**South Carolina General Assembly**

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**S. 921**

**STATUS INFORMATION**

General Bill

Sponsors: Senator McElveen

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Summary: Probate judges

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/11/2019](file:///p:\pprever\2019-20\921_20191211.docx)

**A** **BILL**

TO AMEND SECTION 9-8-40 OF THE 1976 CODE, RELATING TO MEMBERSHIP IN THE RETIREMENT SYSTEM, TO PROVIDE THAT JUDGES, SOLICITORS, AND CIRCUIT PUBLIC DEFENDERS BECOME MEMBERS OF THE SYSTEM UPON TAKING OFFICE BEFORE ATTAINING AGE SEVENTY-SEVEN; TO AMEND SECTION 9-8-60 OF THE 1976 CODE, RELATING TO RETIREMENT ALLOWANCES AND RELATED PROVISIONS, TO PROVIDE THAT A MEMBER MAY RETIRE UPON WRITTEN APPLICATION TO THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY NO LATER THAN THE END OF THE CALENDAR YEAR IN WHICH HE ATTAINS AGE SEVENTY-SEVEN; TO AMEND SECTION 9-8-260(A) AND (B) OF THE 1976 CODE, RELATING TO COMPLIANCE WITH SECTION 401(a)(9) OF THE INTERNAL REVENUE CODE, TO PROVIDE THAT THE TERM “REQUIRED BEGINNING DATE” MEANS APRIL FIRST OF THE CALENDAR YEAR AFTER A MEMBER ATTAINS SEVENTY-FIVE AND ONE-HALF YEARS OF AGE OR THE CALENDAR YEAR IN WHICH THE MEMBER RETIRES, WHICHEVER IS LATER, AND TO PROVIDE THAT PAYMENT OF RETIREMENT BENEFITS SHALL COMMENCE ON THE EFFECTIVE DATE OF RETIREMENT FOR A MEMBER WHO IS ELIGIBLE TO RECEIVE RETIREMENT BENEFITS, HAS NOT APPLIED FOR SUCH BENEFITS, AND CONTINUES MEMBERSHIP AFTER ATTAINING SEVENTY-FIVE AND ONE-HALF YEARS OF AGE; TO AMEND SECTION 22-1-25 OF THE 1976 CODE, RELATING TO THE MANDATORY RETIREMENT AGE OF A MAGISTRATE, TO INCREASE THE MANDATORY AGE OF RETIREMENT FROM SEVENTY-TWO TO SEVENTY-SEVEN YEARS OF AGE; TO AMEND ARTICLE 9, CHAPTER 23, TITLE 14 OF THE 1976 CODE, RELATING TO THE ESTABLISHMENT, JURISDICTION, AND OPERATION OF PROBATE COURTS, BY ADDING SECTION 14-23-1045, TO PROVIDE THAT IT SHALL BE MANDATORY FOR A JUDGE OF PROBATE OR ASSOCIATE JUDGE OF PROBATE TO RETIRE NO LATER THAN THE END OF THE FISCAL YEAR IN WHICH HE REACHES HIS SEVENTY-SEVENTH BIRTHDAY; AND TO AMEND ARTICLE 1, CHAPTER 25, TITLE 14 OF THE 1976 CODE, RELATING TO MUNICIPAL COURTS, BY ADDING SECTION 14-25-30, TO PROVIDE THAT IT SHALL BE MANDATORY FOR A MUNICIPAL COURT JUDGE TO RETIRE NO LATER THAN THE END OF THE FISCAL YEAR IN WHICH HE REACHES HIS SEVENTY-SEVENTH BIRTHDAY.

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

SECTION 1. Section 9-8-40 of the 1976 Code is amended to read:

“~~(1)~~(A) ~~All persons who are judges or solicitors on July 1, 1979, and who have not attained age seventy‑two shall become members of the system as of that date. All administrative law judges on July 1, 2014, who have not retired may elect to become a member of the system. Administrative law judges making that election may transfer prior service into the system as provided in Section 9‑8‑50, and to the extent the service thus transferred occurred after the member took office as an administrative law judge, that service is deemed earned service in the system. All other persons become members~~ A person becomes a member of the system ~~on~~ upon taking office as judge, solicitor, or circuit public defender before attaining age ~~seventy‑two~~ seventy-seven.

~~(2)~~(B) If a member of the system ceases to be a judge, solicitor, or circuit public defender for reasons other than death or retirement, then he ~~then~~ ceases to be a member of the system, whether or not he withdraws his accumulated contributions.”

