DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2008 session. The unannotated South Carolina Code, consisting only of Code text and numbering, may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at LPITS@scstatehouse.net regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 153.

 ENDOWMENT FUNDS

ARTICLE 1.

 DUTIES OF THE TRUSTEE, FIDUCIARIES, AGENTS

**SECTION 59‑153‑10.** Definitions.

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

(1) “Agent” means the State Treasurer.

(2) “Assets” means all funds, investments, and similar property owned by the respective state institutions of higher learning and in the custody of the Agent.

(3) “Beneficiary” means an institution of higher learning which may receive a benefit under the program.

(4) “Board” means the Board of Trustees of the respective institution of higher learning acting as trustee of the endowment system.

(5) “Fiduciary” means a person who:

(a) exercises any authority to invest or manage assets of a system;

(b) provides investment advice for a fee or other direct or indirect compensation with respect to assets of a system or has any authority or responsibility to do so; or

(c) is a member of the board of trustees of the respective institution when it acts as trustee for the endowment system.

(6) “Panel” means the State Retirement Systems Investment Panel established pursuant to Section 9‑16‑310.

(7) “Endowment funds” means those funds donated to the respective individual state‑supported institutions of higher learning of the State of South Carolina, which are held and invested by the State Treasurer on behalf of the institutions. The endowment of each institution is separate and cannot be commingled, except under those circumstances where it can be invested in liquid assets as approved by the appropriate trustees.

(8) “Trustee” means the board of trustees of the respective institutions of higher learning.

**SECTION 59‑153‑20.** Funds and assets held in trust; trustee; investments.

(A) All endowment funds and assets purchased with them are held in trust. The board of trustees of each institution of higher learning is the trustee of all endowment funds held in the name of that institution by the State Treasurer. The trustee has the exclusive authority to invest and manage those funds and assets and may invest and reinvest the funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7, Chapter 9, Title 11, upon the investment of sinking funds of the State, and, subject to like terms, conditions, limitations, and restrictions, may hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which the endowment funds have been invested, plus the proceeds of these investments and any monies belonging to these funds. Additionally, the trustee may invest and reinvest its endowment funds in equity securities of a corporation within the United States that is registered on a national securities exchange as provided in the Securities Exchange Act, 1934, or a successor act, or quoted through the National Association of Securities Dealers Automatic Quotations System, or a similar service.

(B) If endowment funds are invested in a security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80 a‑1, et seq.), the assets of the system include the security, but not assets of the investment company.

**SECTION 59‑153‑30.** Delegation of functions by trustee.

(A) The trustee may delegate functions including, but not limited to, day‑to‑day investment decisions that a prudent trustee acting in a like capacity and familiar with those matters could delegate properly under the circumstances.

(B) The trustee shall exercise reasonable care, skill, and caution in periodically reviewing the agent’s performance and compliance with the terms of the delegation.

(C) In performing a delegated function, an agent owes a duty to the endowment and to its beneficiaries to comply with the terms of the delegation and, if a fiduciary, to comply with the duties imposed by Section 59‑153‑40.

(D) A trustee who complies with subsections (A) and (B) is not liable to the endowment or to its beneficiary for the decisions or actions of the agent to whom the function was delegated.

(E) By accepting the delegation of a function from the trustee, an agent submits to the jurisdiction of the courts of this State.

(F) A trustee may limit the authority of an agent to delegate functions under this section.

**SECTION 59‑153‑40.** Standards for discharge of duties by trustee or other fiduciary.

A trustee or other fiduciary shall discharge duties with respect to an endowment fund:

(1) solely in the interest of the endowment fund and beneficiaries;

(2) for the exclusive purpose of providing benefits to his beneficiary and paying reasonable expenses of administering the system;

(3) with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;

(4) impartially, taking into account any differing interests of beneficiaries;

(5) incurring only those costs that are appropriate and reasonable; and

(6) in accordance with a good faith interpretation of this chapter.

