.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTIONS 9‑1‑1085 AND 9‑11‑225, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO EMPLOYER AND EMPLOYEE CONTRIBUTION RATES UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM AND THE POLICE OFFICERS RETIREMENT SYSTEM RESPECTIVELY, SO AS TO PROVIDE THAT AN EMPLOYER, UP TO CERTAIN LIMITS, MAY ELECT TO PAY ALL OR A PORTION OF REQUIRED EMPLOYEE CONTRIBUTIONS DURING A FISCAL YEAR.

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

SECTION 1. Section 9‑1‑1085 of the 1976 Code is amended by adding a new subsection (E) to read:

“(E) Notwithstanding the employer and employee contribution rates set out in this section, no later than July first, an employer may notify the system of its election to increase its employer contribution rate for the fiscal year beginning that July first by a percentage of earnable compensation no greater than the employee contribution rate for the fiscal year. The employer election under this subsection may not be changed during the fiscal year. The employee contribution rate for employees of an employer electing to increase its employer contribution rate under this subsection must be reduced by the additional percentage of earnable compensation paid by the employer pursuant to this subsection. Additional contributions remitted by an employer under this subsection must be treated as employer contributions.”

SECTION 2. Section 9‑11‑225 of the 1976 Code is amended by adding a new subsection (E) to read:

“(E) Notwithstanding the employer and employee contribution rates set out in this section, no later than July first, an employer may notify the system of its election to increase its employer contribution rate for the fiscal year beginning that July first by a percentage of earnable compensation no greater than the employee contribution rate for the fiscal year. The employer election under this subsection may not be changed during the fiscal year. The employee contribution rate for employees of an employer electing to increase its employer contribution under this subsection must be reduced by the additional percentage of earnable compensation paid by the employer pursuant to this subsection. Additional contributions remitted by an employer under this subsection must be treated as employer contributions.”

SECTION 3. This act takes effect upon approval by the Governor.

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