**South Carolina General Assembly**

124th Session, 2021-2022

**H. 4061**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bradley, Lucas, Burns, Hewitt, McGinnis, Davis, Martin, Haddon, Long, T. Moore, Taylor, Rivers, Erickson, Daning, Nutt, Oremus, Blackwell, May, Jones, Collins, Carter, Huggins, Hardee, Morgan, Elliott, Hyde, Magnuson, Bennett, Felder, Bannister, McGarry, B. Cox, W. Newton, Crawford, Gagnon, Herbkersman, Hiott, Hixon, Lowe, B. Newton and Stringer

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Introduced in the House on March 11, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: Optional shared-risk defined benefit plan

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/11/2021 House Introduced and read first time ([House Journal‑page 11](file:///h:\hj\20210311.docx))

3/11/2021 House Referred to Committee on **Ways and Means** ([House Journal‑page 11](file:///h:\hj\20210311.docx))

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**VERSIONS OF THIS BILL**

[3/11/2021](file:///p:\pprever\2021-22\4061_20210311.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 1, TITLE 9 SO AS TO CREATE THE OPTIONAL SHARED‑RISK DEFINED BENEFIT PLAN, TO PROVIDE RETIREMENT REQUIREMENTS AND BENEFITS, TO PROVIDE FOR A MAXIMUM SIX PERCENT RATE OF RETURN, TO PROVIDE THAT THE PLAN IS ONE HUNDRED PERCENT FUNDED AT INCEPTION AND TO PROVIDE FOR CERTAIN RESTRICTIONS TO PLAN ENROLLMENT; BY ADDING SECTION 9‑1‑110 SO AS TO ALLOW AN EMPLOYER TO WITHDRAW FROM THE SOUTH CAROLINA RETIREMENT SYSTEM IN CERTAIN SITUATIONS; TO AMEND SECTION 9‑1‑10, AS AMENDED, RELATING TO DEFINITIONS, SO AS TO ADD “CLASS FOUR MEMBER”; TO AMEND SECTION 9‑1‑1790, RELATING TO THE AMOUNT THAT MAY BE EARNED BY AN EMPLOYEE RETURNING TO WORK, SO AS TO PROVIDE THAT AN EMPLOYEE WHO RETURNS TO COVERED EMPLOYMENT AFTER RETIREMENT MAY NOT CONTINUE TO RECEIVE THE MONTHLY RETIREMENT ALLOWANCE THE MEMBER IS RECEIVING FROM THE SYSTEM AND TO PROVIDE THAT THE EMPLOYER MAY CHOOSE TO PARTICIPATE IN A DEFERRED COMPENSATION PROGRAM FOR THOSE INDIVIDUALS; AND TO AMEND CHAPTER 20 OF TITLE 9, RELATING TO THE STATE OPTIONAL RETIREMENT PROGRAM, SO AS TO RENAME THE PROGRAM THE “DEFINED CONTRIBUTION PRIMARY RETIREMENT PLAN” (DCPRP), TO PROVIDE FOR A DEFAULT VENDOR AND INVESTMENT OPTION, TO PROVIDE SELECTION CRITERIA FOR VENDORS, TO PROVIDE RESPONSIBILITIES FOR VENDORS, TO PROVIDE FOR THE LENGTH OF VENDOR CONTRACTS, TO PROVIDE FOR THE NUMBER OF VENDORS THAT THE PUBLIC EMPLOYEE BENEFIT AUTHORITY MAY CONTRACT WITH, TO PROVIDE THAT AT LEAST ONE VENDOR OFFERS FIXED RATE AND VARIABLE ANNUITIES, TO PROVIDE THAT A MEMBER MAY NOT BORROW AGAINST HIS DCPRP, TO PROVIDE FOR VESTING REQUIREMENTS, TO PROVIDE FOR EMPLOYER AND EMPLOYEE CONTRIBUTION RATES, TO PROVIDE THAT CERTAIN EDUCATION MUST BE OFFERED TO MEMBERS, AND TO PROVIDE THAT A CLASS TWO OR CLASS THREE MEMBER MAY CHOOSE TO BECOME A CLASS FOUR MEMBER.