**SECTION 59‑153‑50.** Investing and managing assets; objectives and policies.

(A) In investing and managing assets of an endowment fund pursuant to Section 59‑153‑40, the trustee:

(1) shall consider among other circumstances:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the role that each investment or course of action plays within the overall portfolio of the endowment funds;

(d) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(e) the adequacy of funding for the plan based on the university’s spending policy;

(2) shall diversify the investments of the endowment funds unless the trustee reasonably determines that, because of special circumstances, it is clearly prudent not to do so;

(3) shall make a reasonable effort to verify facts relevant to the investment and management of assets of an endowment fund;

(4) may invest in any kind of property or type of investment consistent with this chapter and Article 7, Chapter 9, Title 11;

(5) may consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.

(B) Each trustee shall adopt a statement of investment objectives and policies for its portion of the endowment fund. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset‑allocation goals, guidelines for the delegation of authority, and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it. The relevant portion of this statement may constitute parts of the annual investment plan required pursuant to Section 59‑153‑330.

**SECTION 59‑153‑60.** Compliance by trustee or fiduciary.

(A) Compliance by the trustee or other fiduciary with Sections 59‑153‑30, 59‑153‑40, and 59‑153‑50 must be determined in light of the facts and circumstances existing at the time of the trustee’s or fiduciary’s decision or action and not by hindsight.

(B) The trustee’s investment and management decisions must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the endowment system.

**SECTION 59‑153‑70.** Breach of duty; liability; insurance.

(A) The trustee or other fiduciary who breaches a duty imposed by this chapter is liable personally to the endowment fund for any losses resulting from the breach and any profits resulting from the breach or made by the trustee or other fiduciary through use of assets of the fund by the trustee or other fiduciary. The trustee or other fiduciary is subject to other equitable remedies as the court considers appropriate, including removal.

(B) An agreement that purports to limit the liability of a trustee or other fiduciary for a breach of duty under this chapter is void.

(C) The endowment fund may insure a trustee, fiduciary, or itself against liability or losses occurring because of a breach of duty under this chapter.

(D) A trustee or other fiduciary may insure against personal liability or losses occurring because of a breach of duty under this chapter if the insurance is purchased or provided by the individual trustee or fiduciary, but a fiduciary who obtains insurance pursuant to this chapter must disclose all terms, conditions, and other information relating to the insurance policy to the endowment fund.

**SECTION 59‑153‑80.** Meetings in executive session, records exempt from disclosure where necessary.

(A) Meetings by the board while acting as trustee of the endowment fund or by its fiduciary agents to deliberate about, or make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives.

(B) A record of the board or of its fiduciary agents that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is exempt from the disclosure requirements of Chapter 4 of Title 30, the Freedom of Information Act, to the extent and so long as its disclosure would jeopardize the ability to implement an investment decision or program or to achieve investment objectives.

**SECTION 59‑153‑90.** Investment reports.

(A) The trustee shall place investment reports at least semi‑annually during the fiscal year in the institution’s minutes and shall provide copies of the investment reports upon request.

(B) In addition to the semi‑annual reports provided in subsection (A), the trustees shall place in its minutes an annual report of the investment status of the endowment fund. The report must contain:

(1) a description of a material interest held by a trustee, fiduciary, or an employee who is a fiduciary with respect to the investment and management of assets of the fund, or by a related person, in a material transaction with the fund within the last three years or proposed to be effected;

(2) a schedule of the rates of return, net of total investment expense, on assets of the fund overall and on assets aggregated by category over the most recent one‑year, three‑year, five‑year, and ten‑year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the fund overall and for each category over each period;

(3) a schedule of the sum of total investment expense and total general administrative expense for the fiscal year expressed as a percentage of the fair value of assets of the fund on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years; and

(4) a schedule of all assets held for investment purposes on the last day of the fiscal year aggregated and identified by issuer, borrower, lessor, or similar party to the transaction stating, if relevant, the asset’s maturity date, rate of interest, par or maturity value, number of shares, costs, and fair value and identifying an asset that is in default or classified as uncollectible.

(C) These disclosure requirements are cumulative to and do not replace other reporting requirements provided by law.

ARTICLE 3.

 INVESTMENT OF FUNDS

**SECTION 59‑153‑310.** State Retirement Systems Investment Panel.

The State Retirement Systems Investment Panel has been created and functions pursuant to Sections 9‑16‑310 and 9‑16‑320.

