**South Carolina General Assembly**

123rd Session, 2019-2020

**S. 1088**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis, Campsen, Senn, Shealy, Young and Fanning

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Companion/Similar bill(s): 4258

Introduced in the Senate on February 6, 2020

Currently residing in the Senate Committee on **Finance**

Summary: SC Work and Save Retirement Savings Plan

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/6/2020 Senate Introduced and read first time ([Senate Journal‑page 4](file:///h:\sj\20200206.docx))

2/6/2020 Senate Referred to Committee on **Finance** ([Senate Journal‑page 4](file:///h:\sj\20200206.docx))

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**VERSIONS OF THIS BILL**

[2/6/2020](file:///p:\pprever\2019-20\1088_20200206.docx)

**A** **BILL**

TO AMEND CHAPTER 5, TITLE 11 OF THE 1976 CODE, RELATING TO THE STATE TREASURER, BY ADDING ARTICLE 5, TO ESTABLISH THE “SOUTH CAROLINA WORK AND SAVE RETIREMENT SAVINGS PLAN”, TO ESTABLISH THE “SOUTH CAROLINA RETIREMENT SAVINGS PLAN TRUST”, TO PROVIDE THAT THE STATE SHALL ADOPT AND IMPLEMENT THE SOUTH CAROLINA WORK AND SAVE RETIREMENT SAVINGS PLAN, TO PROVIDE DUTIES FOR THE STATE TREASURER, TO PROVIDE CERTAIN EXEMPTIONS FROM LIABILITY, TO PROVIDE THAT CERTAIN GUARANTEES MAY NOT BE MADE, TO PROVIDE FOR THE CONFIDENTIALITY OF CERTAIN INFORMATION, TO PROVIDE FOR AN INTERGOVERNMENTAL AGREEMENT OR A MEMORANDUM OF UNDERSTANDING WITH CERTAIN AGENCIES, TO PROVIDE THAT THE STATE TREASURER MAY USE PROGRAM MANAGERS, TO ESTABLISH THE “SOUTH CAROLINA WORK AND SAVE ADMINISTRATIVE FUND”, TO PROVIDE THAT THE STATE TREASURER SHALL MAINTAIN AN ACCURATE ACCOUNT OF CERTAIN ACTIVITY, TO PROVIDE FOR SEVERABILITY, AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. Chapter 5, Title 11 of the 1976 Code is amended by adding:

“ARTICLE 5

South Carolina Work and Save Retirement Savings Plan

Section 11‑5‑500. As used in this article:

(1) ‘Eligible employee’ means an individual who is employed by a participating employer, who has wages or other compensation that is allocable to the State, and who is at least twenty‑one years of age. ‘Eligible employee’ does not include:

(a) any employee covered under the federal Railway Labor Act pursuant to 45 U.S.C. 151;

(b) any employee on whose behalf an employer makes contributions to a Taft‑Hartley multiemployer pension trust fund; or

(c) any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the state’s or any other state’s units or instrumentalities.

(2) ‘Eligible employer’ means a person or entity engaged in a business, industry, profession, trade, or other enterprise in the State, whether for profit or not for profit, excluding the federal government, the State, any county, any municipal corporation, or any of the state’s units or instrumentalities. ‘Eligible employer’ does not include an employer that currently maintains a specified tax‑favored retirement plan for its employees or has effectively done so in form and operation at any time within the current or two preceding calendar years. If an employer does not maintain a specified tax‑favored retirement plan for a portion of a calendar year and adopts a plan effective for the remainder of that calendar year, then the employer is not treated as an ‘eligible employer’ for that remainder of the year.

(3) ‘ERISA’ means the Employee Retirement Income Security Act of 1974 pursuant to 29 U.S.C. 1001, et seq.

(4) ‘Internal Revenue Code’ means the Internal Revenue Code of 1986.

(5) ‘Office’ means the State Treasurer’s Office.

(6) ‘Participant’ means an eligible employee or other individual who is contributing to the plan or has a balance credited to his account under the plan.

(7) ‘Participating employer’ means an eligible employer that is participating in the plan provided for by this article.

