CHAPTER 3

Coverage of Public Officers and Employees Under Federal Social Security Act

ARTICLE 1

General Provisions

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑3‑10.** Declaration of policy.

 In order to extend to employees of the State and its political subdivisions, and to dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken to provide such protection to employees of the State and its political subdivisions on as broad a basis as is permitted under the Social Security Act and the provisions of this chapter.

HISTORY: 1962 Code Section 61‑221.1; 1954 (48) 1497; 1955 (49) 51.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 1 et seq.

**SECTION 9‑3‑20.** Definitions.

 For the purpose of this chapter:

 (1) The term “wages” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for “employment” within the meaning of the Federal Insurance Contributions Act, would not constitute “wages” within the meaning of that act;

 (2) The term “employment” means any services performed by an employee in the employ of an employer for such employer, as defined in this chapter, except

 (a) service which in the absence of an agreement entered into under this chapter would constitute “employment” as defined in the Social Security Act; or

 (b) service which under the Social Security Act may not be included in an agreement between the State and the Secretary of the Department of Health, Education and Welfare of the United States entered into under this chapter (specifically excepted from the provisions of this chapter are services performed in a coverage group participating in the South Carolina Retirement System on March 12, 1954); or

 (c) service performed by a student and agricultural labor or

 (d) if so provided in the plan submitted under Section 9‑3‑130, service of an emergency nature, or service in all classes of elective positions, or service in part‑time positions, or service in positions the compensation for which is on a fee basis, performed for a political subdivision by an employee thereof;

 (3) The term “employee” includes an officer of the State, or one of its political subdivisions or instrumentalities;

 (4) The term “State agency” means the South Carolina Retirement System and the term “State agent” means the Director of the South Carolina Retirement System;

 (5) The term “Secretary of the Department of Health, Education and Welfare of the United States” includes any individual to whom the Secretary has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions;

 (6) The term “political subdivisions” includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision;

 (7) The term “Social Security Act” means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the “Social Security Act,” (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended;

 (8) The term “Federal Insurance Contributions Act” means subchapter A of chapter 9 of the Federal Internal Revenue Code as such code has been and may from time to time be amended; and

 (9) The term “employer” means the State of South Carolina and such boards, agencies, political subdivisions, departments and organizations as were not participating in the South Carolina Retirement System on February 17, 1955.

HISTORY: 1962 Code Section 61‑221; 1954 (48) 1497; 1955 (49) 51.

**SECTION 9‑3‑30.** Exemptions.

 Specifically excepted from the provisions of this chapter are services performed in a coverage group participating in the South Carolina Retirement System on March 12, 1954.

HISTORY: 1962 Code Section 61‑221.2; 1954 (48) 1497.

ARTICLE 3

Agreements and Plans to Extend Benefits of Social Security Act to Employees; Referenda

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑3‑110.** State agent may enter into agreement with Secretary of Health, Education and Welfare.

 The State agent, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Secretary of the Department of Health, Education and Welfare of the United States, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the Federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute “employment” as defined in Section 9‑3‑20.

HISTORY: 1962 Code Section 61‑221.11; 1954 (48) 1497.

CROSS REFERENCES

Agreements and relations with the United States government, generally, see Title 3.

**SECTION 9‑3‑120.** Terms of agreement.

 Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the State agent and the Secretary of the Department of Health, Education and Welfare of the United States shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

 (1) Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

 (2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages as defined in Section 9‑3‑20 equal to the sum of the taxes which would be imposed by Sections 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

 (3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, except that such effective date may be made retroactive only to the extent permitted by the applicable provision of the Social Security Act; and

 (4) All services which constitute employment as defined in Section 9‑3‑20, are performed in the employ of the State or a political subdivision thereof, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agent under Section 9‑3‑130, shall be covered by the agreement.

HISTORY: 1962 Code Section 61‑221.12; 1954 (48) 1497; 1957 (50) 21; 1958 (50) 1649; 1961 (52) 28.

**SECTION 9‑3‑130.** Submission of plans by political subdivisions; approval of plans by State agent.

 Each political subdivision of the State is hereby authorized to submit for approval by the State agent a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the State agent if he finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agent, except that no such plan shall be approved unless:

 (1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under Sections 9‑3‑110 and 9‑3‑120;

 (2) It provides that all services which constitute employment as defined in Section 9‑3‑20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

 (3) It specifies the source or sources from which the funds necessary to make the payments required by Sections 9‑3‑520 and 9‑3‑540 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

 (4) It provides for such methods of administration of the plan by the political subdivision as are found by the State agent to be necessary for the proper and efficient administration of the plan;

 (5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agent may from time to time require, and comply with such provisions as the State agent or the Secretary of the Department of Health, Education and Welfare of the United States may from time to time find necessary to assure the correctness and verification of such reports; and

 (6) It authorizes the State agent to terminate the plan in its entirety, in the discretion of the State agent, if he finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice on such conditions as may be provided by regulations of the State agent and may be consistent with the provisions of the Social Security Act.

