~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

March 2, 2017

**S. 394**

Introduced by Senators Sheheen, Jackson, Nicholson, Scott, Bennett and Gambrell

S. Printed 3/2/17--S.

Read the first time February 9, 2017.

**A** **BILL**

TO AMEND SECTION 9‑1‑1085, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA RETIREMENT SYSTEM EMPLOYER AND EMPLOYEE CONTRIBUTION RATES, SO AS TO CHANGE FUTURE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES AND TO REQUIRE THAT THE UNFUNDED LIABILITIES OF THE SYSTEM MUST BE ON A CERTAIN AMORTIZATION SCHEDULE; TO AMEND SECTION 9‑11‑225, RELATING TO THE POLICE OFFICERS RETIREMENT SYSTEM EMPLOYER AND EMPLOYEE CONTRIBUTION RATES, SO AS TO CHANGE FUTURE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES AND TO REQUIRE THAT THE UNFUNDED LIABILITIES OF THE SYSTEM MUST BE ON A CERTAIN AMORTIZATION SCHEDULE; TO AMEND SECTION 9‑16‑335, RELATING TO THE ASSUMED RATE OF RETURN, SO AS TO CHANGE THE ASSUMED RATE OF RETURN TO SEVEN AND ONE QUARTER PERCENT AND TO PROVIDE THAT THE ASSUMED RATE OF RETURN EXPIRES EVERY FOUR YEARS; TO AMEND SECTION 9‑4‑10, RELATING TO THE TERM OF MEMBERS OF THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY (PEBA), SO AS TO CHANGE THE TERM FROM TWO TO FIVE YEARS AND TO REQUIRE THE BOARD TO EMPLOY AN EXECUTIVE DIRECTOR; TO AMEND SECTION 9‑4‑40, RELATING TO THE AUDIT OF PEBA, SO AS TO REQUIRE PEBA TO BE AUDITED EVERY FOUR YEARS; TO AMEND SECTION 9‑16‑10, AS AMENDED, RELATING TO RETIREMENT SYSTEM FUNDS “FIDUCIARY” DEFINITION, SO AS TO ADD THE COMMISSION’S “CHIEF EXECUTIVE OFFICER” TO THE DEFINITION; TO AMEND SECTION 9‑16‑90, AS AMENDED, RELATING TO CERTAIN INVESTMENT REPORTS, SO AS TO PROVIDE THAT CERTAIN REPORTS MUST CONTAIN A SCHEDULE OF NET MANAGER FEES AND EXPENSES; TO AMEND SECTION 9‑16‑315, AS AMENDED, RELATING TO THE RETIREMENT SYSTEM INVESTMENT COMMISSION, SO AS TO CHANGE CERTAIN MEMBERS OF THE COMMISSION, TO ADD QUALIFICATIONS, AND TO REQUIRE THE COMMISSION TO EMPLOY AN EXECUTIVE DIRECTOR; TO AMEND SECTION 9‑16‑330, AS AMENDED, RELATING TO CERTAIN STATEMENTS OF ACTUARIAL ASSUMPTIONS AND INVESTMENT OBJECTIVES, SO AS TO ALLOW FOR CERTAIN DELEGATIONS TO THE CHIEF INVESTMENT OFFICER, AND TO REQUIRE THE INVESTMENT PLAN TO INCLUDE THE FINAL AUTHORITY TO INVEST MADE BY THE COMMISSION; TO AMEND SECTION 9‑16‑380, RELATING TO THE AUDIT OF THE RETIREMENT SYSTEM INVESTMENT COMMISSION, SO AS TO PROVIDE THAT THE RETIREMENT SYSTEM INVESTMENT COMMISSION BE AUDITED EVERY FOUR YEARS; BY ADDING SECTION 9‑16‑100 SO AS TO PLACE CERTAIN RESTRICTIONS ON LOBBYISTS AND TO PROHIBIT THE COMMISSION FROM MAKING CERTAIN INVESTMENTS; TO AMEND SECTION 9‑1‑1310, AS AMENDED, RELATING TO THE TRUSTEE OF THE RETIREMENT SYSTEM, SO AS TO CHANGE A TRUSTEE FROM THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO THE RETIREMENT SYSTEM INVESTMENT COMMISSION; TO AMEND SECTION 9‑1‑1320, RELATING TO THE CUSTODY OF THE ASSETS OF THE RETIREMENT SYSTEM, SO AS TO CHANGE THE CUSTODIAN OF THE ASSETS FROM THE STATE TREASURER TO THE BOARD OF DIRECTORS OF PEBA; TO AMEND SECTION 1‑3‑240, AS AMENDED, RELATING TO THE REMOVAL OF OFFICERS BY THE GOVERNOR, SO AS TO ADD THE SOUTH CAROLINA RETIREMENT INVESTMENT COMMISSION MEMBERS AND THE SOUTH CAROLINA PUBLIC BENEFIT AUTHORITY MEMBERS; AND TO REPEAL SECTIONS 9‑4‑45, 9‑8‑170, 9‑9‑160, 9‑10‑80, AND 9‑11‑250 RELATING TO POLICY DETERMINATIONS AND THE CUSTODY OF FUNDS FOR THE RETIREMENT SYSTEM FOR JUDGES AND SOLICITORS, THE RETIREMENT SYSTEM FOR MEMBERS OF THE GENERAL ASSEMBLY, THE NATIONAL GUARD RETIREMENT SYSTEM, AND THE POLICE OFFICERS RETIREMENT SYSTEM.