(8) ‘Self‑employed individual’ means an individual who is self‑employed, who has self‑employment income or other compensation from self‑employment that is allocable to the State, and who is at least twenty‑one years of age.

(9) ‘South Carolina Work and Save Retirement Savings Plan’ or ‘plan’ means the voluntary multiple‑employer retirement savings plan established by this article, which must be treated as a single plan under Title I of ERISA and is described in sections 401(a), 401(k), and 413(c) of the Internal Revenue Code, in which multiple employers may voluntarily choose to participate whether or not any relationship exists between and among the employers other than their participation in the plan. Based on the context, the term ‘plan’ might also refer to multiple plans if multiple plans are established pursuant to this article.

(10) ‘South Carolina Work and Save Retirement Savings Plan Administrative Fund’ or ‘fund’ is the fund described in Section 11‑5‑590 that is established for the purpose of paying the administrative costs and expenses of the plan.

(11) ‘Specified tax‑favored retirement plan’ means a retirement plan that is tax‑qualified under or is described in and satisfies the requirements of subsection 401(a), 401(k), 403(a), 403(b), 408(k)(Simplified Employee Pension), or 408(p)(SIMPLE‑IRA) of the Internal Revenue Code.

(12) ‘Total fees and expenses’ means all fees, costs, and expenses, including, but not limited to, administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs, and other miscellaneous costs.

(13) ‘Trust’ means the trust in which the assets of the plan are held.

Section 11‑5‑510. There is established the ‘South Carolina Retirement Savings Plan Trust’ as allowed by the Internal Revenue Code for the purpose of helping South Carolinians save for retirement. The State Treasurer is the trustee of the trust and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this article pertaining to the trust, including the power to do the following:

(1) make and enter into contracts necessary for the administration of the trust;

(2) enter into agreements with any financial institution, the State, any federal or other state agency, or any other entity as required to implement this article;

(3) carry out the duties and obligations of the trust pursuant to this article;

(4) accept any grants, gifts, legislative appropriations, and other monies that the State Treasurer shall deposit into the fund from the State, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation;

(5) carry out studies and projections so the office may advise participants regarding present and estimated future retirement needs and levels of financial participation in the trust required in order to enable participants to achieve their retirement funding objectives;

(6) participate in any federal, state, or local governmental program for the benefit of the trust;

(7) procure insurance against any loss in connection with the property, assets, or activities of the trust;

(8) enter into agreements with participants and employers;

(9) make distributions and refunds to participants pursuant to participation agreements as prescribed by the Internal Revenue Code;

(10) invest monies from the fund in any investments that are determined by the office to be appropriate;

(11) engage investment advisors, if necessary, to assist in the investment of trust assets;

(12) contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the State Treasurer regarding trust administration and operation;

(13) establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements; and

(14) administer the funds of the trust.

Section 11‑5‑520. (A) The State Treasurer shall adopt and implement the plan, a voluntary multiple employer plan 401(k) retirement savings plan, which remains in compliance with federal law and regulations once implemented.

(B) In accordance with terms and conditions specified, and regulations promulgated, the plan must:

(1) be set forth in documents prescribing the terms and conditions of the plan;

(2) be available on a voluntary basis to eligible employers and self‑employed individuals;

(3) after appropriate written notice, automatically enroll all eligible employees who choose to participate in the plan by not opting out;

(4) enroll self‑employed individuals who wish to participate;

(5) provide participants the option to terminate their participation at any time;

(6) allow voluntary pretax or designated Roth 401(k) contributions;

(7) allow voluntary employer contributions;

(8) be administered and managed by one or more trustees, other fiduciaries, custodians, third‑party administrators, investment managers, record keepers, and other service providers;

(9) provide that, unless an eligible employee otherwise specifies, he shall automatically contribute six percent of his salary or wages to the plan or may elect to opt out of the plan or contribute at a higher or lower rate, expressed as a percentage of salary or wages, except that the office, in its discretion, may change the six percent initial automatic default contribution rate and shall annually review the default contribution rate;