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

SECTION 1. Chapter 1, Title 9 is amended by adding:

“Article 19

Optional Shared‑Risk Defined Benefit Plan

Section 9‑1‑2410. Employees hired after June 30, 2021, may elect to enroll in the Optional Shared‑Risk Defined Benefit Plan (plan) separate and distinct from the South Carolina Retirement System (SCRS). An employee may choose to enroll in the plan within the first six months of employment and once each year for the first five years of employment.

Section 9‑1‑2420. A Class Four member may retire upon written application to the system setting forth at what time, no more than ninety days before or more than six months after the execution and filing of the application, the member desires to be retired, if the member at the time specified for the member’s service retirement has:

(1) eight or more years of earned service;

(2) attained the age of sixty years and has thirty or more years of creditable service; and

(3) separated from service.

Section 9‑1‑2430. Upon retirement from service, a Class Four member shall receive a service retirement allowance computed as follows:

(1) If the member’s service retirement date occurs on or after his sixty‑fifth birthday, the allowance must be equal to one and one‑half percent of the average of the member’s last seven years of compensation, multiplied by the number of years of the member’s creditable service.

(2) If the member’s service retirement date occurs before his sixty‑fifth birthday, the member’s service retirement allowance is computed as in item (1) but is reduced by five‑twelfths of one percent for each month, prorated for periods less than a month, by which his retirement date precedes the first day of the month coincident with or next following his sixty‑fifth birthday.

Section 9‑1‑2440. (A) The assumed annual rate of return on retirement system investments in the plan must be established by the Public Employee Benefit Authority (PEBA) but may not be more than six percent.

(B) If the rate of return on the plan is above six percent in any year, the employer and employee equally must share the excess gain less expenses. Similarly, if the rate of return is less than six percent in any year, the employer and employee equally must share in the loss plus expenses.

Section 9‑1‑2450. (A) PEBA shall ensure that the plan is one hundred percent funded at its inception and require any future unfunded liabilities to be amortized over short, ten‑year or less dollar schedules.

(B) If the funded ratio of the plan is below ninety‑five percent for two consecutive years or ninety‑percent for one year, a new member may not elect to enroll in the plan until the funded ratio is above ninety‑five percent. A new employee shall enroll in the Defined Contribution Primary Retirement Plan established pursuant to Chapter 20, Title 9 and may elect to enroll in the Optional Shared‑Risk Defined Benefit Plan after the funded ratio is above ninety‑five percent.

Section 9‑1‑2460. Nothing in this article may be construed to alter or amend the employer contribution rate schedule established pursuant to Section 9‑1‑1085. One and sixty‑six hundredths of a percent of the employer contribution rate must be allocated for normal costs and the remaining balance must be allocated to the legacy cost of the South Carolina Retirement System.

Section 9‑1‑2470. A member of the Optional Shared‑Risk Refined Benefit Plan is not eligible for any in‑service death benefits, disability retirement benefits, incidental death benefits, service purchase options, or optional forms of benefit payments.

Section 9‑1‑2480. If not in conflict with this article, Class Four members under this chapter have the same rights and privileges of a Class Three member.”

SECTION 2. Article 1, Chapter 1, Title 9 of the 1976 Code is amended by adding:

“Section 9‑1‑110. (A) As used in this section:

(1) ‘System’ means the South Carolina Retirement System established pursuant to Section 9‑1‑20.

(2) ‘Withdrawing employer’ means an employer that takes an action described in subsection (B).

(B) Subject to the provisions of this section, an employer may do the following:

(1) stop its participation in the system and withdraw all of its employees from participation in the system;

(2) stop its participation in the system by:

(a) selling all of the employer’s assets; or

(b) ceasing to exist.

