CHAPTER 16

Retirement System Funds

CROSS REFERENCES

Iran Divestment Act of 2014, fiduciary responsibilities, see Section 11‑57‑720.

ARTICLE 1

Duties of the Trustee, Fiduciaries, Agents

Editor’s Note

2005 Act No. 153, Pt IV Section 7.A, provides as follows:

“Notwithstanding the general effective date provided for this act, the transfer of the investor functions provided by this part occurs October 1, 2005.”

2005 Act No. 153, Pt V Section 1, provides as follows:

“(A) Beginning October 1, 2005, all assets and liabilities, appropriations, FTE’s, employees, contracts, real and personal property, records, and archives of the State Budget and Control Board with respect to its investment duties for the various state retirement systems are transferred to and devolved upon the Retirement System Investment Commission.

“(B) It is the intention of the General Assembly that the transfer required by this act occurs seamlessly, and to this end, the Executive Director of the State Budget and Control Board and the State Treasurer shall ensure an orderly transfer that allows no hiatus in the investment of the funds of the retirement systems.”

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 9‑16‑10.** Definitions.

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

 (1) “Assets” means all funds, investments, and similar property of the retirement system.

 (2) “Beneficiary” means a person, other than the participant, who is designated by a participant or by a retirement program to receive a benefit under the program.

 (3) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority acting as trustee of the retirement system.

 (3.5) “Commission” means the Retirement System Investment Commission.

 (4) “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;

 (c) is a member of the commission;

 (d) is the commission’s chief investment officer; or

 (e) is the commission’s chief executive officer.

 (5) “Participant” means an individual who is or has been an employee enrolled in a retirement program and who is or may become eligible to receive or is currently receiving a benefit under the program. The term does not include an individual who is no longer an employee of an employer as defined by laws governing the retirement system and who has withdrawn his contributions from the retirement system.

 (6) [Reserved]

 (7) “Retirement program” means a program of rights and obligations which a retirement system establishes or maintains and which, by its express terms or as a result of surrounding circumstances:

 (a) provides retirement benefits to qualifying employees and beneficiaries; or

 (b) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.

 (8) “Retirement system” means the South Carolina Retirement System, Retirement System for Judges and Solicitors, Retirement System for Members of the General Assembly, National Guard Retirement System, and Police Officers Retirement System established pursuant to Chapters 1, 8, 9, 10 and 11 of this title.

 (9) “Trustee” means the Board of Directors of the South Carolina Public Employee Benefit Authority.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005; 2005 Act No. 155, Section 4, eff January 1, 2006; 2012 Act No. 278, Pt IV, Subpt 2, Section 56, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. III, Section 7, eff July 1, 2017.

Effect of Amendment

The first 2005 amendment added item (3.5); in item (4)(c), substituted “is a member of the commission; or” for “is a member of the State Budget and Control Board when it acts as trustee for the retirement system”; added item (4)(d); and, in item (6), substituted “[Reserved]” for the definition of “Panel”.

The second 2005 amendment, in item (8), added the references to the National Guard Retirement System and to Chapter 10.

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “State Budget and Control Board” in items (3) and (9).

2017 Act No. 13, Pt. III, Section 7, added (4)(e), adding “commission’s chief executive officer” to the definition of “fiduciary”.

**SECTION 9‑16‑20.** Investment and management authority of commission; holding assets in group trust under Section 401(a)(24) of the Internal Revenue Code.

 (A) All assets of a retirement system are held in trust. The commission has the exclusive authority, subject to this chapter and Section 9‑1‑1310, to invest and manage those assets.

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

 (C) The board shall hold the assets of the retirement systems in a group trust under Section 401(a)(24) of the Internal Revenue Code that meets the requirements of Revenue Ruling 81‑100, 1981‑1 C.B. 326, as amended by Revenue Ruling 2004‑67. Any group trust shall be operated or maintained exclusively for the commingling and collective investment of funds from other trusts that it holds. The board shall be permitted to hold in this group trust funds that consist exclusively of trust assets held under plans qualified under Internal Revenue Code Section 401(a), individual retirement accounts that are exempt under Internal Revenue Code Section 408(e), and eligible governmental plans that meet the requirements of Internal Revenue Code Section 457(b). For this purpose, a trust includes a custodial account under Internal Revenue Code Section 401(f) or under Internal Revenue Code Section 457(g)(3).

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005; 2008 Act No. 311, Section 27, eff June 4, 2008.

Effect of Amendment

The 2005 amendment, in subsection (A), in the second sentence substituted “commission” for “trustee”.

The 2008 amendment added subsection (C) relating to holding the assets of the retirement systems in a group trust.

Attorney General’s Opinions

The Retirement System Investment Commission is given exclusive authority to invest and manage Retirement System assets in accordance with Art. X, Section 16 of the state Constitution and the statutory guidelines which the Legislature has set forth. S.C. Op.Atty.Gen. (Nov. 16, 2011) 2011 WL 6120331.

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, 2012, 899 F.Supp.2d 457, reconsideration denied, affirmed on other grounds 773 F.3d 536. Federal Courts 2392

**SECTION 9‑16‑30.** Delegation of functions by commission; standard of care; agent’s duty and submission to jurisdiction.