(10) provide for direct deposit of contributions into investments under the plan. To an extent consistent with ERISA, investment alternatives under the plan are limited to an automatic, default investment for participants who do not actively and affirmatively elect a particular investment option, which, unless the office provides otherwise, is a diversified target date fund, including a series of diversified funds to apply to different participants depending on their choice or their target retirement dates, a principal‑protected option, and up to four additional investment alternatives as may be selected by the office, at its discretion. To an extent consistent with ERISA, investment options may include, at the discretion of the office, a principal‑protection fund as a temporary ‘security corridor’ option that applies as the only initial investment before participants may choose other investments or as the initial default investment for a specified period of time or up to a specified dollar amount of contributions or account balance;

(11) be professionally managed;

(12) provide for reports on the status of each participant’s account to be provided to each participant at least annually and make best efforts to provide participants with frequent or continual online access to information on the status of their accounts;

(13) if possible and practicable, use existing employer and public infrastructure to facilitate contributions, recordkeeping, and outreach and use pooled or collective investment arrangements;

(14) provide that each account holder owns the contributions to or earnings on amounts contributed to his account under the plan and that the State and employers have no proprietary interest in those contributions or earnings;

(15) be designed and implemented in a manner consistent with federal law to the extent that it applies;

(16) make a provision for the participation in the plan of individuals who are not employees;

(17) keep total fees and expenses as low as practicable;

(18) establish rules and procedures governing the distribution of funds from the plan, including distributions as may be permitted or required by the plan and any applicable provisions of ERISA, the tax‑qualification rules, and other tax laws, with the objective of maximizing financial security in retirement, protecting spousal rights, and assisting participants to manage effectively the decumulation of their savings and to receive payment of their benefits under the plan. The office has the authority, at its discretion, to provide for one or more reasonably priced distribution options to provide a source of fixed regular retirement income, including income for life or for the participant’s life expectancy, or for joint lives and life expectancies, as applicable;

(19) establish rules and procedures promoting the portability of benefits, including the ability to make tax‑free rollovers or transfers to and from the plan, provided that any rollover is initiated by the participants; and

(20) encourage choices by employers in the State to adopt a specified tax‑favored retirement plan, including the plan.

Section 11‑5‑530. The State Treasurer shall:

(1) establish the processes for enrollment and contributions under the plan, including withholding by participating employers of employee payroll deduction contributions from wages and remittance for deposit to the plan, automatic enrollment and opt‑outs by eligible employees, voluntary contributions by others, including self‑employed individuals and independent contractors, through payroll deduction or otherwise, the making of default contributions using default investments, and participant selection of alternative contribution rates or amounts and alternative investments from among the options offered under the plan.

(2) conduct outreach to individuals, employers, other stakeholders, and the public regarding the plan; and

(3) specify the contents, frequency, timing, and means of required disclosures from the plan to eligible employees, participants, and self‑employed individuals, eligible employers, participating employers, and other interested parties. These disclosures must include, but are not limited to:

(a) benefits associated with tax‑favored retirement saving;

(b) potential advantages and disadvantages associated with participating in the plan;

(c) instructions for enrolling, making contributions, and opting out of participation;

(d) the potential availability of a saver’s tax credit, including the eligibility conditions for the credit and instructions on how to claim it;

(e) that employees seeking tax, investment, or other financial advice should contact appropriate professional advisors, and that participating employers and the office are not in a position to provide advice and are not liable for decisions that individuals make in relation to the plan;

(f) the potential implications of account balances under the plan for the application of asset limits under certain public assistance programs;

(g) that the account owner is responsible for investment performance, including market gains and losses, and that plan accounts and rates of return are not guaranteed by any employer, the State or state officials, or the plan;

(h) additional information about retirement and saving and other information designed to promote financial literacy and capability, which may take the form of links to, or explanations of, how to obtain information; and

(i) the process to obtain additional information about the plan.

