

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN/TURNER
MARCH 25, 2019

CLERK OF THE HOUSE

THE GENERAL GOVERNMENT SUBCOMMITTEE PROPOSES THE
FOLLOWING AMENDMENT No. TO H. 3620
(COUNCIL\SA\3620C001.RT.SA19):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING CLAUSE AND
INSERTING:**

**/ SECTION 1.ARTICLE 9, CHAPTER 1,
TITLE 9 OF THE 1976 CODE IS AMENDED BY
ADDING:**

**“SECTION 9-1-1220. (A)(1) IF A
PARTICIPATING EMPLOYER IN THE SYSTEM
ENGAGES AN ACTIVE, INACTIVE, FORMER, OR**

RETIRED MEMBER OF THE SYSTEM TO PERFORM SERVICES FOR THE EMPLOYER, BUT HAS NOT REPORTED THE MEMBER TO THE SYSTEM AS AN EMPLOYEE, THE PARTICIPATING EMPLOYER SHALL PAY TO THE SYSTEM THE EMPLOYER CONTRIBUTION THAT WOULD BE REQUIRED IF THE MEMBER RECEIVED THE COMPENSATION AS AN ACTIVE CONTRIBUTING MEMBER OF THE SYSTEM. CONTRIBUTIONS ARE REQUIRED UNDER THIS SECTION IF THE MEMBER IS ENGAGED TO PERFORM SERVICES FOR THE EMPLOYER FOR COMPENSATION IN ANY CAPACITY, REGARDLESS OF WHETHER THE MEMBER IS CLASSIFIED AS AN EMPLOYEE, INDEPENDENT CONTRACTOR, LEASED EMPLOYEE, JOINT EMPLOYEE, OR OTHER CLASSIFICATION OF WORKER.

(2) THE CONTRIBUTION REQUIREMENTS OF THIS SECTION DO NOT APPLY IF THE MEMBER IS ENGAGED TO PERFORM SERVICES THAT TRADITIONALLY HAVE NOT BEEN PROVIDED BY EMPLOYEES OF THE PARTICIPATING EMPLOYER. IN MAKING A DETERMINATION ON WHETHER A

SERVICE TRADITIONALLY HAS BEEN PERFORMED BY EMPLOYEES OF THE PARTICIPATING EMPLOYER, THE BOARD SHALL CONSIDER WHO HAS THE RIGHT TO EXERCISE CONTROL OVER THE MEMBER IN THE PERFORMANCE OF THE SERVICE, HOW THE MEMBER IS PAID FOR THE SERVICE, WHO FURNISHES EQUIPMENT TO PERFORM THE SERVICE, AND WHO HAS THE RIGHT TO TERMINATE THE MEMBER'S PERFORMANCE OF THE SERVICE. A PARTICIPATING EMPLOYER SHALL SUBMIT ANY CERTIFICATIONS AND INFORMATION REQUIRED BY THE BOARD TO DETERMINE WHETHER THIS EXCEPTION APPLIES.

(B) A RETIRED MEMBER ENGAGED TO PERFORM SERVICES IS NOT CONSIDERED AN ACTIVE MEMBER OF THE SYSTEM AND DOES NOT ACCRUE SERVICE CREDIT IN THE SYSTEM BY REASON OF THE CONTRIBUTIONS REMITTED PURSUANT TO THIS SECTION. AN ACTIVE, INACTIVE, OR FORMER MEMBER ENGAGED TO PERFORM SERVICES IS NOT CONSIDERED AN ACTIVE MEMBER OF THE SYSTEM AND DOES NOT

ACCRUE SERVICE CREDIT IN THE SYSTEM BY REASON OF THE CONTRIBUTIONS REMITTED PURSUANT TO THIS SECTION, UNLESS THE PARTICIPATING EMPLOYER HAS REPORTED THE MEMBER AS AN ACTIVE EMPLOYEE TO THE SYSTEM AND THE REQUIRED MEMBER CONTRIBUTIONS ALSO ARE MADE.

(C) COMPENSATION RECEIVED BY A RETIRED MEMBER OF THE SYSTEM THAT IS SUBJECT TO THE CONTRIBUTION REQUIREMENTS OF THIS SECTION IS CONSIDERED COMPENSATION EARNED FROM COVERED EMPLOYMENT FOR THE PURPOSES OF THE EARNINGS LIMITATIONS SET OUT IN SECTION 9-1-1790(A).