(C) The withdrawal of an employer’s participation in the system is effective on a termination date established by the board. The termination date may not occur before the following have occurred:

(1) the withdrawing employer has provided written notice of the following to the board:

(a) the withdrawing employer’s intent to cease participation; and

(b) the names of the withdrawing employer’s current employees and former employees as of the date on which the notice is provided;

(2) the expiration of:

(a) a ninety‑day period following the filing of the notice with the board, for a withdrawing employer that sells all of the withdrawing employer’s assets or that ceases to exist; or

(b) a two‑year period following the filing of the notice with the board, for all other withdrawing participating entities;

(3) the withdrawing employer takes all actions required in subsections (D) through (G).

(D) With respect to retired members who have creditable service with the withdrawing employer, the withdrawing employer shall contribute to the system any additional amounts that the board determines are necessary to provide for reserves with sufficient assets to pay all future benefits from the system to those retired members attributable to service with the withdrawing employer. The contribution by the withdrawing employer must be made in a lump sum.

(E) A member who is an employee of the withdrawing employer as of the date of the notice pursuant to subsection (C) is vested in the pension portion of the member’s retirement benefit. The withdrawing employer shall contribute to the system the amount the board determines is necessary to fund fully the vested benefit attributable to service with the withdrawing employer. The contribution by the withdrawing employer must be made in a lump sum.

(F) A member who is covered by subsection (E) and who is otherwise eligible to retire may elect to retire. The benefit for the member must be computed pursuant to Chapter 1, Title 9 using the member’s actual years of service.

(G) With respect to members of the system who have creditable service with the withdrawing employer and who are not employees as of the date of the notice pursuant to subsection (C), the withdrawing employer shall contribute the amount that the board determines is necessary to fund fully the service for those members that is attributable to service with the withdrawing employer. The contribution by the withdrawing employer must be made in a lump sum.”

SECTION 3. Section 9‑1‑10 of the 1976 Code, as last amended by Act 261 of 2018, is further amended by adding an appropriately numbered item to read:

“( ) ‘Class Four member’ means an employee member of the system with an effective date of membership after June 30, 2021.”

SECTION 4. Section 9‑1‑1790 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

“( ) Notwithstanding the provisions of this section, beginning July 1, 2021, a retired member of the system who has been retired for at least thirty consecutive calendar days may be hired and return to employment covered by this system or any other system provided in this title but may not continue to receive the monthly retirement allowance the member is receiving from the system. The employer may choose to participate in a deferred compensation plan that it funds for the employee not to exceed five thousand dollars for each year of employment.”

SECTION 5. Chapter 20, Title 9 of the 1976 Code is amended to read:

“CHAPTER 20

~~State Optional Retirement Program~~

Defined Contribution Primary Retirement Plan

Section 9‑20‑5. The objective of the Defined Contribution Primary Retirement Plan (DCPRP) is to provide participants with a path towards a secure retirement through a focus on lifetime retirement income in order to maintain a participant’s standard of living, following a full career of employment.

Section 9‑20‑10. As used in this chapter:

(1) ‘Employer’ means:

(a) a school district that receives funding from the State from the annual appropriation to the Department of Education for Aid to School Districts‑Employer Contributions in the annual general appropriations act;

(b) a four‑year and postgraduate institution of higher education supported and under the control of the State;

(c) a technical college supported and under the control of the State;

(d) the State or any of its departments, agencies, bureaus, commissions, and institutions, provided that such entity does not meet the definition of item (1)(a), (b), or (c) of this section;

(e) an entity who is an employer for a Class Three member of the South Carolina Retirement System (SCRS).

(2) ‘Eligible employee’ means:

(a) a person hired on or after July 1, 2001, by an employer as defined in ~~Section 9‑20‑10~~ item (1)(a) to fill a permanent full‑time position;

(b) a person hired on or after July 1, 2002, by an employer as defined in ~~Section 9‑20‑10~~ item (1)(b), (c), or (d) to fill a permanent full‑time position;

(c) a person hired on or after July 1, 2003, by an employer as defined in ~~Section 9‑20‑10~~ item (1) to fill a temporary position or a part‑time permanent position;

(d) a person employed by an employer as defined in ~~Section 9‑20‑10~~ item (1) who, as of June 30, 2001, was a participant of the Optional Retirement Program for Teachers and School Administrators or who, as of June 30, 2002, was a participant of the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education; or

(e) an employee, hired on or after January 1, 2003, by the State or any of its departments, agencies, bureaus, commissions, or institutions who is not covered by the State Employee Grievance Procedure but who is eligible to participate in either the ~~South Carolina Retirement System~~ (SCRS) or the Police Officers Retirement System.

