CHAPTER 5

State Retirement and Social Security Act of 1955

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 9‑5‑10.** Short title.

 This chapter may be cited as the State Retirement and Social Security Act of 1955.

HISTORY: 1962 Code Section 61‑225; 1955 (49) 38.

**SECTION 9‑5‑20.** Declaration of policy.

 In order to extend to all employees of the State, and of other employers within the meaning of subsection (5) of Section 9‑1‑10, 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 as to provide such protection to employees of the State and of such other employers on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees who are in positions covered by the South Carolina Retirement System on the date an agreement under this chapter is made applicable to service performed in such positions, or who are receiving periodic benefits under such Retirement System at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

HISTORY: 1962 Code Section 61‑227; 1955 (49) 43.

LIBRARY REFERENCES

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

Attorney General’s Opinions

Entry of an employer into the State Retirement System constitutes an irrevocable contract with the system, and a municipality, once it has become a member, cannot withdraw from the system in the absence of legislation authorizing such withdrawal. 1966‑67 Op Atty Gen, No 2364, p 206.

**SECTION 9‑5‑30.** Definitions.

 For the purposes of this chapter the following terms shall have the following meanings unless a different meaning is plainly required by the context:

 (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 “participating employers” shall mean this State and such boards, agencies, political subdivisions, departments and organizations as are employers within the meaning of subsection (5) of Section 9‑1‑10.

 (3) The term “employment” means any services performed by an employee in the employ of a participating employer for such employer, 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 Secretary of Health, Education and Welfare of the United States entered into under this chapter; or

 (c) services of an emergency nature or services performed by a student.

 Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with Section 218 (d) (3) of that act shall be included in the term “employment,” the Governor having issued, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to Section 8 of Act No. 33 of 1955.

 (4) The term “employee” includes any officer of any participating employer.

 (5) The term “State agency” means the South Carolina Retirement System.

 (6) The term “State agent” means the Director of the South Carolina Retirement System.

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

 (8) 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,” as such act has been and may from time to time be amended.

 (9) The term “Federal Insurance Contributions Act” means subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended.

 (10) The term “employee tax” means the tax imposed by Section 1400 of such Code of 1939 and Section 3101 of such Code of 1954.

HISTORY: 1962 Code Section 61‑226; 1955 (49) 43; 1956 (49) 1602.

Notes of Decisions

Immunity 1

1. Immunity

Entity that administered pension trust plans for employees of the State of South Carolina and its political subdivisions did not function independently of the State, thus supporting determination that the entity was an arm of the State and therefore had Eleventh Amendment immunity from suit brought by retired plan members challenging the constitutionality of law requiring them to contribute to the plans upon their rehiring by the State without providing them with any additional benefits or service credit; although the entity’s assets were held in trust and were not considered funds belonging to the State, and the entity was established as a corporation, state officials from the legislative and executive branches were involved in the entity through their participation on the South Carolina Budget and Control Board, which administered and operated the plans’ funds, and the plans were highly regulated by a comprehensive statutory scheme. Hutto v. South Carolina Retirement System (C.A.4 (S.C.) 2014) 773 F.3d 536. Federal Courts 2384

**SECTION 9‑5‑40.** Chapter 3 of this Title not affected.

 The provisions of Chapter 3 of this Title are not in conflict with this chapter, and Chapter 3 of this Title is reaffirmed and continued as a part of the general law of this State.

HISTORY: 1962 Code Section 61‑228; 1955 (49) 43.

**SECTION 9‑5‑50.** State agent shall make 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 61‑229; 1955 (49) 43.

CROSS REFERENCES

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Retirement System, South Carolina Sections 9‑900 et seq.

**SECTION 9‑5‑60.** State agent shall submit report to legislature.

 The State agent 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 61‑230; 1955 (49) 43.

ARTICLE 3

Agreement for Extension of Federal Old Age and Survivors Insurance System to Employees

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 9‑5‑210.** State agent may enter into agreement with Secretary of Health, Education and Welfare.

 The State agent, with the approval of the Governor, may enter on behalf of the State into an agreement with the Secretary 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 participating employers with respect to services specified in such agreement which constitute employment.

HISTORY: 1962 Code Section 61‑231; 1955 (49) 43.

CROSS REFERENCES

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

**SECTION 9‑5‑220.** Agreement may be made through modification of existing agreement.

 The agreement authorized in Section 9‑5‑210 may, in the discretion of the State agent, be made through a modification of any existing agreement previously made on behalf of the State with the Secretary of Health, Education and Welfare of the United States.

HISTORY: 1962 Code Section 61‑232; 1955 (49) 43.

**SECTION 9‑5‑230.** Terms of agreement.

 The agreement authorized by Sections 9‑5‑210 and 9‑5‑220 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 Secretary 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 equal to the sum of the taxes which would be imposed by 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.