SECTION 2. Section 9-8-60 of the 1976 Code is amended to read:

“(A)(1) A member of the system may retire upon written application to the board setting forth at what time, not later than the end of the calendar year in which the member attains age ~~seventy‑two~~ seventy-seven and not more than ninety days prior nor more than six months subsequent to the execution and filing thereof, the member desires to be retired, if the member at the time so specified for retirement is no longer in the service of the State, except as a member of the General Assembly or as allowed pursuant to subsection (7), and has completed ten years of earned service as a judge or eight years of earned service as a solicitor or circuit public defender or was in service as a judge or solicitor on July 1, 1984, and has either:

(a) attained the age of sixty‑five and completed at least twenty years of credited service;

(b) attained age seventy and completed at least fifteen years of credited service; or

(c) completed at least twenty‑five years of credited service in the system for a judge, or twenty‑four years of credited service in the system for a solicitor or circuit public defender, regardless of age. A member may retire under this section if the member was a member of this system as of June 30, 2004; attained age sixty‑five with at least four years' earned service in the position of judge, solicitor, or circuit public defender; and, as of June 30, 2004, had a total of twenty‑five years of credited service with the State in the South Carolina Retirement System, the Police Officers Retirement System, or the Retirement System for Members of the General Assembly.

(2) A person receiving retirement allowances under this system who is elected to the General Assembly continues to receive the retirement allowances while serving in the General Assembly, and also must be a member of the retirement system unless the person files a statement with the board on a form prescribed by the board electing not to participate in the applicable system while a member of the General Assembly. A person making this election shall not make contributions to the applicable retirement system nor shall the State make contributions on the member's behalf and the person is not entitled to benefits from the applicable retirement system after ceasing to be a member of the General Assembly.

~~(2)~~(B) A retired member shall receive a monthly retirement allowance which is equal to one‑twelfth of seventy‑one and three‑tenths percent of the current active salary of the respective position.

~~(3)~~(C) No member shall be permitted to retire and resign on account of being totally and permanently disabled and to receive the retirement benefit herein provided for until it is proven to the satisfaction of the Supreme Court, or a majority of the justices thereof, that the member is totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service in the position. Upon the finding of the Supreme Court that any member is totally and permanently disabled, the Supreme Court shall notify the director of its findings. A member shall have a minimum of five years of earned service to qualify for disability retirement.

~~(4)~~(D) Any beneficiary receiving a retirement allowance under any other system of the State providing retirement benefits for judges or from the Solicitors' Retirement Program established pursuant to Article 4 of Chapter 7 of Title 1 shall become a beneficiary under this System as of July 1, 1979, and shall receive a retirement allowance under this section adjusted in accordance with the provisions of this section or Section 9‑8‑90, whichever is applicable, in lieu of any retirement allowance under such other system. The full amount of any accumulated contributions or assets held by that system on behalf of the beneficiary shall be transferred to this system promptly pursuant to the provisions of this chapter. Notwithstanding anything herein to the contrary, no beneficiary under this section shall receive an allowance which is less than the allowance he would have received under such other system as of July 1, 1979.

~~(5)~~(E) A member who retires, who has completed at least twenty‑five years of credited service, or twenty‑four years in the case of a solicitor or circuit public defender, shall receive a monthly retirement allowance which must be equal to one‑twelfth of seventy‑one and three‑tenths percent of the current active salary of the respective position plus one‑twelfth of two and sixty‑seven hundredths percent of the current active salary of the respective position for each additional year of earned service over twenty‑five, or twenty‑four in the case of a solicitor or circuit public defender. The monthly retirement allowance may not exceed one‑twelfth of ninety percent of the current active salary of the respective position.

~~(6)~~(F) A member ~~retiring after 2003~~ shall receive an additional benefit, paid at retirement, equal to the member's employee contributions, plus interest, paid to the system after the member attains sufficient creditable service to become eligible to receive the maximum benefit of ninety percent of the current active salary of the respective position under this section.

~~(7)(a)~~(G)(1) A member who has attained the age of sixty years and is eligible to retire and receive the maximum monthly benefit of one‑twelfth of ninety percent of the current active salary of a judge, solicitor, or circuit public defender as provided in subsection (5) may retire and receive a retirement benefit while continuing to serve as judge, solicitor, or circuit public defender until the end of the calendar year in which the member attains the age of ~~seventy‑two~~ seventy-seven years.

(2) The employee and employer contributions must continue to be paid as if the judge, solicitor, or circuit public defender continuing to serve pursuant to this subsection was an active contributing member, but no additional service credit accrues on account of these contributions. A judge, solicitor, or circuit public defender who retires pursuant to this subsection is not subject to the provisions of Section 9‑8‑120 unless he has vacated his office.