 (A) The commission may delegate functions that a prudent person acting in a like capacity and familiar with those matters could properly delegate under the circumstances but final authority to invest cannot be delegated.

 (B) The commission shall exercise reasonable care, skill, and caution in:

 (1) selecting an agent;

 (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the retirement program; and

 (3) 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 retirement system and to its participants and beneficiaries to comply with the terms of the delegation and, if a fiduciary, to comply with the duties imposed by Section 9‑16‑40.

 (D) A commission member who complies with subsections (A) and (B) is not liable to the retirement system or to its participants or beneficiaries for the decisions or actions of the agent to whom the function was delegated.

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

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

 (G) The commission shall cast shareholder proxy votes that are in keeping with its fiduciary duties that are consistent with the best interest of the trust fund and most likely to maximize shareholder value.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005; 2017 Act No. 13 (H.3726), Pt. III, Section 8, eff July 1, 2017.

Effect of Amendment

The 2005 amendment substituted “commission” for “trustee” throughout.

2017 Act No. 13, Pt. III, Section 8, added (G), relating to shareholder proxy votes.

CROSS REFERENCES

Statement of actuarial assumptions and investment objectives, delegation of final authority to invest, components of plan, diversification, verification of investment facts, analysis and recommendations, see Section 9‑16‑330.

**SECTION 9‑16‑40.** Standards for discharge of duty.

 A trustee, commission member, or other fiduciary shall discharge duties with respect to a retirement system:

 (1) solely in the interest of the retirement systems, participants, and beneficiaries;

 (2) for the exclusive purpose of providing benefits to participants and beneficiaries 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 participants and beneficiaries;

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

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

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005.

Effect of Amendment

The 2005 amendment in the introductory paragraph added “, or commission member”.

**SECTION 9‑16‑50.** Investment and management considerations by trustee; diversification; verification of facts; statement of investment objectives and policies.

 (A) In investing and managing assets of a retirement system pursuant to Section 9‑16‑40, the commission:

 (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 retirement system;

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

 (e) the adequacy of funding for the plan based on reasonable actuarial factors;

 (2) shall diversify the investments of the retirement system unless the commission 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 a retirement system;

 (4) may invest in any kind of property or type of investment consistent with this chapter and Section 9‑1‑1310;

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

 (B) The commission shall adopt a statement of investment objectives and policies for the retirement system. 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 commission 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 9‑16‑330.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005.

Effect of Amendment

The 2005 amendment substituted “commission” for “trustee” throughout.

**SECTION 9‑16‑55.** Investments in companies that in their operations are complicit with the government of Sudan in the Darfur genocide.

 (A) As used in this section:

 (1) “Active business operations” means a company engaged in business operations that provide revenue to the government of Sudan or a company engaged in oil‑related activities.

 (2) “Business operations” means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan.

 (3) “Commission” means the Retirement System Investment Commission.

 (4) “Company” means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profit‑making purposes or to otherwise secure economic advantage. “Company” also means a company owned or controlled, either directly or indirectly, by the government of Sudan, that is established or organized under the laws of or has its principal place of business in the Republic of the Sudan.

 (5) “Government of Sudan” means the government of Sudan or its instrumentalities as further defined in the Darfur Peace and Accountability Act of 2006.

 (6) “Invest” or “investment” means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Sudan, corporate bonds, or other debt instruments issued by a company. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.

 (7) “Military equipment” means weapons, arms, or military defense supplies.

 (8) “Oil‑related activities” means, but is not limited to, the export of oil, extracting or producing oil, exploration for oil, or the construction or maintenance of a pipeline, refinery, or other oil field infrastructure.

 (9) “Public employee retirement funds” means those assets as defined in Section 9‑16‑10(1).

 (10) “Substantial action” means a boycott of the government of Sudan, curtailing business in Sudan until that time described in subsection (E), selling company assets, equipment, or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan.

 (11) ‘Sudan’ means the Republic of the Sudan, a territory under the administration or control of the government of Sudan, including, but not limited to, the Darfur region, or an individual, company, or public agency located in Khartoum, northern Sudan, or the Nile River Valley that supports the Republic of the Sudan.

 (B) The commission shall not invest public employee retirement funds in a company with business operations in Sudan if:

 (1)(a) the company is engaged in active business operations in Sudan; or

 (b) the company is not engaged in oil‑related activities and lacks significant business operations in the eastern, southern, and western regions of Sudan; and

 (2)(a) the company is engaged in oil‑related activities or energy or power‑related operations, or contracts with another company with business operations in the oil, energy, and power sectors of Sudan, and the company has failed to take substantial action related to the government of Sudan because of the Darfur genocide; or

 (b) the company has demonstrated complicity in the Darfur genocide.

 (C) Notwithstanding subsection (B), the commission shall not invest public employee retirement funds in a company that supplies military equipment within the borders of Sudan. If a company provides equipment within the borders of Sudan that may be readily used for military purposes, including, but not limited to, radar systems and military‑grade transport vehicles, there is a strong presumption against investing in that company unless that company implements safeguards to prevent the use of that equipment for military purposes.

