



PEBASM

SC Retirement Systems
and State Health Plan

South Carolina Public Employee Benefit Authority

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September 15, 2021

By email only to HCommLegOv@schouse.gov

The Honorable Chris Wooten
Chair, Law Enforcement and Criminal Justice Subcommittee
House Legislative Oversight Committee
Post Office Box 11867
Columbia, SC 29211

Dear Chairman Wooten:

I am in receipt of your letter dated September 10, 2021, requesting input from PEBA regarding the eligibility requirements for the South Carolina Police Officers' Retirement System (PORS) in connection with an oversight study your subcommittee is performing of the South Carolina Department of Probation, Parole, and Pardon Services (DPPPS). We appreciate the opportunity to provide input to the subcommittee on these questions, and we hope that the information provided below is helpful to the subcommittee as it performs its review. As requested, we have provided itemized responses to the subcommittee's questions below.

1. Please provide the agency's interpretation of "requires at least one thousand six hundred hours a year of active duty" in S.C. Code Section 9-11-40(4) for purposes of calculating whether an officer is eligible for police officer retirement system.

(4) All persons who become employed as police officers by the State or other employer after the employer's date of admission to the system under the provisions of this section must become members, as a condition of their employment.

Notwithstanding the provisions of this subsection, no person shall become a member on or after July 1, 1963 unless his employer certifies to the system that his service as a police officer requires at least one thousand six hundred hours a year of active duty and that the person's salary for the service is at least two thousand dollars a year. If in any year after this certification the member does not render at least one thousand six hundred hours of active duty as a police officer, or if the member does not receive at least two thousand dollars in salary, his membership ceases and the provisions of Section 9-11-100 apply.

By way of general background, in order to be eligible for membership in PORS as a police officer, an employee must be required by the terms of his or her employment to give his or her time to the preservation of public order, the protection of life and property, and the detection of crimes in this State. See generally S.C. Code Ann. § 9-11-10(23). Further, the employer must certify that the employee's service as a police officer requires at least 1,600 hours of active duty per year and that the employee's salary for such service is at least \$2,000 per year. See S.C. Code Ann. § 9-11-40(4). Accordingly, to participate in PORS, an employee must not only be employed in a position that has

duties and responsibilities that require the preservation of public order, the protection of life and property, and the detection of crimes, but the employee must also be expected to perform the duties of that law enforcement-related position for at least 1,600 hours each year, which equates to about 30 hours per week.

As reflected in the statutory employer certification requirement of Section 9-11-40(4), employers are in the best position to determine whether an employee is actually performing job duties that meet the requirements for PORS participation for at least 1,600 hours per year. Consequently, in cases where PORS eligibility will largely be dependent upon how the duties of the position are actually being carried out, an employer will be required to submit an affidavit to PEBA attesting, under penalty of perjury, that the position requires the employee to perform duties that satisfy the statutory definition of a police officer for at least 1,600 hours each year. We have enclosed a copy of this affidavit for your reference.

2. What does “active duty” mean (e.g., on the road every day, subject to being called on the road, etc.)?

As a general matter, an employee would be engaged in “active duty” as a police officer for the purposes of Section 9-11-40(4) if he or she is actively employed in, and performing the duties of, a position that meets the statutory definition for a police officer. Accordingly, an employee would not necessarily be required to walk a beat or be out on patrol to be considered on active duty as a police officer, so long as the employee is performing the duties of a qualifying police officer position. However, an employee would not be on active duty if he or she is merely “on call” or otherwise on reserve and not actively performing the duties of a police officer position.

3. How does the number of hours and active-duty requirement apply to officers who have moved to administrative positions?

