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Indicates New Matter

AMENDED

April 26, 2016

**H. 5006**

Introduced by Reps. Lucas, Pope, Merrill, Bradley, Finlay, Stringer, Norman, Ballentine, Felder, Mitchell, King and W.J. McLeod

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Read the first time February 25, 2016.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 9‑16‑100 SO AS TO PROHIBIT LOBBYISTS AND PLACEMENT AGENTS FROM CONTACTING CERTAIN INDIVIDUALS CONNECTED WITH THE RETIREMENT SYSTEM INVESTMENT COMMISSION; TO AMEND SECTION 9‑4‑10, RELATING TO THE PUBLIC EMPLOYEE BENEFIT AUTHORITY, SO AS TO CLARIFY THE BOARD OF THE AUTHORITY IS THE SOLE GOVERNING BODY OF THE AUTHORITY, TO PROVIDE FOR A FIVE‑YEAR TERM AND STAGGERED TERMS OF BOARD MEMBERS, TO PRESCRIBE MEETING REQUIREMENTS, TO PROVIDE FOR AN EXECUTIVE DIRECTOR, AND TO PROVIDE CERTAIN FIDUCIARY DUTIES; TO AMEND SECTION 9‑16‑10, AS AMENDED, RELATING TO DEFINITIONS, SO AS TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 9‑16‑315, AS AMENDED, RELATING TO THE RETIREMENT SYSTEM INVESTMENT COMMISSION, SO AS TO ADD A GUBERNATORIAL APPOINTMENT TO THE COMMISSION, TO LIMIT A MEMBER TO TWO TERMS, TO PROVIDE FURTHER QUALIFICATIONS FOR MEMBERS, TO PROVIDE FOR AN EXECUTIVE DIRECTOR, AND TO ALLOW THE COMMISSION TO ENGAGE ATTORNEYS ON A FEE BASIS; TO AMEND SECTION 9‑16‑380, RELATING TO THE AUDIT OF THE RETIREMENT SYSTEM INVESTMENT COMMISSION, SO AS TO REQUIRE THE AUDIT FIRM BE SELECTED USING THE PROCUREMENT CODE; TO AMEND SECTION 9‑16‑340, AS AMENDED, RELATING TO THE INVESTMENT OF RETIREMENT SYSTEM FUNDS, SO AS TO REQUIRE A REDUCTION IN THE TOTAL AMOUNT OF FEES PAID; BY ADDING ARTICLE 4 TO CHAPTER 16, TITLE 9 SO AS TO ESTABLISH THE REVIEW AND OVERSIGHT COMMISSION ON THE RETIREMENT SYSTEM INVESTMENT COMMISSION, TO PROVIDE FOR ITS MEMBERSHIP, AND TO PROVIDE FOR ITS SCREENING DUTIES; TO AMEND SECTION 9‑1‑1310, AS AMENDED, RELATING TO THE ASSETS OF THE RETIREMENT SYSTEM AND INVESTMENT OF RETIREMENT SYSTEM FUNDS, SO AS TO REQUIRE THE PUBLIC EMPLOYEE BENEFIT AUTHORITY TO HOLD THE ASSETS OF THE RETIREMENT SYSTEM IN A GROUP TRUST, AND TO PROHIBIT INVESTMENTS IN CERTAIN MONEY MORTGAGES AND REAL ESTATE INVESTMENT TRUSTS; AND TO AMEND SECTION 1‑3‑240, AS AMENDED, RELATING TO THE REMOVAL OF OFFICERS BY THE GOVERNOR, SO AS TO ADD THE MEMBERS OF THE RETIREMENT SYSTEM INVESTMENT COMMISSION TO THE LIST OF OFFICERS OR ENTITIES THE GOVERNING BOARD OF WHICH MAY BE REMOVED BY THE GOVERNOR ONLY FOR CERTAIN REASONS CONSTITUTING CAUSE.

Amend Title To Conform

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

SECTION 1. 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 executive director, 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 has any interest. This subsection does not apply to investments that are not managed or selected by the commissioner including, but not limited to, index or mutual funds managed by a professional fund manager.”

SECTION 2. A. Section 9‑4‑10(A), (D), and (G) of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“(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.

(D) Members of the board shall serve for terms of ~~two~~ five years and until their successors are appointed and qualify, except that the terms of the board members appointed by the Governor on July 1, 2014, expire on June 30, 2016, the terms of the nonrepresentative board members appointed by members of the General Assembly on July 1, 2014, expire on June 30, 2017, and the terms of the representative board members appointed by members of the General Assembly on July 1, 2014, expire on June 30, 2018. 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~~ are deemed to expire after June thirtieth of the year in which the term is due to expire. Upon a member’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 full five‑year terms.