 (D)(1) Nothing in this section requires the commission to take action as described in this section unless the commission determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the commission as described in this chapter and there are appropriated funds of the State to absorb the expenses of the commission to implement this section.

 (2) Subsection (B) does not apply to:

 (a) investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Sudan;

 (b) investments in a company that promotes health, education, journalistic, or religious activities in or welfare in the western, eastern, or southern regions of Sudan;

 (c) investments in a United States company that is authorized by the federal government to have business operations in Sudan.

 (E) The restrictions provided for in this section apply only until:

 (1) the government of Sudan halts the genocide in Darfur for twelve months as determined by both the Department of State and the Congress of the United States; or

 (2) the United States revokes its current sanctions against Sudan.

 (F) Present and former board members, officers, and employees of the State Fiscal Accountability Authority, present, future, and former directors, officers, and employees of the South Carolina Public Employee Benefit Authority, the Retirement System Investment Commission, and contract investment managers retained by the commission must be indemnified from the general fund of the State and held harmless by the State from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney’s fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to this section.

HISTORY: 2008 Act No. 248, Section 2, eff upon approval (became law without the Governor’s signature on June 5, 2008); 2012 Act No. 278, Pt IV, Subpt 2, Section 57, eff July 1, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2008 Act No. 248, Section 1, provides as follows:

“The General Assembly finds that:

“(1) The Congress of the United States has declared that genocide is occurring in the Darfur region of Sudan.

“(2) Investing public retirement funds in business firms and institutions with ties to the repressive regime in Sudan is inconsistent with the moral and political values of the people of South Carolina.

“(3) Divestment is a course of last resort that should be used sparingly and under extraordinary circumstances and that the genocide occurring in the Sudan is reprehensible and abhorrent and requires special circumstance.”

Effect of Amendment

The 2012 amendment rewrote subsection (F).

**SECTION 9‑16‑60.** Evaluation of fiduciary’s compliance with law not to be hindsight; decision‑making evaluated in context of whole portfolio.

 (A) Compliance by the trustee, commission, or other fiduciary with Sections 9‑16‑30, 9‑16‑40, and 9‑16‑50 must be determined in light of the facts and circumstances existing at the time of the trustee’s, commission’s, or fiduciary’s decision or action and not by hindsight.

 (B) The commission’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 retirement system.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005.

Effect of Amendment

The 2005 amendment, in subsection (A), added “commission,” and “, commission’s”; and, in subsection (B), substituted “commission’s” for “trustee’s”.

**SECTION 9‑16‑70.** Liability for breach of duty; insurance by retirement system or fiduciary; disclosure of terms and conditions.

 (A) A commission member or other fiduciary who breaches a duty imposed by this chapter is personally liable to the retirement system for any losses resulting from the breach and any profits resulting from the breach or made by the commission member or other fiduciary through use of assets of the system by the commission member or other fiduciary. The commission member 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 retirement system may insure a trustee, commission member, fiduciary, or itself against liability or losses occurring because of a breach of duty under this chapter.

 (D) A trustee, commission member, 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, commission member, 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 retirement system.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005.

Effect of Amendment

The 2005 amendment substituted “commission member” for “trustee” throughout.

**SECTION 9‑16‑80.** Investment meetings of board or commission as executive sessions exempt from disclosure; records of such meetings.

 (A) Meetings by the board while acting as trustee of the retirement system, or meetings of the commission, 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 commission, 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.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005.

Effect of Amendment

The 2005 amendment, in subsection (A), added “, or meetings of the commission,”; and, in subsection (B), added “, or commission,”.

**SECTION 9‑16‑90.** Quarterly and annual investment reports; contents.

 (A) The commission shall provide investment reports at least quarterly during the fiscal year to the State Fiscal Accountability Authority, Revenue and Fiscal Affairs Office, and the Executive Budget Office, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and other appropriate officials and entities.

 (B) In addition to the quarterly reports provided in subsection (A), the commission shall provide an annual report to the State Fiscal Accountability Authority, Revenue and Fiscal Affairs Office, and the Executive Budget Office, the Speaker of the House of Representatives, members of the House of Representatives or Senate, but only upon their request, the President Pro Tempore of the Senate, and other appropriate officials and entities of the investment status of the retirement systems. 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 system, or by a related person, in a material transaction with the system 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 system 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 system overall and for each category over each period;

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

 (4) a schedule of the net manager fees and expenses for each asset class for the fiscal year, including the total amount of manager fee and expense for each asset class and the amount of manager fee and expense for each asset class divided into the amounts attributable to management fees, performance fees or carried interest, and other expenses charged to the managed investment vehicle. The amount of manager fees and expenses must be expressed in total, and in each category of fee and expense, as a dollar amount and a percentage of the fair value of assets of the system on the last day of the fiscal year. The schedule also must include the net investment return for each asset class. In addition to being included in the annual report required by this subsection, the schedule of manager fees and expenses required by this item also must be published in a conspicuous location on the commission’s website;

 (5) 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; and

 (6) a schedule of investment decisions that have been delegated from the commission to the chief investment officer to include the name, asset class, asset value, fees paid, and performance since inception by the manager.

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

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 2, eff July 1, 2005; 2017 Act No. 13 (H.3726), Pt. III, Section 9, eff July 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2005 amendment substituted “commission” for “trustees” and “State Budget and Control Board” for “panel” throughout.

