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COMMITTEE REPORT

March 31, 2022

**H. 4918**

Introduced by Reps. Thayer, Pope, White, Erickson, Gilliam and Long

S. Printed 3/31/22--H.

Read the first time February 3, 2022.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4918) to amend Section 9‑11‑90, Code of Laws of South Carolina, 1976, relating to the earnings limitation upon return to covered employment in the South Carolina Police, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 9‑11‑90(4)(a)(ii) of the 1976 Code 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;

(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; or

(E) compensation received by the retired member from the covered employer is for employment in a critical needs law enforcement position as determined by the Law Enforcement Training Council. For the provisions of this subitem to apply, the Law Enforcement Training Council must review and approve, from the documentation provided by the covered employer, that no qualified, nonretired member is available for employment in the position, and that the member selected for employment meets the requirements of this subitem. No later than January 1, 2023, and each January first thereafter, the Law Enforcement Training Council must submit a report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee of the positions requested for inclusion in the earnings limitation exception under this subitem for the following fiscal year. Effective July 1, 2023, and each July first thereafter, the earnings limitation exception provided in this subitem only applies to those positions approved by action of the General Assembly for the fiscal year in response to the report submitted by the Law Enforcement Training Council. The Law Enforcement Training Council shall develop guidelines and curriculum for these officers to be recertified and may not require recertification through basic training for those that have been inactive for a year or more.”

SECTION 2. Section 9‑1‑1790(A)(2) of the 1976 Code 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 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill as amended removes the earnings limitation for a retiree of PORS if the employee is separated from covered employment for at least twelve months before returning to covered employment, or if the retiree returns to employment in a critical needs law enforcement position. The Law Enforcement Training Council (council) is required to determine if a position is a critical needs position by reviewing and approving documentation provided by a covered employer. By January 1, 2023 and each year thereafter, the council is required to submit a report to the chairman of the Senate Finance Committee and the chairman of the House Ways and Means Committee of the positions requested for inclusion in the earnings limitation exception for the following fiscal year. The General Assembly must approve positions in the report submitted by the council. Furthermore, the council is required to develop guidelines and curriculum for these officers to be recertified and may not require recertification through basic training for those that have been inactive for a year or more.

Additionally, the bill as amended removes the earnings limitation for a retiree of SCRS if the employee is separated from covered employment for at least twelve months before returning to covered employment.

Currently, a member of PORS who retires prior to age fifty-seven, returns to employment that is covered by PORS, and earns more than $10,000 in a calendar year is subject to an earnings limitation which discontinues the member’s retirement benefits in that year. Members of SCRS are similarly subject to the earnings limitation when retiring prior to age sixty-two. PEBA indicates that a change to the earning limitation may increase the number of reemployed retirees and lead to more workers electing to retire at an earlier age. This will result in a higher actuarial accrued liability and increase normal cost, or cost of service earned towards an active member’s benefit in a given year, since a member’s retirement benefit is funded over a shorter career. For the retirement systems to attain a 100 percent funded ratio at the same projected date, the amortization cost will need to increase.

PEBA reports that the provisions allowing SCRS and PORS members to return to covered employment after a twelve-month separation and be exempt from the earnings limitation will have no fiscal impact on SCRS or PORS. PEBA views the twelve-month period as sufficiently long enough such that there will be no measurable change in retirement behavior.

PEBA reports that the critical needs provision for PORS retirees will have an expenditure impact on PORS. There are currently 2,095 PORS members that are younger than age 57 and eligible to retire. Assuming that some members will retire earlier than they otherwise would to take advantage of the critical needs provision, PEBA estimates that the unfunded actuarial accrued liability will increase by $73,000,000. PEBA indicates the necessary one-time appropriation to maintain the current funding period is $88,000,000. If the General Assembly chooses to fund this increase, this bill as amended will result in a one-time increase of $88,000,000 in general Fund, other funds, and federal funds expenditures in FY 2022-23.

This bill as amended will have no expenditure impact on the Law Enforcement Training Council for reviewing and approving critical needs position documentation, preparing annual reports, and developing guidelines and curriculums.

**Introduced on February 3, 2022**

**State Expenditure**

This bill increases the earnings limitation for a retiree of PORS from $10,000 to $50,000 for any member who returns to covered employment and works in a non-administrative capacity at the time of reemployment. Currently, a retiree who returns to employment that is covered by PORS and earns more than $10,000 in a calendar year is subject to an earnings limitation which discontinues the member’s retirement benefits in that year. Increasing the earnings limitation from $10,000 to $50,000 for members who return to covered employment in a non-administrative capacity may decrease the number of members whose benefits are discontinued in a calendar year.

PEBA is working with an actuary to prepare the actuarial analysis of the impact of this bill. Therefore, the expenditure impact of this bill is pending, contingent upon a response from PEBA.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 9‑11‑90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EARNINGS LIMITATION UPON RETURN TO COVERED EMPLOYMENT IN THE SOUTH CAROLINA POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO INCREASE THE AMOUNT THAT MAY BE EARNED WITHOUT AFFECTING THE MONTHLY RETIREMENT ALLOWANCE FROM TEN THOUSAND DOLLARS TO FIFTY THOUSAND DOLLARS FOR CERTAIN RETIRED MEMBERS.

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

SECTION 1. Section 9‑11‑90(4) of the 1976 Code is amended by adding:

“(e) Notwithstanding the ten thousand dollar earnings limitation contained in this subsection (4), a retired member of this system may be hired and return to employment covered by this system and may earn up to fifty thousand dollars without affecting the monthly retirement allowance the member is receiving from this system, so long as at the time of reemployment, the retired member is working in a nonadministrative capacity. An employer shall provide documentation of need to the Public Employee Benefit Authority.”

SECTION 2. This act takes effect upon approval by the Governor.

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