(D) THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER REQUIREMENTS OF THIS TITLE.

(E) THIS SECTION DOES NOT REQUIRE A MEMBER OR EMPLOYER TO MAKE CONTRIBUTIONS IF THE MEMBER IS ELIGIBLE TO OPT OUT OF PARTICIPATION IN THE SYSTEM IN CONNECTION WITH THE SERVICES PROVIDED AND

THE MEMBER MAKES A TIMELY AND VALID ELECTION TO DECLINE PARTICIPATION.

(F) THE BOARD IS AUTHORIZED TO AUDIT PARTICIPATING EMPLOYERS IN THE SYSTEM, INCLUDING ANY CONTRACTS OR ARRANGEMENTS WITH THIRD PARTIES, TO VERIFY COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION OR ANY OTHER PROVISION OF THIS TITLE. THE PROVISIONS OF THIS TITLE RELATED TO THE COLLECTION OF EMPLOYER CONTRIBUTIONS TO THE SYSTEM APPLY TO ANY CONTRIBUTIONS REQUIRED BY THIS SECTION.”

SECTION 2. ARTICLE 1, CHAPTER 11, TITLE 9 OF THE 1976 CODE IS AMENDED BY ADDING:

“SECTION 9-11-240. (A)(1) IF A PARTICIPATING EMPLOYER IN THE SYSTEM ENGAGES AN ACTIVE, INACTIVE, FORMER, OR RETIRED MEMBER OF THE SYSTEM TO PERFORM SERVICES FOR THE EMPLOYER, BUT HAS NOT REPORTED THE MEMBER TO THE SYSTEM AS AN

EMPLOYEE, THE PARTICIPATING EMPLOYER SHALL PAY TO THE SYSTEM THE EMPLOYER CONTRIBUTION THAT WOULD BE REQUIRED IF THE MEMBER RECEIVED THE COMPENSATION AS AN ACTIVE CONTRIBUTING MEMBER OF THE SYSTEM. CONTRIBUTIONS ARE REQUIRED UNDER THIS SECTION IF THE MEMBER IS ENGAGED TO PERFORM SERVICES FOR THE EMPLOYER FOR COMPENSATION IN ANY CAPACITY, REGARDLESS OF WHETHER THE MEMBER IS CLASSIFIED AS AN EMPLOYEE, INDEPENDENT CONTRACTOR, LEASED EMPLOYEE, JOINT EMPLOYEE, OR OTHER CLASSIFICATION OF WORKER.

(2) THE CONTRIBUTION REQUIREMENTS OF THIS SECTION DO NOT APPLY IF THE MEMBER IS ENGAGED TO PERFORM SERVICES THAT TRADITIONALLY HAVE NOT BEEN PROVIDED BY EMPLOYEES OF THE PARTICIPATING EMPLOYER. IN MAKING A DETERMINATION ON WHETHER A SERVICE TRADITIONALLY HAS BEEN PERFORMED BY EMPLOYEES OF THE PARTICIPATING EMPLOYER, THE BOARD SHALL CONSIDER WHO

HAS THE RIGHT TO EXERCISE CONTROL OVER THE MEMBER IN THE PERFORMANCE OF THE SERVICE, HOW THE MEMBER IS PAID FOR THE SERVICE, WHO FURNISHES EQUIPMENT TO PERFORM THE SERVICE, AND WHO HAS THE RIGHT TO TERMINATE THE MEMBER'S PERFORMANCE OF THE SERVICE. A PARTICIPATING EMPLOYER SHALL SUBMIT ANY CERTIFICATIONS AND INFORMATION REQUIRED BY THE BOARD TO DETERMINE WHETHER THIS EXCEPTION APPLIES.

(B) A RETIRED MEMBER ENGAGED TO PERFORM SERVICES IS NOT CONSIDERED AN ACTIVE MEMBER OF THE SYSTEM AND DOES NOT ACCRUE SERVICE CREDIT IN THE SYSTEM BY REASON OF THE CONTRIBUTIONS REMITTED PURSUANT TO THIS SECTION. AN ACTIVE, INACTIVE, OR FORMER MEMBER ENGAGED TO PERFORM SERVICES IS NOT CONSIDERED AN ACTIVE MEMBER OF THE SYSTEM AND DOES NOT ACCRUE SERVICE CREDIT IN THE SYSTEM BY REASON OF THE CONTRIBUTIONS REMITTED PURSUANT TO THIS SECTION, UNLESS THE

PARTICIPATING EMPLOYER HAS REPORTED THE MEMBER AS AN ACTIVE EMPLOYEE TO THE SYSTEM AND THE REQUIRED MEMBER CONTRIBUTIONS ALSO ARE MADE.