Section 11‑5‑540. An eligible employer, participating employer, or other employer is not liable or responsible for:

(1) an employee’s decision to participate in the plan;

(2) an employee’s decision as to which investments to choose;

(3) a participant’s or the office’s investment decision;

(4) the administration, investment, investment returns, or investment performance of the plan including, without limitation, any interest rate or other rate of return on any contribution or account balance, provided that the eligible employer, participating employer, or other employer is not involved in the administration or investment of the plan;

(5) the plan design or benefits paid to participants; or

(6) any loss, failure to realize a gain, or other adverse consequences, including, without limitation, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits incurred by any person as a result of participating in the plan.

Section 11‑5‑550. (A) The State, state officials, state boards, commissions, agencies, a member, an officer, or an employee, and the plan:

(1) may not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

(2) are not liable or responsible for any loss, deficiency, failure to realize a gain, or other adverse consequences, including, without limitation, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits incurred by any person as a result of participating in the plan.

(B) The debts, contracts, and obligations of the plan are not the debts, contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the plan.

(C) The State shall defend the State Treasurer against a claim or suit that arises out of or by virtue of his performance of official duties on behalf of the plan and shall indemnify the State Treasurer for a loss or judgment incurred as a result of a claim or suit, without regard to whether the claim or suit is brought against the State Treasurer in individual or official capacities, or both. The State shall defend the management employees of the office against a claim or suit that arises out of or by virtue of performance of official duties, unless the management employee was acting in bad faith, and shall indemnify these management employees for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to the State Treasurer and management employees after they have left their employment with the office, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of the plan.

Section 11‑5‑560. Individual account information relating to accounts under the plan and relating to individual participants, including, but not limited to, names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions, and earnings, is confidential and must be maintained as confidential except to the extent necessary to administer the plan in a manner consistent with this article, the tax laws of this State, ERISA, the Internal Revenue Code, or other federal or state law, or unless the individual who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

Section 11‑5‑570. The office may enter into an intergovernmental agreement or memorandum of understanding with the State and any agency of the State to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the plan, subject to obligations of confidentiality as may be agreed or required by law, or other services or assistance. The State and any agencies of the State that enter into agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the office. The memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

Section 11‑5‑580. (A) The State Treasurer may implement the plan through the use of program managers as account depositories, managers, or both. The State Treasurer may solicit proposals from program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the plan. The State Treasurer may select as program depositories or managers, from among the bidding program managers, those that demonstrate the most advantageous combination, both to potential plan participants and this State, of the following factors:

(1) financial stability and integrity of the program manager;

(2) the safety of the investment instrument being offered;

(3) the ability of the program manager to satisfy recordkeeping and reporting requirements;

(4) the program manager’s plan for promoting the plan and the investment that the organization is willing to make to promote the plan;

(5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization requires;

(7) the ability of the program manager to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to the State or its residents included in the proposal, including fees payable to the State to cover the expenses of the operation of the plan.

(B) The State Treasurer may enter into contracts with program managers as necessary to effectuate the provisions of this article. A management contract must include, at a minimum, terms requiring the program managers to:

(1) take any action required to keep the plan in compliance the with requirements of this article;

(2) keep adequate records of each account, keep each account segregated, and provide the statements required;

(3) compile and total information contained in statements required and provide compilations to the State Treasurer;

(4) if there is more than one program manager, provide the State Treasurer with information as is necessary;

(5) provide the State Treasurer with access to the books and records of the program manager to the extent needed;

(6) hold all accounts for the benefit of the account owner, account owners, or designated beneficiary;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager, with the approval of the State Treasurer, and provide the results of the audit to the State Treasurer;

(8) provide the State Treasurer with copies of all regulatory filings and reports made by the program manager during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports that are not part of the plan. The program manager shall make available for review by the State Treasurer the results of the periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that a report or reports may not be disclosed under law; and

(9) ensure that any description of the plan, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(C) The State Treasurer may:

(1) enter into contracts as he considers necessary and proper for the implementation of the plan;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the State Treasurer has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager; and

(3) terminate or not renew a management agreement. If the State Treasurer terminates or does not renew a management agreement, then the State Treasurer shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

Section 11‑5‑590. (A) The ‘South Carolina Work and Save Administrative Fund’ is established in the State Treasury, to be held in trust separate and distinct from the general fund of the State. Interest earned by the fund must be credited to the fund. Monies in the fund are to be used by the office for paying the administrative costs and expenses of the plan.