All members who participate in PORS as police officers must continue to be employed in positions that meet the statutory definition of a police officer and must perform the duties of those qualifying positions for at least 1,600 hours per year in order to continue membership in PORS. With regard to supervisory or administrative positions, the South Carolina Attorney General’s office has historically advised the retirement systems that an employee who is not necessarily in a frontline police officer position may continue to participate in PORS where that employee is directly responsible for the supervision of other employees who are required to preserve public order, protect life and property, and detect crimes and the employee’s duty to ensure that such responsibilities are carried out remains his or her predominate responsibility. Accordingly, the Attorney General’s office has found that supervisory personnel, such as a city chief of police/public safety director, a county detention center manager, and the State Fire Marshal, are eligible for participation in PORS, even though they do not service in frontline positions.

However, if an employee is employed in a purely administrative position that does not have direct or supervisory responsibility for the preservation of public order, the protection of life and property, and the detection of crimes, or in a position that otherwise has duties and responsibilities that do not predominately relate to such law enforcement functions, the employee would not generally be eligible for participation in PORS, regardless of whether he or she has previously participated in PORS or not.

Again, we hope that the information provided in this letter will assist your subcommittee as it carries out its review of DPPPS. If you or any other subcommittee members have any questions regarding this

information or if we can be of any further assistance to the subcommittee on these matters, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Peggy G. Boykin". The signature is written in a cursive style with a large initial "P".

Peggy G. Boykin, CPA
Executive Director

Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF COUNTY NAME.)
_____)

EMPLOYER AFFIDAVIT
AND CERTIFICATION OF
POLICE OFFICERS RETIREMENT
SYSTEM (PORS) ELIGIBILITY

PERSONALLY APPEARED before me, Name of Affiant, who first being duly sworn, deposes and says:

1. I am the Title of Affiant of Name of Employer (“Employer”), a participating employer in the South Carolina Police Officers’ Retirement System (“PORS”).
2. In that capacity, I am familiar with the duties and responsibilities of the employees of the Employer and have been authorized to execute this affidavit on its behalf.
3. I understand that PORS was established to provide enhanced benefits because “the physical qualifications for the services of police officers require an earlier retirement age than other employees of the State” and because “the dangerous character of their services justifies higher retirement benefits.”
4. I understand that, pursuant to Section 9-11-40(4) of the South Carolina Code of Laws, no person may become a member of PORS unless his or her employer certifies that the person meets the eligibility requirements for PORS participation.
5. I further understand that, pursuant to Section 9-11-320 of the South Carolina Code of Laws, “[a]ny person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record of the System in any attempt to defraud the System, as a result of such act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding twelve months, or both in the discretion of the court.”
6. I certify that Name of PORS Enrollee (“Employee”) is an employee of the Employer and currently holds the position of PORS Enrollee’s Position Title.
7. I further certify that in his/her capacity in that position, Employee is eligible to participate in PORS as a (check the appropriate category):
 - Police officer, because he/she is required by the terms of his/her employment to give his/her time to the exercise of traditional law enforcement powers and responsibilities, including: (i) the preservation of public order, (ii) the protection of life and property, and (iii) the detection of crimes in the state.
 - Firefighter, because he/she is required by the terms of his/her employment to give his/her time to prevention and control of property destruction by fire, including actual firefighting duties.
 - Peace officer, because he/she is employed by the South Carolina Department of Corrections, South Carolina Department of Juvenile Justice, or South Carolina

Department of Mental Health and by the terms of his/her employment has the status of a peace officer with respect to the custody and control of inmates pursuant to Section 24-1-280 of the South Carolina Code of Laws.

- 8. I also attest that, in his/her capacity in that position, Employee is required to devote at least 1,600 hours per year of active duty to performing the police officer, firefighter, or peace officer duties listed in paragraph 7 above, and that he/she receives at least \$2,000 salary per year for the performance of those duties.
- 9. I hereby certify, under penalty of perjury, that all of the foregoing information in this affidavit is true and correct to the best of my knowledge.

Signature

Title

Employer Name

Sworn to and subscribed before me this
____ day of _____ 20__.

Notary Public for the State of South Carolina

Notary Printed Name

My commission expires: _____