2017 Act No. 13, Pt. III, Section 9, in (B)(3), substituted “, manager fees and expenses, and general administrative expenses” for “and total general administrative expense”; added (B)(4) and (B)(6), relating to schedules for net manager fees and expenses, and schedules for all assets held for investment purposes; and made other nonsubstantive changes.

**SECTION 9‑16‑100.** Restrictions on lobbyists.

 (A) A lobbyist, as defined in Section 2‑17‑10(13), may not contact any member of the commission, the chief executive officer, chief investment officer, or staff member of the commission to solicit the investment of funds with a particular entity regardless of whether the lobbyist represents that entity.

 (B) The commission may not make an investment with or invest in a fund managed by an external investment manager if a placement agent receives compensation as a result of the commission’s investment. For purposes of this subsection, “placement agent” means an individual directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with making an investment with or investing in a fund managed by the external investment manager.

 (C) The commission may not invest in any asset or with any entity in which a commissioner or his immediate family has any interest. This subsection does not apply to publicly traded securities.

HISTORY: 2017 Act No. 13 (H.3726), Pt. III, Section 13, eff July 1, 2017.

ARTICLE 3

Investment of Funds

Editor’s Note

2005 Act No. 153, Pt IV Section 7.A, provides as follows:

“Notwithstanding the general effective date provided for this act, the transfer of the investor functions provided by this part occurs October 1, 2005.”

2005 Act No. 153, Pt V Section 1, provides as follows:

“(A) Beginning October 1, 2005, all assets and liabilities, appropriations, FTE’s, employees, contracts, real and personal property, records, and archives of the State Budget and Control Board with respect to its investment duties for the various state retirement systems are transferred to and devolved upon the Retirement System Investment Commission.

“(B) It is the intention of the General Assembly that the transfer required by this act occurs seamlessly, and to this end, the Executive Director of the State Budget and Control Board and the State Treasurer shall ensure an orderly transfer that allows no hiatus in the investment of the funds of the retirement systems.”

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 9‑16‑310.** Repealed by 2012 Act No. 278, Pt IV, Subpt 3, Section 63, eff July 1, 2012.

Editor’s Note

2012 Act No. 278, Section Pt IV, Subpt 3, 63, provides as follows:

“Effective July 1, 2012, Section 9‑16‑310 of the 1976 Code, relating to the State Retirement Systems Investment Panel, is repealed. Effective after December 31, 2013, the Deferred Compensation Commission is abolished. All of the functions and duties of the Deferred Compensation Commission are devolved upon the Board of Directors of the South Carolina Public Employee Benefit Authority as of January 1, 2014.”

Former Section 9‑16‑310 was entitled “State Retirement Systems Investment Panel; membership qualifications, terms and compensation; role in preparing annual investment plan” and was derived from 1998 Act No. 371, Section 2; 2005 Act No. 153, Pt IV, Section 3.

**SECTION 9‑16‑315.** Retirement System Investment Commission; membership; terms; qualifications; chief executive officer; chief investment officer and administrative staff; attorneys; costs and salary.

 (A) There is established the “Retirement System Investment Commission” (RSIC) consisting of eight members, seven of which have voting privileges, as follows:

 (1) two members appointed by the Governor, one of which is an active member of the South Carolina Retirement System, Police Officers Retirement System, the Judges and Solicitors Retirement System, or the National Guard Retirement System;

 (2) one member appointed by the State Treasurer;

 (3) one member appointed by the Comptroller General;

 (4) one member appointed by the Chairman of the Senate Finance Committee;

 (5) one member appointed by the Chairman of the House Ways and Means Committee;

 (6) one member who is a retired member of the South Carolina Retirement System, Police Officers Retirement System, Judges and Solicitors Retirement System, or National Guard Retirement System. This representative member must be appointed by unanimous vote of the voting members of the commission; and

 (7) the Executive Director of South Carolina Public Employee Benefit Authority, ex officio, without voting privileges.

 (B) In making appointments, the appointing authorities shall select members who are representative of the racial, gender, and geographical diversity of the State.

 Members shall serve for terms of four years and until their successors are appointed and qualify. Except for the Executive Director of the South Carolina Public Employee Benefit Authority, a person appointed may not serve until the appointing official certifies to the Secretary of State that the appointee meets or exceeds the qualifications set forth in subsections (D) and (E). A person appointed may not qualify unless he first certifies that he meets or exceeds the qualifications applicable for his appointment. Terms are deemed to expire after June thirtieth of the year in which the term is due to expire. Members are appointed for a term and may be removed before the term expires only by the Governor for the reasons provided in Section 1‑3‑240(C). A member may not be appointed to serve more than two consecutive full four‑year terms. A member serving a second or greater term, beginning July 1, 2016, may not serve an additional consecutive four‑year term upon the expiration of his term pursuant to the provisions of this subsection. A member who has served for ten or more years as of July 1, 2017, may complete the term for which he was appointed but may not be reappointed to the commission.

 (C) The commission shall select one of the voting members to serve as chairman and shall select those other officers it determines necessary.