(C) COMPENSATION RECEIVED BY A RETIRED MEMBER OF THE SYSTEM THAT IS SUBJECT TO THE CONTRIBUTION REQUIREMENTS OF THIS SECTION IS CONSIDERED COMPENSATION EARNED FROM COVERED EMPLOYMENT FOR THE PURPOSES OF THE EARNINGS LIMITATIONS SET OUT IN SECTION 9-11-90(4)(A).

(D) THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER REQUIREMENTS OF THIS TITLE.

(E) THIS SECTION DOES NOT REQUIRE A MEMBER OR EMPLOYER TO MAKE CONTRIBUTIONS IF THE MEMBER IS ELIGIBLE TO OPT OUT OF PARTICIPATION IN THE SYSTEM IN CONNECTION WITH THE SERVICES PROVIDED AND THE MEMBER MAKES A TIMELY AND VALID ELECTION TO DECLINE PARTICIPATION.

(F) THE BOARD IS AUTHORIZED TO AUDIT PARTICIPATING EMPLOYERS IN THE SYSTEM, INCLUDING ANY CONTRACTS OR ARRANGEMENTS WITH THIRD PARTIES, TO VERIFY COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION OR ANY OTHER PROVISION OF THIS TITLE. THE PROVISIONS OF THIS TITLE RELATED TO THE COLLECTION OF EMPLOYER CONTRIBUTIONS TO THE SYSTEM APPLY TO ANY CONTRIBUTIONS REQUIRED BY THIS SECTION.”

SECTION 3. SECTION 9-1-1790(A)(2) OF THE 1976 CODE OF LAWS IS AMENDED TO READ:

“(2) THE EARNINGS LIMITATION IMPOSED PURSUANT TO THIS ITEM DOES NOT APPLY IF THE MEMBER MEETS AT LEAST ONE OF THE FOLLOWING QUALIFICATIONS:

(A) THE MEMBER RETIRED BEFORE JANUARY 2, 2013;

(B) THE MEMBER HAS ATTAINED THE AGE OF SIXTY-TWO YEARS AT RETIREMENT; OR

(C) COMPENSATION RECEIVED BY THE RETIRED MEMBER FROM THE COVERED EMPLOYER IS FOR SERVICE IN A PUBLIC OFFICE FILLED BY THE APPOINTMENT OF THE GOVERNOR AND WITH CONFIRMATION BY THE SENATE, BY APPOINTMENT OR ELECTION BY THE GENERAL ASSEMBLY, OR BY ELECTION OF THE QUALIFIED ELECTORS OF THE APPLICABLE JURISDICTION; OR

(D) THE MEMBER HAS NOT BEEN ENGAGED TO PERFORM SERVICES FOR A PARTICIPATING EMPLOYER IN THE SYSTEM OR ANY OTHER SYSTEM PROVIDED IN THIS TITLE FOR COMPENSATION IN ANY CAPACITY, WHETHER AS AN EMPLOYEE, INDEPENDENT CONTRACTOR, LEASED EMPLOYEE, JOINT EMPLOYEE, OR OTHER CLASSIFICATION OF WORKER, FOR A PERIOD OF AT LEAST TWELVE CONSECUTIVE MONTHS SUBSEQUENT TO RETIREMENT. THE EXEMPTION PROVIDED UNDER THIS SUBITEM DOES NOT APPLY UNLESS THE MEMBER FIRST CERTIFIES TO THE SYSTEM THAT HE SATISFIES THE REQUIREMENTS FOR THE EXEMPTION. IF A MEMBER

INACCURATELY CERTIFIES THAT HE SATISFIES THE REQUIREMENTS FOR THE EXEMPTION PROVIDED IN THIS SUBITEM, THE MEMBER IS RESPONSIBLE FOR REIMBURSING THE SYSTEM FOR ANY BENEFITS WRONGLY PAID TO THE MEMBER.”