Amend Title To Conform

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

Part I

Funding of the Retirement System

SECTION 1. Section 9‑1‑1085 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Section 9‑1‑1085. (A) As provided in Sections 9‑1‑1020 and 9‑1‑1050, the employer and employee contribution rates for the system beginning in Fiscal Year ~~2012‑2013~~ 2017‑2018, expressed as a percentage of earnable compensation, are as follows:

Fiscal Year Employer Contribution Employee Contribution

~~2012‑2013~~ ~~10.60~~ ~~7.00~~

~~2013‑2014~~ ~~10.60~~ ~~7.50~~

~~2014‑2015 and after~~ ~~10.90~~ ~~8.00~~

2017‑2018 13.56 9.00

2018‑2019 14.56 9.00

2019‑2020 15.56 9.00

2020‑2021 16.56 9.00

2021‑2022 17.56 9.00

2022‑2023 18.56 9.00

2023‑2024 18.56 9.00

2024‑2025 18.56 9.00

2025‑2026 18.56 9.00

2026‑2027 and after 18.56 9.00

The employer contribution rate set out in this schedule includes contributions for participation in the incidental death benefit plan provided in Sections 9‑1‑1770 and 9‑1‑1775. The employer contribution rate for employers that do not participate in the incidental death benefit plan must be adjusted accordingly.

(B) After June 30, ~~2015~~ 2027, the board may increase the percentage rate in employer ~~and employee~~ contributions for the system on the basis of the actuarial valuation~~, but any such increase may not result in a differential between the employee and employer contribution rate for the system that exceeds 2.9 percent of earnable compensation~~. An increase in the employer contribution rate adopted by the board pursuant to this section may not provide for an increase in an amount of more than one‑half of one percent of earnable compensation in any one year.

(C)(1) The unfunded actuarial accrued liability (UAAL) of the system as determined by the annual actuarial valuation must be amortized over a funding period that does not exceed the following schedule:

Fiscal Year Funding Period

2017‑2018 30 years

2018‑2019 29 years

2019‑2020 28 years

2020‑2021 27 years

2021‑2022 26 years

2022‑2023 25 years

2023‑2024 24 years

2024‑2025 23 years

2025‑2026 22 years

2026‑2027 21 years

2027‑2028 and after 20 years

(2) If the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B), are insufficient to ~~maintain a thirty year~~ ~~amortization schedule for the unfunded liabilities of the system~~ meet the funding period set forth in item (1) for the applicable year, then the board shall increase the employer contribution rate ~~as provided in subsection (A) or as last adopted by the board~~ ~~in equal percentage amounts for employer and employee contributions~~ as necessary to ~~maintain an amortization schedule of no more than thirty years~~ meet the funding period set forth in item (1). Such adjustments may be made without regard to the annual limit increase of one‑half percent of earnable compensation provided pursuant to subsection (B)~~, but the differential in the employer and employee contribution rates provided in subsection (A) or subsection (B), as applicable, of this section must be maintained at the rate provided in the schedule for the applicable fiscal year~~. Participating employers must be notified of any contribution rate increase required by this item by July first of the fiscal year preceding the fiscal year in which the increase takes effect.