~~However, an employee who exercises an option to not participate in the South Carolina Retirement System under Section 9‑1‑550 is not eligible to participate in the State Optional Retirement Program.~~

(3) ‘Participant’ means an eligible employee who participates in the ~~optional retirement program~~ DCPRP provided by this chapter.

(4) ‘Open enrollment period’ means the period from January first to March first of each year.

(5) ‘Class Four member’ means an employee member of the DCPRP with an effective date of membership after June 30, 2021.

Section 9‑20‑20. The ~~South Carolina Retirement System~~ Public Employee Benefit Authority (PEBA) shall establish the ~~State Optional Retirement Program (State ORP)~~ DCPRP, a defined contribution plan, for eligible employees defined in Section 9‑20‑10(2). ~~An employee is not eligible to participate in the State ORP unless the employee is eligible for membership in the South Carolina Retirement System.~~ The following retirement and death benefit payment options may be provided for a participant in the ~~State ORP~~ DCPRP: annuities, lump‑sum distributions, partial distributions, or periodic withdrawals, whether through individual annuity contracts or mutual funds or individual certificates issued for group annuity contracts, fixed, or variable in nature, or a combination of them. Eligibility is determined solely by ~~South Carolina Retirement System~~ PEBA.

Section 9‑20‑30.(A) ~~The South Carolina Retirement System~~ PEBA shall provide for the administration of the ~~State Optional Retirement Program~~ DCPRP under this chapter. Beginning July 1, 2021, the Director of ~~the South Carolina Retirement System acting on behalf of the Board of Directors of the South Carolina Public Employee Benefit Authority~~ PEBA shall designate ~~no fewer than four~~ at least two but no more than six companies to provide annuity contracts, mutual fund accounts, or similar investment products offered through state or national banking institutions, financial institutions, or a combination of them, under the program. This designation may not be construed to alter or otherwise diminish existing contacts to provide financial services from vendors to the State Optional Retirement Program (ORP). In making the designation, selection criteria must include:

(1) the nature and extent of the rights and benefits to be provided by the contracts or accounts, or both, of participants and their beneficiaries;

(2) the relation of the rights and benefits to the amount of contributions to be made;

(3) the suitability of these rights and benefits to the needs of the participants;

(4) the ability and experience of the designated companies in providing suitable rights and benefits under the contracts or accounts, or both; and

(5) the ability and experience of the designated companies to provide suitable education and investment options.

(B) Companies participating in the optional retirement program for publicly supported four‑year and postgraduate institutions of higher education as of July 1, 2002, or the optional retirement program for teachers and school administrators as of July 1, 2001, may continue to participate in this program and participation is governed by their existing contracts.

(C)(1) PEBA shall select a default vendor and collaborate with that vendor to develop a default retirement plan for new member enrollment. A new member is given sixty days to select a vendor and investment option. A member that does not elect a vendor will remain with the default investment plan until the next open enrollment period. The default investment plan must be a target‑date plan that is closest to the member’s thirty‑year employment anniversary from his hire date.

(2) In making the designation of default vendor, the selection criteria must include:

(a) at least twenty years experience providing investment services to public sector plans;

(b) capacity to provide fully bundled retirement plan investments, plan administration, and planning and education services;

(c) capacity to offer target‑date funds or an equivalent retirement fund that professionally rebalances the participant’s portfolio with an income‑in‑retirement targeted objective;

(d) capacity to offer asset allocation funds with at least a principal preservation fund, an income fund, a balanced toward growth and income fund, a growth fund, and an aggressive growth fund;

(e) the range of investment options provided; and

(f) fees and total costs.

(3) The default vendor shall:

(a) offer at least one professionally managed portfolio option with fees less than fifty basis points annually;

(b) offer at least five, but no more than fifteen, predetermined portfolio options for members with fees less than seventy‑five basis points annually; and

(c) offer at least one set of target‑date funds with fees less than seventy‑five basis points annually.