**SECTION 59‑153‑320.** Proposal for annual investment plan.

(A) The panel shall develop and adopt an annual investment plan for proposal to each trustee for the next fiscal year. No later than June first of each year, the panel shall submit the proposed plans to the respective trustees. Amendments may be made to a plan by the panel during the fiscal year with the approval of the trustee.

(B) The panel shall meet at least once during each fiscal year quarter for the purposes of reviewing the performance of investments, assessing compliance with the annual investment plan, and determining whether to recommend amendments to the plan by the trustee. The panel shall meet at other times as are set by the panel or chairman or requested by the trustee.

(C) The panel may discuss, deliberate on, and make decisions on a portion of the annual investment plan or relate financial or investment matters in executive session if their disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

(D) A record of the panel or of the trustee or of the trustee’s agent that discloses discussions, deliberations, or decisions on portions of the annual investment plan or other related financial or investment matters is not a public record under Section 30‑4‑20 to the extent and so long as its disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

(E) The costs of administering the duties of the panel as performed for endowment investments must be paid pro rata, considering the amount of time spent on its duties for each of the various trustees, from the investment earnings of the respective endowment funds.

(F) The panel does not act as a fiduciary with respect to the respective endowment funds, but must exercise reasonable care and skill in carrying out its duties.

(G) The panel may retain independent advisors to assist it and periodically shall provide for an outside evaluation of the investment strategy of the trustee.

**SECTION 59‑153‑330.** Statement of policy and objectives.

(A) The trustee shall provide the panel with a statement of the spending policy and general investment objectives. The trustee shall review the statement annually for the purpose of affirming it or changing it and advise the panel of its actions.

(B) The annual investment plan must be consistent with the actions taken by the trustee pursuant to subsection (A) and must include, but is not limited to, the following components:

(1) general operational and investment policies;

(2) investment objectives and performance standards;

(3) investment strategies, which may include indexed or enhanced indexed strategies as the preferred or exclusive strategies for equity investing, and an explanation of the reasons for the selection of each strategy;

(4) industry sector, market sector, issuer, and other allocations of assets that provide diversification in accordance with prudent investment standards, including desired rates of return and acceptable levels of risks for each asset class;

(5) policies and procedures providing flexibility in responding to market contingencies;

(6) procedures and policies for selecting, monitoring, compensating, and terminating investment consultants, equity investment managers, and other necessary professional service providers; and

(7) methods for managing the costs of the investment activities.

(C) In developing the annual investment plan, the panel shall:

(1) diversify the investments of the endowment funds, unless the panel reasonably determines that, because of special circumstances, it is clearly not prudent to do so; and

(2) make a reasonable effort to verify facts relevant to the investment of assets of the endowment funds.

**SECTION 59‑153‑340.** Duties of trustee; State Treasurer as agent; adoption of annual investment plan.

(A) The trustee of the endowment fund shall invest and reinvest the assets of the endowment funds as provided for in this chapter and as authorized in Article 7, Chapter 9, Title 11. The State Treasurer shall serve as the agent of the board with respect to all such investments. Investments allowed by law in equities may be made by the board in the manner it shall determine, consistent with this chapter and consistent with its fiduciary duties with respect to the endowment funds. The agent may employ or retain administrators, agents, consultants, or other advisors it considers necessary with respect to making equity investments.

(B) After receiving the proposed plan of the panel, the trustee shall adopt an annual investment plan, which must be implemented by the State Treasurer. The board shall review regularly the plan implementation and make amendments as it considers appropriate.

(C) The adopted plan must provide that:

(1) the minimum and maximum portions of fund assets allocated to equity investments on an ongoing basis may be determined by the trustees;

(2) preference may be given to brokerage firms domiciled in this State for conducting nondiscretionary brokerage transactions if these brokerage firms are able to meet the test of equal service and best execution in the purchase and sale of authorized investments.

(D) The provisions of this section are cumulative to, and not instead of, any other provisions of law applicable to the panel and its members in the performance of official duties including, but not limited to, Chapter 13 of Title 8.