(D)(1) After June 30, ~~2015~~ 2027, if the most recent annual actuarial valuation of the system shows a ratio of the actuarial value of system assets to the actuarial accrued liability of the system (the funded ratio) that is equal to or greater than ~~ninety~~ eighty‑five percent, then the board, effective on the following July first, may decrease the then current employer and employee contribution rates in equal amounts upon making a finding that the decrease will not result in a funded ratio of less than ~~ninety~~ eighty‑five percent. ~~Any decrease in contribution rates must maintain the 2.9 percent differential between employer and employee contribution rates provided pursuant to subsection (B) of this section.~~

(2) If contribution rates are decreased pursuant to item (1) of this subsection and the most recent annual actuarial valuation of the system shows a funded ratio of less than ~~ninety~~ eighty‑five percent, then effective on the following July first, and annually ~~thereafter~~ after that time as necessary, the board shall increase the then current employer and employee contribution rates ~~as provided pursuant to subsection (B) of this section~~ in equal amounts not exceeding one‑half of one percent of earnable compensation in any one year until a subsequent annual actuarial valuation of the system shows a funded ratio that is equal to or greater than ~~ninety~~ eighty‑five percent. However, the employee contribution rate may not exceed nine percent and any contribution increase required by this item after the employee contribution rate equals nine percent must be an employer contribution rate.

(E) When there is no longer an unfunded actuarial accrued liability (UAAL) of the system as determined by the annual actuarial valuation, all new employees must participate in a defined contribution retirement plan.”

SECTION 2. Section 9‑11‑225 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Section 9‑11‑225. (A) As provided in Sections 9‑11‑210 and 9‑11‑220, the employer and employee contribution rates for the system beginning in Fiscal Year ~~2012‑2013~~ 2017‑2018, expressed as a percentage of earnable compensation, are as follows:

Fiscal Year Employer Contribution Employee Contribution

~~2012‑2013~~ ~~12.30~~ ~~7.00~~

~~2013‑2014~~ ~~12.50~~ ~~7.50~~

~~2014‑2015 and after~~ ~~13.00~~ ~~8.00~~

2017‑2018 16.24 9.75

2018‑2019 17.24 9.75

2019‑2020 18.24 9.75

2020‑2021 19.24 9.75

2021‑2022 20.24 9.75

2022‑2023 21.24 9.75

2023‑2024 21.24 9.75

2024‑2025 21.24 9.75

2025‑2026 21.24 9.75

2026‑2027 and after 21.24 9.75

The employer contribution rate set out in this schedule includes contributions for participation in the incidental death benefit plan provided in Sections 9‑11‑120 and 9‑11‑125 and for participation in the accidental death benefit program provided in Section 9‑11‑140. The employer contribution rate for employers that do not participate in these programs must be adjusted accordingly.

(B) After June 30, ~~2015~~ 2027, the board may increase the percentage rate in employer ~~and employee~~ contributions for the system on the basis of the actuarial valuation~~, but any such increase may not result in a differential between the employee and employer contribution rate for that system that exceeds 5.00 percent of earnable compensation~~. An increase in the employer contribution rate adopted by the board pursuant to this section may not provide for an increase in an amount of more than one‑half of one percent of earnable compensation in any one year.

(C)(1) The unfunded actuarial accrued liability (UAAL) of the system as determined by the annual actuarial valuation must be amortized over a funding period that does not exceed the following schedule:

Fiscal Year Funding Period

2017‑2018 30 years

2018‑2019 29 years

2019‑2020 28 years

2020‑2021 27 years

2021‑2022 26 years

2022‑2023 25 years

2023‑2024 24 years

2024‑2025 23 years

2025‑2026 22 years

2026‑2027 21 years

2027‑2028 and after 20 years

(2) If the scheduled employer and employee contributions provided in subsection (A), or the rates last adopted by the board pursuant to subsection (B), are insufficient to ~~maintain a thirty year~~ ~~amortization schedule for the unfunded liabilities of the system~~ meet the funding period set forth in item (1), for the applicable year, then the board shall increase the employer contribution rate ~~as provided in subsection (A) or as last adopted by the board~~ ~~in equal percentage amounts for employer and employee contributions~~ as necessary to ~~maintain an amortization schedule of no more than thirty years~~ meet the funding period set forth in item (1). Such adjustments may be made without regard to the annual limit increase of one‑half percent of earnable compensation provided pursuant to subsection (B)~~, but the differential in the employer and employee contribution rates provided in subsection (A) or subsection (B), as applicable, of this section must be maintained at the rate provided in the schedule for the applicable fiscal year~~. Participating employers must be notified of any contribution rate increase required by this item by July first of the fiscal year preceding the fiscal year in which the increase takes effect.