~~(b)~~(3) A member who has not yet reached the age of sixty years, but who is eligible to retire and receive the maximum monthly benefit of one‑twelfth of ninety percent of the current active salary of a judge, solicitor, or circuit public defender as provided in subsection (5) may retire and continue to serve as judge, solicitor, or circuit public defender until the end of the calendar year in which the member attains the age of ~~seventy‑two~~ seventy-seven years. While a member continues to serve as judge, solicitor, or circuit public defender pursuant to this subsection, the member's normal monthly retirement benefit will be deferred and placed in the system's trust fund on behalf of the member. Upon reaching the age of sixty years, the balance of the member's deferred retirement benefit will be distributed to the member. No interest will be paid on the member's deferred monthly retirement benefit placed in the system's trust fund. The employee and employer contributions must continue to be paid as if the judge, solicitor, or circuit public defender continuing to serve pursuant to this subsection was an active contributing member, but no additional service credit accrues on account of these contributions. A judge, solicitor, or circuit public defender who retires pursuant to this subsection is not subject to the provisions of Section 9‑8‑120 unless he has vacated his office.

~~(c)~~(4) For a member retiring and continuing to serve as judge, solicitor, or circuit public defender pursuant to subsection (7)(b) the additional benefit provided for in subsection (6) will be deferred and placed in the system's trust fund until the member reaches the age of sixty years. Upon reaching the age of sixty years, the additional benefit will be distributed, plus interest, to the member.

~~(d)~~(5) For all purposes other than employment, a member retiring and continuing to serve as judge, solicitor, or circuit public defender pursuant to either subsection (7)(a) or (7)(b) is a retired member of the system.”

SECTION 3. Section 9-8-260(A) and (B) of the 1976 Code is amended to read:

“Section 9-8-260. (A) ~~Effective as of January 1, 1989, the~~ The system shall pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirement in Section 401(a)(9)(G), and the applicable Treasury Regulations and Internal Revenue Service Rulings and other interpretations issued thereunder, including Treasury Regulations Sections 1.401(a)(9)‑2 through 1.401(a)(9)‑9. The provisions of this section shall override any distribution options that are inconsistent with Section 401(a)(9) of the Internal Revenue Code to the extent that those distribution options are not grandfathered under Treasury Regulation Section 1.401(a)(9)‑6, Q&A‑16.

(B) Each member's entire benefit shall be distributed to the member, beginning no later than the required beginning date, over the member's lifetime or the joint lives of the member and a designated beneficiary, or over a period not extending beyond the member's life expectancy or the joint life expectancies of the member and a designated beneficiary. If a member fails to apply for retirement benefits by his required beginning date, the board shall begin distributing the benefit as required by this chapter:

(1) For purposes of this section, the ‘required beginning date’ is April first of the calendar year after the later of the following:

(a) the calendar year in which ~~the~~ a member reaches ~~age seventy and one‑half years of age~~ seventy-five and one-half years of age; or

(b) the calendar year in which the member retires.

(2) For purposes of this section, a ‘designated beneficiary’ means any individual designated as a co‑beneficiary by the member under this chapter. If the member designates a trust as a co‑beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirement set forth in Treasury Regulation Section 1.401(a)(9)‑3.

(3) Payment of retirement benefits, for those members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of this chapter, and who continue membership after attaining seventy and one‑half years of age, shall commence on the effective date of retirement.”

SECTION 4. Section 22-1-25 of the 1976 Code is amended to read:

“Section 22-1-25. Notwithstanding the provisions of ~~Section 9‑1‑1530 or~~ Section ~~1‑13‑80(h)(8)~~ 1‑13‑80(H)(8), (10) or (12), it shall be mandatory for a magistrate to retire ~~not~~ no later than the end of the fiscal year in which he reaches his ~~seventy‑second~~ seventy-seventh birthday. ~~Any magistrate serving in office on the effective date of this section who has attained the age of seventy‑two years prior to July 1, 1993, may continue to serve until June 30, 1994~~.”

SECTION 5. Article 9, Chapter 23, Title 14 of the 1976 Code, is amended by adding:

“Section 14-23-1045. Notwithstanding the provisions of Section 1‑13‑80(H)(8), (10) or (12), it shall be mandatory for a judge of probate or associate judge of probate to retire no later than the end of the fiscal year in which he reaches his seventy-seventh birthday.”

SECTION 6. Article 1, Chapter 25, Title 14 of the 1976 Code, is amended by adding:

“Section 14-25-30. Notwithstanding the provisions of Section 1‑13‑80(H)(8), (10) or (12), it shall be mandatory for a municipal court judge to retire no later than the end of the fiscal year in which he reaches his seventy-seventh birthday.”

SECTION 7. This act takes effect upon approval by the Governor.

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