(G) 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.”

B. Section 9‑4‑10 of the 1976 Code, as added by Act 278 of 2012, is amended by adding appropriately lettered subsections to read:

“( ) The board shall employ an executive director who shall 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.

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

(1) solely 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.”

SECTION 3. A. Section 9‑16‑10(3.5) of the 1976 Code, as added by Act 155 of 2005, is amended to read:

“(3.5) ‘Commission’ means the Retirement System Investment Commission, except as specified in Article 4.”

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

“(9) ‘Trustee’ means the Board of Directors of the South Carolina Public Employee Benefit Authority and the State Fiscal Accountability Authority.”

SECTION 4. 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 members as follows:

(1) one member appointed by the Governor;

(2) 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 Ways and Means Committee of the House of Representatives;

(6) one member ~~who is a retired member of the retirement system. This representative member must be appointed by unanimous vote of the voting members of the commission~~ appointed by the Governor, who is an active or retired member of the South Carolina Retirement System, Police Officers Retirement System, the Judges and Solicitors Retirement System, or the National Guard Retirement System; 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).~~ Except for the State Treasurer and the Executive Director of the South Carolina Employee Benefit Authority, all members appointed to the commission are subject to the requirement of Article 4 of this chapter.

(C) ~~Except as provided in subsection (B),~~ Members shall serve for terms of five 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~~. 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 full five‑year terms. Any member serving a full five‑year term on June 30, 2015, only may be reappointed to one additional full five‑year term.

(D) 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) 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 with a minimum of ten years of experience;

(2) the Certified Financial Planner credential of the Certified Financial Planner Board of Standards and at least ten years of corresponding professional experience;

(3) ~~reserved~~ the Chartered Alternative Investment Analyst certification of the Chartered Alternative Investment Analyst Association with a minimum of ten years of experience;

(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) Not including the State Treasurer, ~~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) 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, or its successor agencies, 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.

(H) The commission shall employ an executive director who shall serve at the pleasure of the commission. The executive director 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.

(I)(1) ~~To assist the commission in its investment function, it~~ The executive director 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 executive director. ~~The chief investment officer serves at the pleasure of the commission and must receive the compensation the commission determines appropriate.~~

(2) The ~~commission may~~ executive director must 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 executive director. The compensation of the executive director, chief investment officer, and other employees of the commission ~~is~~ are not subject to the state compensation plan.

(J) Notwithstanding Section 1‑7‑170, the commission 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 provide quarterly reports to the Attorney General on attorneys retained, hourly rates, and estimated maximum fees.

~~(H)(1)~~ (K)(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 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 5. Section 9‑16‑380 of the 1976 Code, as added by Act 278 of 2012, is amended to read:

“Each year in the general appropriations act, the General Assembly shall appropriate sufficient funds to the Office of the State Inspector General to 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, pursuant to the South Carolina Procurement Code. The request for proposal and the terms of the fiduciary audit must be determined by the Inspector General and the custodian. The report from the previous fiscal year must be completed by January fifteenth. 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 9‑16‑340 of the 1976 Code, as last amended by Act 153 of 2005, is further amended by adding two subsections to read:

“(C) Beginning July 1, 2016, the annual investment plan must reduce the total amount of fees paid by the commission by one‑half of one percent of the total amount of assets held by the commission and continue that annual reduction until the total amount of fees paid by the commission is no more than one‑half of one percent of the total amount of assets held by the system.

(D) Once the fee limitation of one‑half of one percent of the total amount of assets is established pursuant to subsection (C), the commission is not authorized to expend more than one‑half of one percent of the total value of the system’s assets on fees on its investments.”

SECTION 7. Section 9‑1‑1310 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

“Section 9‑1‑1310. (A) The South Carolina Public Employee Benefit Authority and the State Fiscal Accountability Authority~~, or its successor,~~ 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 South Carolina Public Employee Benefit Authority shall hold the assets of the retirement system in a group trust 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, subsection (B) of this section, and Chapter 16 of this title.