 (D) A person may not be appointed to the commission unless the person possesses at least one of the following qualifications:

 (1) the Chartered Financial Analyst credential of the CFA Institute;

 (2) at least twelve years as a Certified Financial Planner credentialed by the Certified Financial Planner Board of Standards;

 (3) the Chartered Alternative Investment Analyst certification of the Chartered Alternative Investment Analyst Association;

 (4) at least twenty years professional actuarial experience, including at least ten as an Enrolled Actuary licensed by a Joint Board of the Department of the Treasury and the Department of Labor, to perform a variety of actuarial tasks required of pension plans in the United States by the Employee Retirement Income Security Act of 1974;

 (5) at least twenty years professional teaching experience in economics or finance, ten of which must have occurred at a doctorate‑granting university, master‑granting college or university, or a baccalaureate college as classified by the Carnegie Foundation;

 (6) an earned Ph.D. in economics or finance from a doctorate‑granting institution as classified by the Carnegie Foundation;

 (7) the Certified Internal Auditor credential of The Institute of Internal Auditors;

 (8) at least twelve years of professional experience in the financial management of pensions or insurance plans; or

 (9) at least twelve years of professional experience as a certified public accountant with financial management, pension, or insurance audit expertise.

 (E) Except for the member appointed pursuant to subsection (A)(6) and (7), a person may not be appointed or continue to serve who is an elected or appointed officer of the State or any of its political subdivisions, including school districts.

 (F) The Retirement System Investment Commission is established to invest the funds of the retirement system. All of the powers and duties of the State Budget and Control Board as investor in equity securities and the State Treasurer’s function of investing in fixed income instruments are transferred to and devolved upon the Retirement System Investment Commission.

 (G) The commission shall employ a chief executive officer who serves at the pleasure of the commission. The chief executive officer is the chief administrative officer of the commission as an agency and is charged with the affirmative duty to carry out the mission, policies, and direction of the commission as established by the commission. The chief executive officer is delegated the authority of the commission necessary, reasonable, and prudent to carry out the operation and management of the commission as an agency and to implement the commission’s decisions and directives. Notwithstanding Section 9‑16‑30, the chief executive officer may execute on behalf of the commission any documents necessary to implement a final decision to invest.

 (H)(1) The chief executive officer shall employ a chief investment officer. The chief investment officer shall develop and maintain annual investment plans and invest and oversee the investment of retirement system funds subject to the oversight of the chief executive officer.

 (2) The chief executive officer shall employ the other professional, administrative, and clerical personnel he determines necessary to support the administration and operation of the commission and fix their compensation pursuant to an organizational plan approved by the commission. All employees of the commission are employees at will and serve at the pleasure of the chief executive officer. The compensation of the chief executive officer, chief investment officer, and other employees of the commission is not subject to the state compensation plan.

 (I) Notwithstanding Section 1‑7‑170, the commission, in consultation with the Attorney General, may engage, on a fee basis, attorneys necessary to exercise its exclusive authority to invest and manage the retirement system’s assets. The commission shall establish policies and procedures for the retention of attorneys pursuant to this subsection and shall notify the Attorney General of the terms and conditions of a representation upon engagement. The commission shall provide quarterly reports to the Attorney General on attorneys retained, hourly rates, and estimated maximum fees, which he shall monitor for reasonableness and to ensure consistency with the terms and conditions of the representation.

 (J)(1) The administrative costs of the Retirement System Investment Commission must be paid from the earnings of the state retirement system.

 (2) Each commission member, except for the Executive Director of the South Carolina Public Employee Benefit Authority, shall receive an annual salary of twenty thousand dollars plus mileage and subsistence as provided by law for members of state boards, committees, and commissions. Notwithstanding any other provision of law, membership on the commission does not make a member eligible to participate in a retirement system administered pursuant to this title and does not make a member eligible to participate in the employee insurance program administered pursuant to Article 5, Chapter 11, Title 1, if the member is not otherwise eligible. Compensation paid on account of the member’s service on the commission is not considered earnable compensation for purposes of any retirement system administered pursuant to this title.

HISTORY: 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005; 2012 Act No. 278, Pt IV, Subpt 3, Section 64.A, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. III, Section 10, eff July 1, 2017.

Editor’s Note

2012 Act No. 278, Pt IV, Subpt 3, Section 64.C, provides as follows:

“Notwithstanding the provision of Section 9‑16‑315(E) as amended in this section, appointed members of the Retirement System Investment Commission serving on June 30, 2012, shall continue to serve for the remainder of their current and any succeeding terms for which they are appointed, after which their successors must have a qualification described in Section 9‑16‑315(E) as amended by this section.”

Effect of Amendment

The 2012 amendment rewrote the section.

2017 Act No. 13, Pt. III, Section 10, rewrote the section, changing certain members of the commission, adding qualifications, and requiring the commission to employ a chief executive officer.

Attorney General’s Opinions

A court would likely determine in order to serve as a Retiree Representative Member with the S.C. Retirement Investment Commission, one would have to be a resident of South Carolina. S.C. Op.Atty.Gen. (May 14, 2013) 2013 WL 2367501.