 (4) All services which constitute employment as defined in Section 9‑5‑30 are performed in the employ of a participating employer, and are covered by the South Carolina Retirement Act, shall be covered by the agreement; and

 (5) The agreement shall include all services described in paragraph (3) and paragraph (4) of this section and performed by individuals to whom Section 218 (c) (3) (C) of the Social Security Act is applicable and shall provide that the service described in those paragraphs of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of the South Carolina Retirement System.

HISTORY: 1962 Code Section 61‑233; 1955 (49) 43; 1957 (50) 21; 1958 (50) 1649; 1961 (52) 27.

**SECTION 9‑5‑240.** South Carolina Retirement System deemed one system and not a separate system under Social Security Act.

 For purposes of this chapter, the South Carolina Retirement System shall be deemed to constitute one retirement system, and in no event shall the South Carolina Retirement System be deemed to be, with respect to any participating employer, a separate retirement system within the meaning of Section 218 (d) (6) of the Social Security Act.

HISTORY: 1962 Code Section 61‑234; 1955 (49) 43.

ARTICLE 5

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 9‑5‑410.** Contributions of employees; deduction from wages; refunds and adjustments.

 (1) Every employee whose services are covered by an agreement entered into under Sections 9‑5‑210 to 9‑5‑230 shall be required to pay for the period of service with respect to which such agreement is effective, into the contribution fund established by Section 9‑5‑460, contributions with respect to wages equal to the amount of employee tax which would be imposed by 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 participating employer, or his entry upon such service, after February 17, 1955.

 (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 61‑235; 1955 (49) 43.

**SECTION 9‑5‑420.** Collection of employees’ contributions by employer.

 Each participating employer may, in consideration of the employee’s retention in, or entry upon, employment after February 17, 1955, collect the contributions required of its employees under Section 9‑5‑410. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such participating employer under Section 9‑5‑430. Failure to deduct such contribution shall not relieve the participating employer of liability therefor.

HISTORY: 1962 Code Section 61‑236; 1955 (49) 43.

**SECTION 9‑5‑430.** Contributions of employers.

 Each participating employer shall pay into the contribution fund, with respect to wages, 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 9‑5‑210 to 9‑5‑230.

HISTORY: 1962 Code Section 61‑237; 1955 (49) 43.

**SECTION 9‑5‑440.** Reports of employers.

 Each participating employer shall make such reports, in such form and containing such information, as the State agent may from time to time require, and shall comply with such provisions as the State agent may from time to time find necessary to assure the correctness and verification of such reports.

HISTORY: 1962 Code Section 61‑238; 1955 (49) 43.

**SECTION 9‑5‑450.** Collection of delinquent payments from employers; withholding of State funds for delinquency or failure to make reports.

 Delinquent payments due under Section 9‑5‑430 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 for the next July first. 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 the 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 9‑5‑430 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 must be withheld from the political subdivision until notice from the state agent to the State Treasurer that the political subdivision is no longer in default in its payments or in filing the required report.

HISTORY: 1962 Code Section 61‑239; 1955 (49) 43; 1985 Act No. 201, Part II, Section 47E.

**SECTION 9‑5‑460.** 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 9‑5‑410 to 9‑5‑450;

 (2) All moneys appropriated thereto under this chapter except for appropriations made for the purpose of paying administrative costs;

 (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 except moneys appropriated for administrative costs and the expenses of a referendum.

 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 61‑240; 1955 (49) 43.

**SECTION 9‑5‑470.** State Treasurer shall be custodian of 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 61‑241; 1955 (49) 43.

CROSS REFERENCES

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

**SECTION 9‑5‑480.** Contribution fund shall be kept separate; withdrawals; payments to Secretary of Treasury.

 Subject to the provisions of Section 9‑5‑490, 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 9‑5‑210 to 9‑5‑230, (b) payment of refunds provided for in Section 9‑5‑410, subsection (3) and (c) refunds of overpayments, not otherwise adjustable, made by a participating employer.

 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 9‑5‑210 to 9‑5‑230 and the Social Security Act.

HISTORY: 1962 Code Section 61‑242; 1955 (49) 43.

**SECTION 9‑5‑490.** Contribution fund may be combined with contribution fund established under Section 9‑3‑550.

 Notwithstanding any other provisions herein, the contribution fund established under Section 9‑5‑460 may, in the discretion of the State agent, be combined with the contribution fund previously established under the provisions of Section 9‑3‑550.

HISTORY: 1962 Code Section 61‑243; 1955 (49) 43.

**SECTION 9‑5‑500.** Appropriations for contribution fund.

 There are hereby authorized to be appropriated annually to the contribution fund, to be available for the purposes of Section 9‑5‑480 until expended, such 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 9‑5‑210 to 9‑5‑230.

 The State agent shall submit to each regular session of the State 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 61‑244; 1955 (49) 43.