(4) In making the designation of default investment option, the selection criteria must include:

(a) the capacity of the strategy to produce income in retirement;

(b) the relative risk in the asset allocation of the strategy;

(c) the capacity for the strategy to be understood by plan participants; and

(d) the fees and costs of the strategy.

(D) Beginning January 1, 2022, PEBA shall require each vendor to reapply to provide services at least every five years, except for the default vendor which may have a contract up to eight years. When considering a bid to provide financial services to DCPRP members, PEBA shall take the following into consideration:

(1) the financial stability of the company and the ability of the company to provide the contracted rights and benefits to the participants;

(2) the costs of the investments, plan administration, and services to the participants;

(3) the experience of the company in providing defined contribution retirement plans instead of defined benefit plan participation to public employees;

(4) the experience of the company in paying retirement income to public employees; and

(5) the experience of the company in providing plan education, counseling, and advice to participants in public employee retirement plans that are offered instead of a state‑defined benefit plan.

(E) PEBA may not contract with more than six vendors and the vendors may not provide more than twenty‑five total investment options after January 1, 2022.

(F) By January 1, 2022, PEBA shall ensure that at least one vendor offers fixed rate and variable annuities.

(G) A member may not borrow against his DCPRP for any reason.

(H) Employer contributions to DCPRP accounts vest at twenty percent for each year and fully vest after five years.

(I) After a member retires, he has the option to enroll in a guaranteed annuity product offered by one of the DCPRP’s vendors.

Section 9‑20‑40. (A) All eligible employees shall elect either to join the ~~South Carolina Retirement System~~ SCRS or to participate in the State ORP under this chapter within thirty days after entry into service. If an eligible employee fails to make the initial election within the required time, the employee is considered to have elected membership in the ~~South Carolina Retirement System~~ SCRS. An election made pursuant to this section must be made in writing and filed with the retirement system and the appropriate officer of the employee’s participating employer and is effective on the date of employment. A State ORP participant who accepts an additional concurrent position with an employer participating in the ~~South Carolina Retirement System~~ SCRS must enroll in the State ORP for the second position if the second position is eligible to participate in the State ORP. Also, a member of the ~~South Carolina Retirement System~~ SCRS who accepts an additional concurrent position with an employer participating in the ~~South Carolina Retirement System~~ SCRS must enroll in the ~~South Carolina Retirement System~~ SCRS with respect to that position. An eligible employee electing to participate in the State ORP assumes all investment risk. The election to participate in the State ORP is irrevocable except as set forth in subsections (B) and (C).

(B) A State ORP participant may irrevocably elect to join the ~~South Carolina Retirement System~~ SCRS during any open enrollment period after the first annual anniversary but before the fifth annual anniversary of the person’s initial enrollment in the State ORP. The State ORP participant shall become a member of the ~~South Carolina Retirement System~~ SCRS effective on the first of April following the participant’s election to join the ~~South Carolina Retirement System~~ SCRS under this subsection. For purposes of this subsection, the date of initial enrollment in the State ORP for employees who previously participated in the Optional Retirement Program for Teachers and School Administrators or the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education is the date of initial enrollment in these programs.

(C) Any participant in the State ~~Optional Retirement Program~~ ORP who was a participant in the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education may irrevocably elect to participate in the ~~South Carolina Retirement System~~ SCRS during the open enrollment period from January 1, 2004, to March 1, 2004. A State ORP participant electing to participate in the ~~South Carolina Retirement System~~ SCRS under this subsection shall become a member of the ~~South Carolina Retirement System~~ SCRS on April 1, 2004.

(D) All participants in the Optional Retirement Program for Teachers and School Administrators on July 1, 2001, and the Optional Retirement Program for Publicly Supported Four‑Year and Postgraduate Institutions of Higher Education on July 1, 2002, thereafter are participants in the State ORP.

(E) This section applies to members in the ORP before July 1, 2021.