A participant in and receiver of benefits from the State Optional Retirement Program would not be eligible as a nominee to serve as a Retiree Representative Member with the S.C. Retirement Investment Commission unless the person separately qualifies as a retired member in the S.C. Retirement System. S.C. Op.Atty.Gen. (May 14, 2013) 2013 WL 2367501.

Simultaneous service as a member of the Retirement System Investment Commission and a member of the City of Aiken Zoning and Planning Commission would be dual office holding. S.C. Op.Atty.Gen. (October 3, 2012) 2012 WL 4836948.

**SECTION 9‑16‑320.** Adoption of annual investment plan; quarterly review; deliberations in executive session; independent advisors.

 (A) The commission shall meet no later than May first of each year to adopt the proposed annual investment plan for the retirement systems for the next fiscal year. The annual investment plan must be developed by the chief investment officer. No later than April first of each year, the chief investment officer shall submit the proposed plan to the commission. Amendments may be made to the plan by the commission during the fiscal year.

 (B) The commission 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 amend the plan. The commission shall meet at such other times as are set by the commission or the chairman or requested by the board.

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

 (D) A record of the commission 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) [Reserved]

 (F) [Reserved]

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

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005.

Editor’s Note

2005 Act No. 153, PT IV Section 7.B, provides as follows:

“Notwithstanding any other provision of law, the annual investment plan otherwise due to take effect July 1, 2005, may be amended to provide for implementation of the revised investment limits provided pursuant to this part and this subsection and the provisions of Section 9‑16‑340(B) of the 1976 Code, as amended by this part, take effect upon approval of this act by the Governor.”

Effect of Amendment

The 2005 amendment, in subsection (A), in the first sentence substituted “commission” for “panel”, in the second sentence “chief investment officer” for “panel”, in the third sentence “April” for “June”, “chief investment officer” for “panel”, and “commission” for “board”, and in the fourth sentence “commission” for “panel” and deleted “with the approval of the board”; in subsection (B), substituted “commission” for “panel” throughout and at the end of the first sentence substituted “amend the plan” for “recommend amendments to the plan to the board”; in subsection (C), substituted “commission” for “panel”; in subsection (D), substituted “commission” for “panel or of the Retirement System”; in subsections (D) and (F), substituted “[Reserved]” for the text which provided for administrative costs and fiduciary care, respectively; and, in subsection (G), substituted “commission” for “panel” and deleted “of the board” following “strategy”.

**SECTION 9‑16‑330.** Statement of actuarial assumptions and investment objectives; delegation of final authority to invest; components of plan; diversification; verification of investment facts; analysis and recommendations.

 (A) The commission shall provide the chief executive officer and the chief investment officer with a statement of general investment objectives. The commission also shall provide the chief executive officer and the chief investment officer with a statement of actuarial assumptions developed by the system’s actuary and approved by the board. The commission shall review the statement of general investment objectives annually for the purpose of affirming or changing it and advise the chief executive officer and the chief investment officer of its actions. The retirement system shall provide the commission, its chief executive officer and chief investment officer that data or other information needed to prepare the annual investment plan.

 (B)(1) Notwithstanding Section 9‑16‑30(A), the commission’s statement of general investment objectives may include a delegation to the chief investment officer of the final authority to invest an amount not to exceed:

 (a) two percent of the total value of portfolio assets for each investment, if the investment is in assets that are publicly tradeable and the investment provides for liquidity in ninety days or less; or

 (b) one percent of the total value of portfolio assets for each investment, if the investment is in assets that are not publicly tradeable or the investment’s liquidity provision is greater than ninety days.

 (2) Any final authority delegated to the chief investment officer pursuant to this subsection must be exercised subject to the oversight of the chief executive officer. The closing documentation of an investment made pursuant to this delegation must include the chief executive officer’s certification that the investment conforms to the amount and the extent of the delegation. Any authority exercised pursuant to this section must be exercised in a manner consistent with the limitations imposed by this section and investments may not be divided into smaller amounts in order to avoid these limitations. The commission must be notified of an investment made pursuant to any delegated authority within three business days of the investment’s closing and the investment must be reviewed with the commission at its next regularly scheduled meeting. The commission may amend, suspend, or revoke the delegation of the final authority to invest at any time and may place stricter limits on any delegated authority than those provided in this subsection.

 (C) The annual investment plan must be consistent with actions taken by the commission 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;

 (7) methods for managing the costs of the investment activities; and

 (8) a detailed description of the amount and extent of the final authority to invest made by the commission pursuant to subsection (B).

 (D) In developing the annual investment plan, the chief investment officer shall:

 (1) diversify the investments of the retirement systems, unless the commission 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 retirement systems.

 (E) Before the implementation of delegation of final investment authority from the commission to the chief investment officer, the commission’s external investment consultant shall provide an analysis of the extent of investment authority delegation in other public pension funds, including resulting investment performance, and recommendations regarding policy parameters to govern investment authority delegation. The analysis and recommendations must be completed and provided to the commission before the implementation of delegation of final investment authority to the chief investment officer.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005; 2017 Act No. 13 (H.3726), Pt. III, Section 11, eff July 1, 2017.