(B) Except where not allowed pursuant to Sections 11 and 16, Article X of the Constitution of this State and Chapter 16 of this title, the funds of the system may be invested in, including, but not limited to, the following:

(1) bonds of this State, other states of the United States, the United States, or any political subdivisions or agencies thereof;

(2) banks and savings and loan institutions;

(3) top‑rated commercial paper;

(4) funds of funds;

(5) foreign certificates of deposit;

(6) short‑term debt;

(7) investment trust securities;

(8) real estate securities;

(9) foreign fixed‑income obligations;

(10) futures and options regulated by the United States Securities and Exchange Commission;

(11) private equity;

(12) domestic and foreign group trusts;

(13) investment vehicles of Federal Deposit Insurance Corporation approved institutions;

(14) bonds of foreign countries designated industrialized by the International Monetary Fund;

(15) collateralized mortgage obligations;

(16) World Bank bonds;

(17) debt of the United States or Canadian corporations;

(18) equipment trust debt;

(19)~~(a)~~ ~~purchase money mortgages received for real estate;~~

~~(b)~~ ~~real property;~~

~~(c)~~ ~~exchange traded funds;~~

~~(d)~~ ~~American Depository Receipts~~ Reserved;

(20) ~~real estate investment trusts~~ Reserved; and

(21) investments allowed pursuant to Section 11‑9‑660 and equity investments as allowed pursuant to Section 16, Article X of the Constitution of this State.

(C) The funds and assets of the various state retirement systems are not funds of the State, but are instead held in trust as provided in Section 9‑16‑20.

(D) The fees authorized to be paid for the purchase of or participation in any of the instruments enumerated in this section may not exceed the limitations set forth in Section 9‑16‑340(C) and (D).”

SECTION 8. Section 1‑3‑240(C)(1) of the 1976 Code, as last amended by Act 224 of 2014, is further amended by adding an appropriately lettered subitem to read:

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

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

“Article 4

The Review and Oversight Commission on the Retirement System Investment Commission

Section 9‑16‑400. (A)(1) There is established the Review and Oversight Commission on the Retirement System Investment Commission which must exercise the powers and fulfill the duties described in this article.

(2) For purposes of this article, ‘commission’ means the Review and Oversight Commission on the Retirement System Investment Commission.

(B) The commission is composed of the following nine members:

(1) from the Senate:

(a) the Chairman of the Finance Committee or his designee;

(b) two members of the Senate appointed by the President Pro Tempore;

(2) from the House of Representatives:

(a) the Chairman of the Ways and Means Committee or his designee;

(b) two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(3) three members appointed by the Governor from the state at large. One member must be an active member of the South Carolina Retirement System and one member must be an active member of the South Carolina Police Officers Retirement System.

(C) In making appointments to the commission, race, gender, and other demographic factors, such as residence in rural or urban areas, must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State.

(D) The commission must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and electing any other officers the commission considers necessary. After the organizational meeting, the commission must meet as necessary to screen candidates for appointment and at the call of the chairman or by a majority of the members. A quorum consists of six members.

Section 9‑16‑410. The commission has the following powers and duties:

(1)(a) to screen each person appointed to serve on the Retirement System Investment Commission;

(b) in screening candidates and making its findings, the commission must give due consideration to:

(i) ability, area of expertise, dedication, compassion, common sense, and integrity of each candidate; and

(ii) the impact that each candidate would have on the racial and gender composition of the commission, and each candidate’s impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;

(c) to determine if each candidate is qualified and meets the requirements provided by law to serve as a member of the Retirement System Investment Commission, make findings concerning whether each candidate is qualified, and deliver its findings to the President Pro tempore of the Senate and the Speaker of the House of Representatives;

(2) to receive, annually, in public session, the results of all audits, experience studies or other required analysis conducted by the Retirement System Investment Commission;

(3) to conduct an oversight review of the Retirement System Investment Commission and its operations at least once every two years; and

(4) undertake any additional reviews, studies, or evaluations as it considers necessary.

Section 9‑16‑420. Each state agency must fully cooperate with requests from the commission for assistance in carrying out its responsibilities and duties as established in this article.

Section 9‑16‑430. The oversight report required by this article must at least contain:

(1) a performance review of each member of the board for the previous two years;

(2) a performance review of the Executive Director of the Retirement System Investment Commission; and

(3) an evaluation of the actions of the Retirement System Investment Commission, sufficient to allow the members of the General Assembly to better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate.

Section 9‑16‑440. Commission members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid by the Retirement System Investment Commission.

Section 9‑16‑450. The commission must use clerical and professional employees of the General Assembly and the Office of the Governor for its staff, who must be made available to the commission. The commission may employ or retain other professional staff, upon the determination of the necessity for other staff by the commission and as may be funded in the legislative appropriation of the annual general appropriations act.”

SECTION 10. This act takes effect upon approval by the Governor.

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