(B) The ‘South Carolina Work and Save Administrative Fund’ consists of:

(1) monies appropriated to the fund by the General Assembly;

(2) monies transferred to the fund from the federal government, other state agencies, or local governments;

(3) monies from the payment of application, account, administrative, or other fees and the payment of other monies due;

(4) any gifts, donations, or grants made to the State for deposit into the fund;

(5) monies collected for the fund from contributions to, or investment returns or assets of, the plan or other monies collected by or for the plan or pursuant to arrangements established under the plan to the extent permitted under federal and state law; and

(6) earnings on monies in the fund.

(C) To an extent consistent with ERISA, the tax qualification rules, and other federal law, the office shall accept any grants, gifts, appropriations, or other monies from the State, any unit of federal, state, or local government, or any other person, firm, partnership, corporation, or other entity for deposit into the fund, whether for investment or administrative expenses.

(D) To enable or facilitate the start‑up and continuing operation, maintenance, administration, and management of the plan until the plan accumulates sufficient balances and can generate sufficient funding through fees assessed on plan accounts for the plan to become financially self‑sustaining, the office may:

(1) accept loans from the State, any unit of federal, state, or local government, or any other person, firm, partnership, corporation, or other entity working capital funds and other funds as may be necessary for this purpose, provided that the funds are borrowed in the name of the plan and that any borrowings are payable from the revenues of the plan; and

(2) enter into long‑term procurement contracts with one or more financial providers that provide a fee structure that would assist the plan in avoiding or minimizing the need to borrow or to rely upon general assets of the State.

(E) Subject to appropriation, the State may pay administrative costs associated with the creation, maintenance, operation, and management of the plan and trust until sufficient assets are available in the fund for that purpose. After sufficient assets are available, all administrative costs of the fund, including any repayment of start‑up funds provided by the State, must be repaid only out of monies on deposit. However, private funds or federal funding received in order to implement the plan until the fund is self‑sustaining may not be repaid unless those funds were offered contingent upon the promise of repayment.

(F) The office may use the monies in the fund only to pay the administrative costs and expenses of the plan and the administrative costs and expenses that the office incurs in the performance of its duties under this article.

Section 11‑5‑600. (A) The State Treasurer shall maintain an accurate account of all of the plan’s, trust’s, and office’s activities, operations, receipts, and expenditures. Each year, a full audit of the books and accounts of the office pertaining to those activities, operations, receipts and expenditures, personnel, services, or facilities must be conducted by a certified public accountant and must include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees for the administration of the plan. For the purposes of the audit, the auditors shall have access to the properties and records of the plan and the office, pertaining to the plan activities, and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the plan.

(B) By March first of each year, the office shall submit a report to the appropriate committees of the Senate and House of Representatives and the Governor on the operation of the plan and trust, including an audited financial report, prepared in accordance with generally accepted accounting principles, that details the activities, operations, receipts, investment results, and expenditures of the plan and the office during the preceding calendar year. The report must also include a summary of the benefits provided by the plan, the number of participants, the names of the participating employers, the contribution formulas and amounts of contributions made by participants and by each participating employer, the withdrawals, the account balances, investments, investment returns, and fees and expenses associated with the investments and with the administration of the plan, projected activities of the plan for the current calendar year, and any other information regarding the plan and its operations that the office may provide.”

SECTION 2. (A) The South Carolina Work and Save Retirement Savings Plan must be established so that individuals may begin to contribute to the plan no later than the first of the month following the one‑year anniversary of the effective date of this act.

(B) The provisions of Section 11‑5‑500(2), as added by this act, relating to an employer that is not treated as an ‘eligible employer,’ applies to an employer that does not maintain a specified tax‑favored retirement plan for a portion of a calendar year ending after December 31, 2019.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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