HISTORY: 1962 Code Section 61‑221.13; 1954 (48) 1497.

NOTES OF DECISIONS

In general 1

1. In general

Contract excluding city policemen not amended without action by city council. Where a contract between a city and the State agent for social security as to participation of the city’s officials and employees in Federal social security expressly excluded the municipal police department, and the Federal Social Security Act was subsequently amended so as to authorize coverage of municipal policemen, coverage was not extended to policemen of the city by operation of law, notwithstanding the use in the contract of the words “as such Act has been and may be from time to time amended.” Moreover, the mayor of the city had no power to hold a referendum on the question of inclusion of policemen in the contract, or to bind the city thereabout, in the absence of a new ordinance or resolution of the council. City of Aiken v. State (S.C. 1958) 232 S.C. 284, 101 S.E.2d 841.

**SECTION 9‑3‑140.** Notice and hearing before disapproval or termination of plans.

 The State agent shall not finally refuse to approve a plan submitted by a political subdivision under Section 9‑3‑130, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

HISTORY: 1962 Code Section 61‑221.14; 1954 (48) 1497.

**SECTION 9‑3‑150.** Referendum on social security coverage for persons coming under certain retirement systems.

 (1) The Governor is empowered to authorize a referendum, and to designate any agency or individual to supervise its conduct, in accordance with the requirements of Section 218 (d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system, other than the South Carolina Retirement System established by the State or by a political subdivision thereof, should be excluded from or included under the agreement provided for in Sections 9‑3‑110 and 9‑3‑120. The notice of the referendum required in Section 218 (d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liability to which they will be subject, if their services are included under the agreement provided for in Sections 9‑3‑110 and 9‑3‑120.

 (2) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in Section 218 (d) (3) of the Social Security Act have been met, the Governor shall so certify to the Secretary of Health, Education and Welfare.

HISTORY: 1962 Code Section 61‑221.15; 1955 (49) 697.

NOTES OF DECISIONS

In general 1

1. In general

Cited in City of Aiken v. State (S.C. 1958) 232 S.C. 284, 101 S.E.2d 841.

**SECTION 9‑3‑160.** Social security coverage for justices and judges.

 A referendum having been held pursuant to Section 9‑3‑150 among the members of the judiciary participating in the judges’ retirement system provided for in Sections 9‑7‑10 to 9‑7‑90, and the official authorized to approve payments of warrants for the salaries of the justices and judges having entered into an agreement pursuant to the provisions of this chapter, with the State agent for social security to effectuate such coverage for justices and judges, the State Treasurer shall pay out of the general funds in the State Treasury, on the warrant of such official authorized to approve payments of warrants for the salaries of the justices and judges, such funds as may be necessary, from time to time, as employer contributions by the State under such agreement.

HISTORY: 1962 Code Section 61‑221.16; 1957 (50) 21.

CROSS REFERENCES

A constitutional provision regarding retirement of judges, see SC Const, Art 5, Section 17.

ARTICLE 5

Administration of Chapter

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑3‑310.** Compensation of State agent.

 The State agent shall receive four thousand dollars as administrator of this chapter.

HISTORY: 1962 Code Section 61‑221.21; 1954 (48) 1497; 1957 (50) 267; 1960 (51) 1518.

**SECTION 9‑3‑320.** Charges or assessments against political subdivisions for expenses of administration.

 The State agent shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this chapter. Such charge or assessment shall be determined by the State agent and shall be apportioned among the various political subdivisions of government in a rateable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this chapter. Such amount shall be assessed against each such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this chapter by the State agency.

HISTORY: 1962 Code Section 61‑221.22; 1954 (48) 1497.

**SECTION 9‑3‑330.** Collection of delinquent assessments or charges made against political subdivisions.

 In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this chapter, or in case such charge or assessment remains unpaid for a period of thirty days, the State agent may maintain a suit in a court of competent jurisdiction for the recovery of such charge or assessment, or the amount of such charge or assessment, or such charge or assessment may, at the request of the State agent, be deducted from any other moneys payable to such subdivision by any department or agency of the State.

HISTORY: 1962 Code Section 61‑221.23; 1954 (48) 1497.

**SECTION 9‑3‑340.** Deposit and disbursement of funds derived from assessments or charges against political subdivisions.

 The funds accumulated and derived from the assessments and charges provided for in Section 9‑3‑320 shall be deposited by the State agent in some safe and reliable bank or depository chosen by the State agent, and the State agent shall issue such checks or vouchers as may be necessary to defray the above‑mentioned expenses of administration.

HISTORY: 1962 Code Section 61‑221.24; 1954 (48) 1497.

**SECTION 9‑3‑350.** Rules and regulations.

 The State agent shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as he finds necessary or appropriate to the efficient administration of the functions with which he is charged under this chapter.

HISTORY: 1962 Code Section 61‑221.25; 1954 (48) 1497.

CROSS REFERENCES

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Retirement System, South Carolina Sections 19‑900 et seq..