(D)(1) After June 30, ~~2015~~ 2027, if the most recent annual actuarial valuation of the system shows a ratio of the actuarial value of system assets to the actuarial accrued liability of the system (the funded ratio) that is equal to or greater than ~~ninety~~ eighty‑five percent, then the board, effective on the following July first, may decrease the then current employer and employee contribution rates in equal amounts upon making a finding that the decrease will not result in a funded ratio of less than ~~ninety~~ eighty‑five percent. ~~Any decrease in contribution rates must maintain the 5.0 percent differential between employer and employee contribution rates provided pursuant to subsection (B) of this section.~~

(2) If contribution rates are decreased pursuant to item (1) of this subsection and the most recent annual actuarial valuation of the system shows a funded ratio of less than ~~ninety~~ eighty‑five percent, then effective on the following July first, and annually ~~thereafter~~ after that time as necessary, the board shall increase the then current employer and employee contribution rates ~~as provided pursuant to subsection (B) of this section~~ in equal amounts not exceeding one‑half of one percent of earnable compensation in any one year until a subsequent annual actuarial valuation of the system shows a funded ratio that is equal to or greater than ~~ninety~~ eighty‑five percent. However the employee contribution rate may not exceed nine and three quarters of one percent and any contribution increase required by this item after the employee contribution rate equals nine and three quarters of one percent must be an increase in the employer contribution rate.

(E) When there is no longer an unfunded actuarial accrued liability (UAAL) of the system as determined by the annual actuarial valuation, all new employees must participate in a defined contribution retirement plan.”

SECTION 3. Section 9‑16‑335 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Section 9‑16‑335. (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, ~~2012~~ 2017, the assumed annual rate of return on retirement system investments is seven ~~and one~~‑~~half~~ 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.”

Part II

Public Employee Benefit Authority

SECTION 4. Section 9‑4‑10 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Section 9‑4‑10. (A) Effective July 1, 2012, there is created the South Carolina Public Employee Benefit Authority. The sole governing body of the authority is a board of directors consisting of eleven members. The functions of the authority must be performed, exercised, and discharged under the supervision and direction of the board of directors.

(B)(1) The board is composed of:

(a) three nonrepresentative members appointed by the Governor;

(b) two members appointed by the President Pro Tempore of the Senate, one a nonrepresentative member and one a representative member who is either an active or retired member of SCPORS;

(c) two members appointed by the Chairman of the Senate Finance Committee, one a nonrepresentative member and one a representative member who is a retired member of SCRS;

(d) two members appointed by the Speaker of the House of Representatives, one a nonrepresentative member and one a representative member who must be a state employee who is an active contributing member of SCRS; and

(e) two members appointed by the Chairman of the House Ways and Means Committee, one a nonrepresentative member and one a representative member who is an active contributing member of SCRS employed by a public school district.

(2) For purposes of the appointments provided by this section, a nonrepresentative member may not belong to those classes of employees and retirees from whom representative members must be appointed.

(C)(1) A nonrepresentative member may not be appointed to the board unless the person possesses at least one of the following qualifications:

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

(b) at least twelve years academic experience and holds a bachelor’s or higher degree from a college or university as classified by the Carnegie Foundation;

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

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

(e) at least twelve years membership in the South Carolina Bar and extensive experience in one or more of the following areas of law:

(i) taxation;

(ii) insurance;

(iii) health care;

(iv) securities;

(v) corporate;

(vi) finance; or

(vii) the Employment Retirement Income Security Act (ERISA).

(2) A representative member may not be appointed to the board unless the person:

(a) possesses one of the qualifications set forth in item (1); or

(b) has at least twelve years of public employment experience and holds a bachelor’s degree from a college or university as classified by the Carnegie Foundation.