(F) Beginning July 1, 2021, all members of the ORP are automatically enrolled in the DCPRP. Nothing in this subsection may be construed to alter or amend the employer‑provided benefits for members of the ORP or the currently provided investment distributions. Any contract with a current financial services provider remains in effect until it is up for rebid.

Section 9‑20‑50. For individuals who are members of the State ORP before July 1, 2021, each participant shall contribute monthly to the program the same amount he would be required to contribute to the ~~South Carolina Retirement System~~ SCRS if the participant were a member of that system. Participant contributions must be made by employer pick up in accordance with Section 9‑1‑1160(B) and any applicable provisions of the Internal Revenue Code of 1986. Each employer shall contribute on behalf of each participant five percent of compensation. Deductions must not be made from this five percent contribution. Each employer shall remit to the designated companies for application to participants’ contracts or accounts, or both, an amount equal to the participant’s contribution plus the employer’s contribution in accordance with the guidelines established by the Internal Revenue Service for payroll tax remittance. The employer shall remit to the retirement system the percentage of the employee’s compensation that is the difference between the system employer contribution rate set in Section 9‑1‑1175 and the five percent allocated to member accounts in this section in accordance with the guidelines established for remitting retirement contributions to the ~~South Carolina Retirement System~~ SCRS. The ~~South Carolina Retirement System~~ SCRS may retain from this employer contribution an amount as determined by the director to defray any reasonable expenses incurred in performing services regarding the plan. These services may include, but are not limited to:

(1) participant education regarding the merits and risks associated with selection of defined contribution plans versus defined benefit plans;

(2) on‑going investment education, where appropriate;

(3) recordkeeping; and

(4) monitoring contract compliance.

Section 9‑20‑55. (A) For members of the DCPRP, each employer shall contribute a minimum rate of three percent of payroll, with a one‑hundred percent match on up to two percent of payroll of voluntary employee contributions. The maximum contribution rate for an employer is five percent.

(B) Each member shall contribute a minimum of seven percent of payroll. A member must be enrolled with a nine percent contribution rate, but must be given the option of lowering his rate once a year, in a manner prescribed by PEBA.

(C) An employer shall contribute to PEBA an amount equal to the prescribed employer rate as a percentage of its total DCPRP payroll, minus the calculated employer share of normal cost for Class Three members of the SCRS.

(D) The employer shall make a supplemental contribution to PEBA equal to five percent of payroll for members participating in DCPRP minus the total amount actually contributed to DCPRP accounts, until the unfunded liability for the SCRS is paid off.

Section 9‑20‑60. Group life insurance benefits may be paid by the State for service rendered while participating in the State ORP under the same requirements set out for participants in the ~~South Carolina Retirement System~~ SCRS’s defined benefit plan pursuant to Section 9‑1‑1770. However, a postretirement group life insurance benefit must not be paid by the State for service rendered while participating in the State ORP. Employers shall remit the same contribution for the group life insurance benefit that employers would have contributed had the eligible employee chosen to be a member of the ~~South Carolina Retirement System~~ SCRS.

Section 9‑20‑70. PEBA shall ensure that members receive regular education related to their retirement investments. This education can be provided directly or PEBA may require that vendors provide this education. PEBA shall require that a vendor shall provide planning services for participants to understand how the accumulation of their account balance is progressing relative to their retirement income goals.

Section 9‑20‑80. (A) A Class Four member is automatically enrolled in the DCPRP with a nine percent payroll contribution rate.

(B) A Class Two or Class Three member of the SCRS may choose to become a Class Four member. A Class Two or Class Three member who chooses to become a Class Four member shall retain the value of his contributions to the SCRS with interest in the same manner as provided in Section 9‑1‑1550.

Section 9‑20‑90. A member of the DCPRP is not eligible for any incidental death benefits.

Section 9‑20‑100. Nothing in this chapter may be construed to alter or otherwise diminish the rights of persons who are active contributing members of the State ORP as of June 30, 2021, or who are retired members or beneficiaries of deceased retirees of that system as of the same date.”

SECTION 6. This act takes effect upon approval by the Governor.

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