**SECTION 9‑3‑360.** State agent shall make studies, reports and recommendations.

 The State agent shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and political subdivisions or instrumentalities thereof and concerning the operation of agreements made and plans approved under this chapter and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this chapter during the preceding calendar year, including such recommendations for amendments to this chapter as he considers proper.

HISTORY: 1962 Code Section 61‑221.26; 1954 (48) 1497.

ARTICLE 7

Contributions and Contribution Fund

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑3‑510.** Contributions of State employees; collection; adjustments and refunds.

 (1) Every employee of the State whose services are covered by an agreement entered into under Sections 9‑3‑110 and 9‑3‑120 shall be required to pay for the period of such coverage, into the contribution fund established by Section 9‑3‑550, contributions, with respect to wages as defined in Section 9‑3‑20, equal to the amount of tax which would be imposed by Section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee’s retention in the service of the State, or his entry upon such service, after the enactment of this chapter.

 (2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

 (3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agent shall prescribe.

HISTORY: 1962 Code Section 61‑221.31; 1954 (48) 1497.

**SECTION 9‑3‑520.** Contributions of political subdivisions.

 Each political subdivision as to which a plan has been approved under Section 9‑3‑130 shall pay into the contribution fund, with respect to wages as defined in Section 9‑3‑20, at such time or times as the State agent may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State agent under Sections 9‑3‑110 and 9‑3‑120.

HISTORY: 1962 Code Section 61‑221.32; 1954 (48) 1497.

**SECTION 9‑3‑530.** Deductions from wages of employees of political subdivisions.

 Each political subdivision required to make payments under Section 9‑3‑520 is authorized, in consideration of the employee’s retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages as defined in Section 9‑3‑20 not exceeding the amount of tax which would be imposed by Section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under Section 9‑3‑520. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

HISTORY: 1962 Code Section 61‑221.33; 1954 (48) 1497.

**SECTION 9‑3‑540.** Procedures for collection of delinquent contributions from political subdivisions.

 Delinquent payments due under Section 9‑3‑520 must be charged interest compounded annually based on the adjusted prime rate charged by banks, rounded to the nearest full percent. The effective date of the adjustment must be based on the twelve‑month period ending March thirty‑first of any calendar year and must be established by April fifteenth for an effective date of the next first day of July. The adjusted prime rate charged by banks means the average predominant prime rate quoted by commercial banks to large businesses as determined by the Board of Governors of the Federal Reserve System. The adjusted prime rate used must be the adjusted prime rate charged by the bank during March of that year. Delinquent payments may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agent, be deducted from any other monies payable to such subdivision by any department or agency of the State. Upon notification of the state agent to the State Treasurer and Comptroller General as to a delinquency of any payments due under Section 9‑3‑520 or of the failure of any political subdivision to make required reports, any distributions which might otherwise be made to the political subdivision from any funds of the State shall be withheld from such political subdivision until notice from the state agent to the State Treasurer that such political subdivision is no longer in default in its payments or in filing the required reports.

HISTORY: 1962 Code Section 61‑221.34; 1954 (48) 1497; 1985 Act No. 201, Part II, Section 47D.

**SECTION 9‑3‑550.** Contribution fund established; items to be deposited therein; administration.

 There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund:

 (1) All contributions, interest and penalties collected under Sections 9‑3‑510 to 9‑3‑540;

 (2) All moneys appropriated thereto under this chapter;

 (3) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;

 (4) Interest earned upon any moneys in the fund; and

 (5) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source.

 All moneys in the fund shall be mingled and undivided. Subject to the provisions of this chapter, the State agent is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts, whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter.

HISTORY: 1962 Code Section 61‑221.35; 1954 (48) 1497.

**SECTION 9‑3‑560.** State Treasurer to be custodian of contribution fund; payment of warrants drawn on fund.

 The Treasurer of the State shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the State agent and shall pay all warrants drawn upon it in accordance with the provisions of this article and with such regulations as the State agent may prescribe pursuant hereto.

HISTORY: 1962 Code Section 61‑221.36; 1954 (48) 1497.

CROSS REFERENCES

The state treasurer, generally, see Sections 11‑5‑10 et seq.

**SECTION 9‑3‑570.** Contribution fund shall be kept separate; withdrawals; payments to Secretary of Treasury.

 The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for (a) payment of the amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under Sections 9‑3‑110 and 9‑3‑120, (b) payment of refunds provided for in Section 9‑3‑510 and (c) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

 From the contribution fund the custodian of the funds shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the State agent, in accordance with any agreement entered into under Sections 9‑3‑110 and 9‑3‑120 and the Social Security Act.

HISTORY: 1962 Code Section 61‑221.37; 1954 (48) 1497.

**SECTION 9‑3‑580.** Additional appropriations to contribution fund.

 There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under Sections 9‑3‑510 to 9‑3‑540, to be available for the purposes of Section 9‑3‑570 until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under Sections 9‑3‑110 and 9‑3‑120.

 The State agent shall submit to each regular session of the legislature, at least ninety days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the contribution fund by this section for the next appropriation period.

HISTORY: 1962 Code Section 61‑221.38; 1954 (48) 1497.