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

(E) Members of the board shall serve for terms of ~~two~~ four years and until their successors are appointed and qualify, except that the terms of the board members appointed by the Governor on July 1, 2016 expire on June 30, 2018, the terms of the nonrepresentative board members appointed by members of the General Assembly on July 1, 2016 expire on June 30, 2019, and the terms of the representative board members appointed by members of the General Assembly on July 1, 2016 expire on June 30, 2020. Vacancies must be filled within sixty days in the manner of original appointment for the unexpired portion of the term. Terms ~~commence on July first of even numbered years~~ expire after June thirtieth of the year in which the term is due to expire. Upon a ~~member’s~~ person’s appointment, the appointing official shall certify to the Secretary of State that the appointee meets or exceeds the qualifications set forth in subsections (B) and (C). ~~No~~ A person appointed may not qualify unless he first certifies that he meets or exceeds the qualifications applicable for their appointment. A member ~~serves at the pleasure of the member’s appointing authority~~ 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 four‑year terms, except that a member of the board who has five or more years of consecutive service on the board at the expiration of his term, beginning July 1, 2016, may not be appointed to serve for more than one additional consecutive four‑year term.

~~(E)~~(F) The members shall select a nonrepresentative member to serve as chairman and shall select those other officers they determine necessary. Subject to the qualifications for chairman provided in this section, members may set their own policy related to the rotation of the selection of a chairman of the board.

~~(F)~~(G)(1) Each member ~~must~~ shall receive an annual salary of twelve thousand dollars. This compensation must be paid from approved accounts of general funds and retirement system funds based on the proportionate amount of time the board devotes to its various functions. Members may receive the mileage and subsistence authorized by law for members of state boards, commissions, and committees paid from approved accounts funded by general funds and retirement system funds in the proportion that compensation is paid.

(2) Notwithstanding any other provision of law, membership on the board 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. Any compensation paid on account of the member’s service on the board is not considered earnable compensation for purposes of any state retirement system.

~~(G)~~(H) Minimally, the board shall meet ~~monthly~~ quarterly and at other times set by the board. If the chairman considers it more effective, the board may meet by teleconferencing or video conferencing. However, if the agenda of the meeting consists of items that are not exempt from disclosure or the meeting may not be closed to the public pursuant to Chapter 4, Title 30, the provisions of Chapter 4, Title 30 apply, and the meeting must be open to the public.

~~(H)~~(I) Effective July 1, 2012, the following offices, divisions, or components of the State Budget and Control Board are transferred to, and incorporated into, an administrative agency of state government to be known as the South Carolina Public Employee Benefit Authority:

(1) Employee Insurance Program; and

(2) the Retirement Division.

(J) The board shall employ an executive director who will serve at the pleasure of the board. The executive director is the chief administrative officer of the authority as an agency and is charged with the affirmative duty to carry out the mission, policies, and direction of the board as established by the board. The executive director is delegated all the authority of the board necessary, reasonable, and prudent to carry out the operation and management of the authority as an agency and to implement the board’s decisions and directives. The executive director shall employ the other professional, administrative, and clerical personnel he determines necessary to support the administration and operation of the authority and fix their compensation pursuant to an organizational plan approved by the authority.

(K) Members of the board and the executive director, and other employees or agents designated by the board, are fiduciaries of the authority and in discharging their duties as fiduciaries shall act:

(1) only in the interest of the participants and beneficiaries of the employee benefit plans administered by the authority;

(2) for the exclusive purpose of providing retirement and insurance benefits to participants and beneficiaries of the employee benefit plans administered by the authority and paying reasonable expenses of administering those employee benefit plans;

(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 and other applicable provisions of law.

(L)(1) A board member or other fiduciary employed by the authority who breaches a duty imposed by this section personally is liable to the affected employee benefit plan administered by the authority for any losses resulting from the breach and any profits resulting from the breach or made by the board member or other fiduciary through use of assets of the employee benefit plan by the board member or other fiduciary. The board member or other fiduciary is subject to other equitable remedies, as the court considers appropriate, including removal.

(2) An agreement that purports to limit the liability of a fiduciary for a breach of duty under this section is void.