Effect of Amendment

The 2005 amendment rewrote subsection (A), substituting “commission” and “chief investment officer” for “panel” and adding the fourth sentence relating to information for the annual investment plan; in subsection (B), in the introductory paragraph and in paragraph (C)(1), substituted “commission” for “panel” and in subsection (C), in the introductory paragraph substituted “chief investment officer” for “panel”.

2017 Act No. 13, Pt. III, Section 11, in (A), inserted “executive officer and the chief” in four places; added (B), relating to final authority to invest certain amounts; redesignated the remaining paragraphs accordingly; added (C)(8), relating to the final authority to invest; added (E), relating to analysis of the extent of investment authority delegation in other public pension funds; and made other nonsubstantive changes.

**SECTION 9‑16‑335.** Assumed annual rate of return.

 (A) For all purposes of this title, the assumed annual rate of return on the investments of the Retirement System must be established by the General Assembly pursuant to this section. Effective July 1, 2017, the assumed annual rate of return on retirement system investments is seven and one quarter percent.

 (B) The assumed rate of return set in subsection (A) expires on July 1, 2021. A new annual rate of return must be set and made effective no later than July 1, 2021, and, every four years after, a new annual rate must be set and made effective. Before January first of each year that the assumed rate of return is due to expire, the board shall submit a proposed assumed annual rate of return for the corresponding four‑year period. The proposed assumed annual rate of return must be developed based on the recommendations of the board’s actuary and in consultation with the commission, and must be submitted to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee. If the General Assembly does not enact a joint resolution that continues or amends the assumed annual rate of return before expiration, the assumed annual rate of return developed and submitted by the board takes effect for the corresponding four‑year period until subsequent action of the General Assembly.

HISTORY: 2012 Act No. 278, Pt V, Section 68, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. I, Section 3, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. I, Section 3, added paragraph designator (A), in (A), substituted “2017” for “2016” and “seven and one quarter percent” for “seven and one‑half percent”, and added (B).

**SECTION 9‑16‑340.** Investment of retirement systems assets; annual investment plan; adoption and review.

 (A) The commission, acting through the chief investment officer, shall invest and reinvest the assets of the retirement systems as provided in Section 9‑1‑1310. The commission may employ or retain administrators, agents, consultants, or other advisors it considers necessary with respect to making investments. The chief investment officer may use the services of the State Treasurer in making nonequity security investments as the chief investment officer determines appropriate.

 (B) After receiving the proposed plan of the chief investment officer, the commission shall adopt an annual investment plan, which must be implemented by the commission through the chief investment officer. The commission shall regularly review the plan implementation and make amendments as it considers appropriate. The plan must include the minimum and maximum portions of system assets that may be allocated to equity investments on an ongoing basis not to exceed seventy percent.

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt. IV Section 3 [Subsection (A) eff July 1, 2005; subsection (B) eff June 10, 2005].

Editor’s Note

2005 Act No. 153, PT IV Section 7.B, provides as follows:

“Notwithstanding any other provision of law, the annual investment plan otherwise due to take effect July 1, 2005, may be amended to provide for implementation of the revised investment limits provided pursuant to this part and this subsection and the provisions of Section 9‑16‑340(B) of the 1976 Code, as amended by this part, take effect upon approval of this act by the Governor.”

2005 Act No. 153, Pt V Section 1, provides as follows:

“(A) Beginning October 1, 2005, all assets and liabilities, appropriations, FTE’s, employees, contracts, real and personal property, records, and archives of the State Budget and Control Board with respect to its investment duties for the various state retirement systems are transferred to and devolved upon the Retirement System Investment Commission.

“(B) It is the intention of the General Assembly that the transfer required by this act occurs seamlessly, and to this end, the Executive Director of the State Budget and Control Board and the State Treasurer shall ensure an orderly transfer that allows no hiatus in the investment of the funds of the retirement systems.”

Effect of Amendment

The 2005 amendment rewrote this section to reflect the roles of the commission and the chief investment officer and to delete subsection (C) setting forth plan requirements.

**SECTION 9‑16‑345.** Minority and minority‑owned business representation.

 In hiring and procurement in the implementation and administration of this chapter, and consistent with its duties as fiduciary under this title, the commission shall strive to assure that minorities and minority‑owned businesses are represented.

HISTORY: 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005.

**SECTION 9‑16‑350.** Use of information for self‑interest; blind trusts; violations; punishment; provisions cumulative with other laws.

 (A) It is unlawful for a member, employee, or agent of the commission or anyone acting on its behalf to use any information concerning commission activities to obtain any economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

 (B) If a member of the commission, an employee of the commission, or a member of his immediate family holds an economic interest in a blind trust, he is not considered to have violated the provisions of subsection (A) even if the acquisition of the economic interest by the blind trust would otherwise violate the provisions of subsection (A), if the existence of the blind trust and the manner of its control is disclosed to the State Ethics Commission and the commission.

 (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years and fined not more than one hundred thousand dollars.

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

HISTORY: 1998 Act No. 371, Section 2, eff May 26, 1998; 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005.

Effect of Amendment

The 2005 amendment substituted “commission” for “panel” throughout; and, in subsection (B), at the end substituted “commission for “Budget and Control Board”.