SECTION 4. SECTION 9-11-90(4)(A)(II) OF THE 1976 CODE OF LAWS IS AMENDED TO READ:

“(II) THE EARNINGS LIMITATION IMPOSED PURSUANT TO THIS ITEM DOES NOT APPLY IF THE MEMBER MEETS AT LEAST ONE OF THE FOLLOWING QUALIFICATIONS:

(A) THE MEMBER RETIRED BEFORE JANUARY 2, 2013;

(B) THE MEMBER HAS ATTAINED THE AGE OF FIFTY-SEVEN YEARS AT RETIREMENT; OR

(C) COMPENSATION RECEIVED BY THE RETIRED MEMBER FROM THE COVERED EMPLOYER IS FOR SERVICE IN A PUBLIC OFFICE FILLED BY THE APPOINTMENT OF THE GOVERNOR AND WITH CONFIRMATION BY THE SENATE, BY

APPOINTMENT OR ELECTION BY THE GENERAL ASSEMBLY, OR BY ELECTION OF THE QUALIFIED ELECTORS OF THE APPLICABLE JURISDICTION; OR

(D) THE MEMBER HAS NOT BEEN ENGAGED TO PERFORM SERVICES FOR A PARTICIPATING EMPLOYER IN THE SYSTEM OR ANY OTHER SYSTEM PROVIDED IN THIS TITLE FOR COMPENSATION IN ANY CAPACITY, WHETHER AS AN EMPLOYEE, INDEPENDENT CONTRACTOR, LEASED EMPLOYEE, JOINT EMPLOYEE, OR OTHER CLASSIFICATION OF WORKER, FOR A PERIOD OF AT LEAST TWELVE CONSECUTIVE MONTHS SUBSEQUENT TO RETIREMENT. THE EXEMPTION PROVIDED UNDER THIS SUBITEM DOES NOT APPLY UNLESS THE MEMBER FIRST CERTIFIES TO THE SYSTEM THAT HE SATISFIES THE REQUIREMENTS FOR THE EXEMPTION. IF A MEMBER INACCURATELY CERTIFIES THAT HE SATISFIES THE REQUIREMENTS FOR THE EXEMPTION PROVIDED IN THIS SUBITEM, THE MEMBER IS RESPONSIBLE FOR REIMBURSING THE SYSTEM FOR ANY BENEFITS WRONGLY PAID TO THE MEMBER.”

**SECTION 5. THIS ACT TAKES EFFECT ON
JULY 1, 2019. /**

**RENUMBER SECTIONS TO CONFORM.
AMEND TITLE TO CONFORM.**

**REPORT OF THE
GENERAL GOVERNMENT SUBCOMMITTEE
(Cobb-Hunter, Lowe, Finlay, Bannister, and Daning – Blythe Littlefield, staff)**

HOUSE BILL 3620

H. 3620 -- Reps. Pope, Tallon, Bryant, Bailey, Johnson, Forrest, Clary, Caskey, B. Cox, Elliott, Gilliam, Hixon and Wooten: A BILL TO AMEND SECTIONS 9-1-1790 AND 9-11-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RETIREMENT BENEFITS AFTER RETURNING TO COVERED EMPLOYMENT UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM AND THE POLICE OFFICERS RETIREMENT SYSTEM, RESPECTIVELY, SO AS TO REMOVE THE TEN THOUSAND DOLLAR EARNINGS LIMITATION ON EMPLOYEES RETURNING TO EMPLOYMENT WHO RETIRED BEFORE JANUARY 2, 2019.

Received by Ways and Means: 1/16/2019

Summary of Bill: As introduced, this bill removes the \$10,000 earnings limitation on employees returning to employment who retired before January 2, 2019.

Estimated Revenue Impact: Pending

Subcommittee Recommendation: Passed Favorably with Amendment

Full Committee Recommendation:

Other Notes/Comments: The amendment addresses and seeks to balance two concerns related to the contributions made to, and benefits paid from, the South Carolina Retirement Systems: (1) the receipt of retirement benefits by certain retired members who return to covered employment, and (2) the collection of contributions from participating employers to pay down the unfunded liabilities of the systems.
Please see one-pager and PEBA briefing paper attached.