(3) The authority may insure a fiduciary or itself against liability or losses occurring because of a breach of duty under this section.

(4) A fiduciary may insure against personal liability or losses occurring because of a breach of duty under this section if the insurance is purchased or provided by the individual fiduciary, but a fiduciary who obtains insurance pursuant to this section shall disclose all terms, conditions, and other information relating to the insurance policy to the authority.

(5) Nothing in this subsection may be construed to limit the applicability of the provisions of Section 9‑4‑15.”

SECTION 5. Section 9‑4‑40 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑4‑40. ~~Each year in the general appropriations act, the General Assembly shall appropriate sufficient funds to the Office of the State Inspector General to~~ Every four years the State Auditor shall employ a private audit firm to perform a fiduciary audit on the South Carolina Public Employee Benefit Authority. The audit firm must be selected by the ~~State Inspector General~~ State Auditor. ~~The~~ A report from ~~the previous fiscal year~~ the private audit firm must be completed by January ~~fifteenth~~ 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.”

SECTION 6. Section 9-1-240 of the 1976 Code is amended to read:

“Section 9-1-240. The Board shall designate an actuary, subject to the approval of the State Fiscal Accountability Authority or its successor, who ~~shall be~~ is the technical advisor of the Board on matters regarding the operation of the System and shall perform such other duties as are required in connection therewith, provided, however, that the Retirement System Investment Commission is a third-party beneficiary of the contract with the actuary, with full rights to all actuarial valuations prepared by the actuary. The board shall provide to the State Fiscal Accountability Authority or its successor actuarial valuations and reports requested.”

Part III

Retirement System Investment Commission

SECTION 7. Section 9‑16‑10(4) of the 1976 Code, as last amended by Act 153 of 2005, is further amended by adding an appropriately lettered subitem to read:

“( ) is the commission’s chief executive officer.”

SECTION 8. Section 9-16-30 of the 1976 Code, as last amended by Act 153 of 2005, is further amended by adding an appropriately lettered subsection to read:

“( ) 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.”

SECTION 9. Section 9‑16‑90(B) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

“(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 ~~total~~ general administrative expense 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; ~~and~~

(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; and

(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.

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

(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 manager.”

SECTION 10. Section 9‑16‑315 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑16‑315. (A) There is established the ‘Retirement System Investment Commission’ (RSIC) consisting of ~~seven~~ eight members, seven of which have voting privileges, as follows:

(1) ~~one~~ two ~~member~~ 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~~, ex officio~~;

(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 ~~of the House of Representatives~~;

(6) one member who is a retired member of the ~~retirement system~~ 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) ~~The State Treasurer may appoint a member to serve in his stead. A member appointed by the State Treasurer shall serve for a term coterminous with the State Treasurer and must possess at least one of the qualifications provided in subsection (E). Once appointed, this member may not be removed except as provided in subsection (C)~~ In making appointments, the appointing authorities shall select members who are representative of the racial, gender, and geographical diversity of the State.

~~(C)~~ ~~Except as provided in subsection (B), members~~ Members shall serve for terms of ~~five~~ four years and until their successors are appointed and qualify~~, except that of those first appointed, the appointees of the Comptroller General and the Chairman of the Senate Finance Committee shall serve for terms of three years and the appointee of the Chairman of the Committee on Ways and Means and the representative appointee shall serve for terms of one year~~. 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.

~~(D)~~(C) The commission shall select one of the voting members to serve as chairman and shall select those other officers it determines necessary~~, but the State Treasurer may not serve as chairman~~.

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

(3) ~~reserved~~ 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’s 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; ~~or~~

(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.

~~(F)~~(E) ~~Not including the State Treasurer~~ Except for the member appointed pursuant to subsection (A)(6) and (7), ~~no~~ a person may not be appointed or continue to serve who is an elected or appointed officer ~~or employee~~ of the State or any of its political subdivisions, including school districts.

~~(G)~~(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) ~~To assist the commission in its investment function, it~~ The chief executive officer shall employ a chief investment officer~~, who under the direction and supervision of the commission, and as its agent~~. 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. ~~The chief investment officer serves at the pleasure of the commission and must receive the compensation the commission determines appropriate.~~

(2) The ~~commission may~~ chief executive officer shall employ the other professional, administrative, and clerical personnel ~~it~~ 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.

