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CHAPTER 12.

 QUALIFIED EXCESS BENEFITS ARRANGEMENTS

**SECTION 9‑12‑10.** Definitions.

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

(1) “Board” means the State Budget and Control Board acting as trustee of the retirement systems and acting through its Division of Retirement Systems.

(2) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time.

(3) “QEBA” means a Qualified Excess Benefit Arrangements under Section 415(m) of the Internal Revenue Code.

(4) “Retirement system” means the South Carolina Retirement System, Retirement System for Judges and Solicitors, Retirement System for Members of the General Assembly, and Police Officers Retirement System established pursuant to Chapters 1, 8, 9, and 11 of this title.

**SECTION 9‑12‑20.** Qualified Excess Benefit Arrangements created.

Each retirement system may establish and maintain a QEBA. The amount of any annual benefit that would be payable pursuant to this chapter but for the limitation imposed by Section 415 of the Internal Revenue Code shall be paid from a QEBA established and maintained pursuant to this chapter. A QEBA established under this chapter shall be maintained through a separate unfunded QEBA. This arrangement is established for the sole purpose of enabling the retirement systems to continue to apply the same formulas for determining benefits payable to all employees covered by the retirement systems created under Chapters 1, 8, 9, and 11 of this title, including those whose benefits are limited by Section 415 of the Internal Revenue Code.

**SECTION 9‑12‑30.** Administration of QEBAs.

The board shall administer the QEBAs. The board has full discretionary authority to determine all questions arising in connection with the QEBAs, including its interpretation and any factual questions arising under the QEBAs. Further, the board has full authority to make modifications to the benefits payable under the QEBAs as may be necessary to maintain the QEBAs’ qualification under Section 415(m) of the Internal Revenue Code.

**SECTION 9‑12‑40.** Eligibility for participation in a QEBA.

All members, retired members, and beneficiaries of the retirement systems are eligible to participate in a QEBA if their benefits would exceed the limitation imposed by Section 415 of the Internal Revenue Code. Participation is determined for each calendar year, and participation shall cease for any calendar year in which the benefit of a member, retired member, or beneficiary is not limited by Section 415 of the Internal Revenue Code.

**SECTION 9‑12‑50.** QEBA supplemental retirement allowance.

On and after the effective date of the QEBA, the board shall pay to each eligible retiree and beneficiary a supplemental retirement allowance equal to the difference between the retiree’s or beneficiary’s monthly benefit otherwise payable from the applicable retirement system prior to any reduction or limitation because of Section 415 of the Internal Revenue Code and the actual monthly benefit payable from the retirement system as limited by Section 415. The board shall compute and pay the supplemental retirement allowance in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the retirement system except for the Internal Revenue Code Section 415 limitations.

**SECTION 9‑12‑60.** Amount of contributions to the QEBA.

The board shall determine the amount of benefits that cannot be provided under the retirement systems because of the limitations of Section 415 of the Internal Revenue Code, and the amount of contributions that must be made to the QEBAs as separate funds within the retirement systems. The board shall engage such actuarial services as shall be required to make these determinations. If applicable, fees for the actuary’s service shall be paid by the applicable employers.

**SECTION 9‑12‑70.** Employer contributions and separate fund.

Contributions shall not be accumulated under a QEBA to pay future supplemental retirement allowances. Instead, each payment of contributions by the applicable employer that would otherwise be made to a retirement system shall be reduced by the amount necessary to pay the required supplemental retirement allowances, and these contributions will be deposited in a separate fund that is a portion of the retirement system. This separate fund is intended to be exempt from federal income tax under Sections 115 and 415(m) of the Internal Revenue Code. The board shall pay the required supplemental retirement allowances to the member, retired member, or beneficiary out of the employer contributions so transferred. The employer contributions otherwise required under the terms of a retirement system shall be divided into those contributions required to pay supplemental retirement allowances hereunder, and those contributions paid into and accumulated in the retirement system funds created under Chapter 16 of this title to pay the maximum benefits permitted. Employer contributions made to a separate fund to provide supplemental retirement allowances shall not be commingled with the contributions paid into and accumulated in the retirement system funds created under Chapter 16. The supplemental retirement allowance benefit liability shall be funded on a calendar year to calendar year basis. Any assets of a separate QEBA fund not used for paying benefits for a current calendar year shall be used, as determined by the board, for the payment of administrative expenses of the QEBA for the calendar year.

**SECTION 9‑12‑80.** No ability to defer.

A member, retired member, or beneficiary cannot elect to defer the receipt of all or any part of the payments due under a QEBA.

**SECTION 9‑12‑90.** No assignment.

Payments under a QEBA are exempt from garnishment, assignment, alienation, judgments, and other legal processes to the same extent as a retirement allowance under a retirement system.

**SECTION 9‑12‑100.** QEBA funds unsecured.

Nothing in this chapter shall be construed as providing for assets to be held in trust or escrow or any form of asset segregation for members, retired members, or beneficiaries. To the extent any person acquires the right to receive benefits under a QEBA, the right shall be no greater than the right of any unsecured general creditor of the State of South Carolina.

**SECTION 9‑12‑110.** QEBA is a governmental plan.

A QEBA is a portion of a governmental plan as defined in Section 414(d) of the Internal Revenue Code, and is intended to meet the requirements of Internal Revenue Code Sections 115 and 415(m), and shall be so interpreted and administered.

**SECTION 9‑12‑120.** No deduction for employer contributions.

Amounts deducted from employer contributions and deposited in a separate QEBA fund shall not increase the amount of employer contributions required under Chapters 1, 8, 9, and 11 of this title.