2nd Reading:

Amendments:

2nd Reading Vote:

H. 3620 - State Employee Return-to-Work

Amendment - Earnings Limitation and Contribution Requirements for Outsourced Employees

The amendment addresses and seeks to balance two concerns related to the contributions made to, and benefits paid from, the South Carolina Retirement Systems: (1) the receipt of retirement benefits by certain retired members who return to covered employment, and (2) the collection of contributions from participating employers to pay down the unfunded liabilities of the systems. How the amendment addresses each of those two concerns will be discussed, in turn, below.

Earnings Limitation

- Participating employers in the South Carolina Retirement System (SCRS) and Police Officers Retirement System (PORS) have raised concerns that the imposition of the service retirement earnings limitation has impaired their ability to meet their staffing needs because it discourages certain retired members of the systems from returning to covered employment.
- The proposed amendment creates a new exception to the service retirement earnings limitation imposed upon the receipt of benefits by certain retired members of SCRS and PORS.
- Under the proposed exception, the SCRS and PORS return-to-work cap would not apply if the retired member has not been engaged to perform services for a participating employer in SCRS or PORS for compensation in any capacity, whether as an employee, independent contractor, leased employee, joint employee, or other classification of worker, for a period of at least twelve consecutive months after retirement.
- With the inclusion of the one-year separation requirement in this amendment, the systems' actuaries do not expect that the new exception will change retirement behavior in a way that would adversely affect the systems' funding.
- The new exception would not replace or repeal any of the existing exceptions to the earnings limitation, including those for members who retired before January 2, 2013, members who retire after age 62 in SCRS or age 57 in PORS, members who return to certain elected or appointed offices, and members who return to certain critical needs teaching or school resource officer positions.

Contribution Requirements for Outsourced Employees

- Through Act 13 of 2017, the General Assembly enacted several strong measures to pay off the retirement systems' unfunded liabilities on a responsible, proactive schedule. It dictated employer contribution rates on a schedule designed to significantly improve the systems' funding status, while building in a cushion for future adverse experience in the market.
- As these contribution rates have increased, a number of participating employers in the retirement systems have changed, or are considering changing, their employment practices to reduce their covered payroll and, thus, reduce the amount of contributions they will pay to the systems.
- Many participating employers in the system are taking steps to hire workers through a staffing agency or a third-party employer in order to circumvent paying these contributions.
- These workers are still performing work that would be expected to be done by a FTE but they are not classified as employees and their compensation is not included in the employer's covered payroll.
- As this employment practice expands, the associated reductions in the employer contributions to the retirement systems will have a significant adverse fiscal impact on the systems.
- The amendment would address this new practice by requiring contributions if a participating employer engages a current or former member to perform services for the employer, regardless of how the employer classifies the engagement.

South Carolina General Assembly
123rd Session, 2019-2020

H. 3620

STATUS INFORMATION

General Bill

Sponsors: Reps. Pope, Tallon, Bryant, Bailey, Johnson, Forrest, Clary, Caskey, B. Cox, Elliott, Gilliam, Hixon, Wooten and Davis

Document Path: I:\council\bill\rt\17528sa19.docx

Companion/Similar bill(s): 4249

Introduced in the House on January 16, 2019

Currently residing in the House Committee on **Ways and Means**

Summary: Not yet available

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/16/2019	House	Introduced and read first time (<u>House Journal-page 23</u>)
1/16/2019	House	Referred to Committee on Ways and Means (<u>House Journal-page 23</u>)
1/24/2019	House	Member(s) request name added as sponsor: Davis

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VERSIONS OF THIS BILL

1/16/2019

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A BILL

TO AMEND SECTIONS 9-1-1790 AND 9-11-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RETIREMENT BENEFITS AFTER RETURNING TO COVERED EMPLOYMENT UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM AND THE POLICE OFFICERS RETIREMENT SYSTEM, RESPECTIVELY, SO AS TO REMOVE THE TEN THOUSAND DOLLAR EARNINGS LIMITATION ON EMPLOYEES RETURNING TO EMPLOYMENT WHO RETIRED BEFORE JANUARY 2, 2019.

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

SECTION 1. Section 9-1-1790(A)(2)(a) of the 1976 Code is amended to read:

“(a) the member retired before January 2, ~~2013~~ 2019,”

SECTION 2. Section 9-11-90(4)(a)(ii)(A) of the 1976 Code is amended to read:

“(A) the member retired before January 2, ~~2013~~ 2019,”

SECTION 3. This act takes effect on July 1, 2019.

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