~~(H)~~(J)(1) The administrative costs of the Retirement System Investment Commission must be paid from the earnings of the state retirement system ~~in the manner provided in Section 9‑1‑1310~~.

(2) ~~Effective beginning July 1, 2012,~~ Each commission member, ~~not including~~ except for the Executive Director of the South Carolina Public Employee Benefit Authority, ~~must~~ 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 ~~paid as provided pursuant to item (1) of this subsection~~. 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.”

SECTION 11. Section 9‑16‑330 of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

“Section 9‑16‑330. (A) The commission shall provide the chief executive officer and the chief investment officer with a statement of general investment objectives. The commission ~~shall~~ 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, ~~and~~ 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; ~~and~~

(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).

~~(C)~~(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.”

SECTION 12. Section 9‑16‑380 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Section 9‑16‑380. ~~Each year in the general appropriations act, the General Assembly shall appropriate sufficient funds to the Office of the State Inspector General to~~ 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 ~~Inspector General~~ Auditor. ~~The~~ A report from the ~~previous fiscal year~~ private audit firm must be completed by January ~~fifteenth~~ 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.”

SECTION 13. Article 1, Chapter 16, Title 9 of the 1976 Code is amended by adding:

“Section 9‑16‑100. (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.”

Part IV

Administration of Retirement System Funds

SECTION 14. Section 9‑1‑1310(A) of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“(A) The South Carolina Public Employee Benefit Authority and the ~~State Fiscal Accountability Authority, or its successor,~~ Retirement System Investment Commission are cotrustees of the assets of the retirement system as ‘assets’ and ‘retirement system’ ~~is~~ are defined in Section 9‑16‑10(1) and (8) ~~in performing the functions imposed on them by law in the governance of the Retirement System~~. Notwithstanding any other provision of law, any reference in law to the trustee of the assets of the Retirement System must be construed to conform to the cotrusteeship as provided in this subsection. The Public Employee Benefit Authority shall hold the assets of the Retirement System in a group trust as provided in Section 9‑16‑20. The Retirement System Investment Commission shall invest and reinvest the ~~funds~~ assets of the retirement system ~~as ‘retirement system’ is defined in Section 9‑16‑10(8)~~, subject to all the terms, conditions, limitations, and restrictions imposed by Section 16, Article X of the South Carolina Constitution, 1895, subsection (B) of this section, and Chapter 16 of this title.”

SECTION 15. Section 9‑1‑1320 of the 1976 Code is amended to read:

“Section 9‑1‑1320. (A) The ~~State Treasurer~~ board ~~shall be~~ is the custodian of the ~~funds~~ assets of the Retirement System as ‘assets’ and ‘retirement system’ are defined in Section 9‑16‑10(1) and (8), and the Retirement System Investment Commission has the exclusive authority to select the custodial bank, provided, however, that the Public Employee Benefit Authority is a third‑party beneficiary of the contract with the custodial bank with full rights to information under them. ~~All payments from such funds shall be made by him only upon vouchers signed by two persons designated by the Board.~~ The custodial banking agreement may provide for electronic signatory approval.

(B)(1) A custodial bank selected by the commission must:

(a) be a United States domiciled trust company and a member of the Federal Reserve;

(b) have in excess of one trillion dollars of assets under custody;

(c) have provided custody services for at least the previous fifteen years; and

(d) provide custody services to other public fund institutional clients that individually have assets under management that meet or exceed the amount of assets managed by the commission.

(2) Nothing in this subsection prohibits the commission from imposing more stringent or additional qualifications as part of its selection process.”

Part V

Miscellaneous and Time Effective

SECTION 16. Section 1‑3‑240(C)(1) of the 1976 Code, as last amended by Act 275 of 2016, is further amended by adding appropriately lettered subitems to read:

“( ) South Carolina Retirement Investment Commission members appointed by the Governor or members of the General Assembly;

( ) South Carolina Public Benefit Authority members.”

SECTION 17. Section 9-16-50(A) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

“(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; and

(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~~.”

SECTION 18. Sections 9‑4‑45, 9‑8‑170, 9‑9‑160, 9‑10‑80, and 9‑11‑250 of the 1976 Code are repealed.

SECTION 19. This act takes effect on July 1, 2017.

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