**SECTION 9‑16‑360.** Standards of conduct for fiduciary or employee of fiduciary.

 (A) In addition to and not in lieu of the provisions of Section 9‑16‑350 and Chapter 13 of Title 8, and for the purposes of this article, there are the standards of conduct provided in subsection (B) of this section that apply for a fiduciary or employee of a fiduciary.

 (B) A fiduciary or employee of a fiduciary shall:

 (1) take no action to purchase or acquire services or property for the commission or the retirement system where the fiduciary or employee of the fiduciary, their family, or their business associates have a financial interest in the services or property;

 (2) take no action to invest retirement system funds in any share, or other security if the fiduciary or employee of the fiduciary, their family, or their business associates have an interest in, are underwriters of, or receive any fees from the investment;

 (3) have no interest in the profits or receive any benefit from a contract entered into by the fiduciary;

 (4) not use their positions to secure, solicit, or accept things of value, including gifts, travel, meals and lodging, and consulting fees for payment for outside employment, from parties doing or seeking to do business with or who are interested in matters before the fiduciary;

 (5) not represent, while serving as or in the employment of the fiduciary and for one year after leaving the fiduciary, any person, in any fashion, before any public agency, with respect to any matters in which the fiduciary personally participated while serving as or employed by the fiduciary;

 (6) not take any official action on matters that will result in a benefit to themselves, their family members, or their business associates;

 (7) not, during or after their term of service, disclose or use confidential information acquired in their official capacity as fiduciary or employee of the fiduciary, without proper authorization;

 (8) not use assets of the system for their own interests;

 (9) not act on behalf of a party whose interests are adverse to the system or the fiduciary, even if the member receives no personal gain;

 (10) not have any direct or indirect interest in the gains or profits of any system investment other than the indirect interest of a passive investor holding less than five percent of the outstanding equity in a publicly‑traded security;

 (11) not make investments through or purchases from, or otherwise do any business with a former fiduciary member or employee or with a business that is owned or controlled by a former fiduciary member or employee, for a period of three years after the fiduciary member or employee leaves the fiduciary.

 The provisions of this subsection do not apply to an employee or affiliate of a fiduciary described in Section 9‑16‑10(4)(a) and (b) if the commission elects specifically to waive this application by written contract with such a fiduciary. The commission shall disclose any such waivers in its quarterly report.

 (C) A breach of the standards provided in this section is grounds for the removal of a commission member as a conflict of interest pursuant to the Governor’s removal powers under Section 1‑3‑240(C), for the dismissal of an employee of the commission, and in the case of a corporate fiduciary, at the commission’s option, voiding any contract with the fiduciary.

HISTORY: 2005 Act No. 153, Pt IV, Section 3, eff July 1, 2005; 2006 Act No. 264, Sections 5.A, 5.B, eff May 2, 2006.

Effect of Amendment

The 2006 amendment, in subsection (B), in paragraph (10) added the final clause starting with “other than the indirect interest” and added an undesignated paragraph at the end relating to waiver of application of the section to certain employees or affiliates of a fiduciary.

**SECTION 9‑16‑370.** Defense and indemnification of Retirement System Investment Commission members, officers and management employees.

 The State shall defend the members of the Retirement System Investment Commission established pursuant to this article against a claim or suit that arises out of or by virtue of their performance of official duties on behalf of the commission and must indemnify these members 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. The State shall defend officers and management employees of the commission against a claim or suit that arises out of or by virtue of performance of official duties unless the officer, or management employee was acting in bad faith and must indemnify these officers, and management employees for a loss or judgment incurred by them as a result of such 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 members, officers, and management employees after they have left their membership on or employment with the commission, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of the commission.

HISTORY: 2006 Act No. 264, Section 1, eff May 2, 2006.

Attorney General’s Opinions

A court would likely conclude that where a member of the Retirement Systems Investment Commission is subject to a criminal investigation involving acts taken as part of the member’s official duties, and the member acts in good faith, and the investigation ends in no criminal charges, the member is entitled to reimbursement for reasonable attorney fees. S.C. Op.Atty.Gen. (August 14, 2014) 2014 WL 4253409.

**SECTION 9‑16‑380.** Audit of Retirement System Investment Commission.

 Every four years the State Auditor shall employ a private audit firm to perform a fiduciary audit on the Retirement System Investment Commission. The audit firm must be selected by the State Auditor. A report from the private audit firm must be completed by January 15, 2019, and every four years after that time. Upon completion, the report must be submitted to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee.

HISTORY: 2012 Act No. 278, Pt IV, Subpt 3, Section 64.B, eff July 1, 2012; 2017 Act No. 13 (H.3726), Pt. III, Section 12, eff July 1, 2017.

Effect of Amendment

2017 Act No. 13, Pt. III, Section 12, rewrote the section, providing that the Retirement System Investment Commission be audited every four years.

ARTICLE 5

Investment Education

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 9‑16‑710.** Investment education services.

 Notwithstanding an employee’s right to obtain educational and administrative services from independent companies or vendors, or both, that offer products in the state’s retirement plans, the South Carolina Retirement Systems may provide unbiased investment education services including, but not limited to, instructional videos identifying plan types, plan provisions, and plan differences to any participant in any of the state’s retirement plans.

HISTORY: 2002 Act No. 287, Section 1, eff July 1, 2002.