

**South Carolina Public Employee Benefit Authority  
Meeting Minutes**

(As Adopted February 1, 2013)

**Wednesday, December 12, 2012**

2<sup>nd</sup> Floor Conference Room  
202 Arbor Lake Drive  
Columbia, South Carolina 29223

**Board Members Present:**

Mr. Art Bjontegard, Chairman (in person)  
Ms. Peggy Boykin (in person)  
Mr. Frank Fusco (in person)  
Ms. Cynthia Hartley (in person)  
Ms. Stacy Kubu (in person)  
Sheriff Leon Lott (in person)  
Mr. Steve Matthews (in person)  
Mr. Joe "Rocky" Pearce (in person)  
Mr. Audie Penn (in person)  
Mr. John Sowards (in person)  
Mr. David Tigges (in person)

**Others present for all or a portion of the meeting:**

Bill Blume, Lil Hayes, Robbie Bell, Stephen Van Camp, Justin Werner, David Avant from the South Carolina Public Employee Benefit Authority (PEBA); Governor Nikki Haley; Paul Patrick and Kara Brurok from House Ways and Means; Daniel Brannon from the State Treasurer's Office; Eric Ferris from WLTX; Will Kinney from Mullikin Law Firm; Mike Shealy and Jennifer Hyler from Senate Finance; Wayne Bell and Wayne Pruitt from the South Carolina State Retirees Association; Rachel Fulmer from the State Budget Office; Adam Beam from *The State Newspaper*.

**I. CALL TO ORDER; ADOPTION OF PROPOSED AGENDA**

Chairman Bjontegard called the meeting to order at 1:10 p.m., and Ms. Kubu gave the invocation. Ms. Hayes confirmed meeting notice compliance with the Freedom of Information Act. Chairman Bjontegard requested a motion to adopt the agenda.

**A. Adoption of Proposed Agenda**

Mr. Sowards moved to adopt the agenda. Ms. Hartley seconded. Unanimously approved.

**B. Approval of Meeting Minutes — November 21, 2012**

Mr. Matthews mentioned a number of corrections to the previous meeting's minutes. Mr. Sowards moved to approve the minutes of the November 21, 2012 meeting as amended. Mr. Penn seconded. Unanimously approved.

## **II. BUDGET AND CONTROL BOARD AND PEBA**

Chairman Bjontegard then introduced Governor Nikki Haley. The Governor began by thanking the Board members for their service. She commended Mr. Blume for being willing to accept new challenges and thanked the Board for allowing her to move him to the Department of Revenue. She explained that she would like to see the Board to look at cost savings rather than simply considering cost-shifting. She would like to see them incentivize members to become healthier. Every dollar spent on benefits is a dollar taken away from other government services. She advised the Board to be creative in determining how to reduce costs for the health plan while also making members healthier. She stated on behalf of the B&C Board that "we have your back." The Governor announced that Mr. David Avant will be the interim Executive Director of PEBA. Chairman Bjontegard asked Mr. Avant to stand and receive applause. Mr. Sowards asked Governor Haley whether the B&C Board sees tighter budgeting available in the future. She responded that the B&C Board expects the available amount of funds to reduce in the coming year but even more in the following years. She expressed that the decision of the B&C Board to split the contributions for health premiums was based upon pressure from the private sector because they are having to drop benefits for their employees to fund the costs of public employees' benefits. Governor Haley stated she would meet with the PEBA Board as often as they need her but that her job is to allow them to do their job. She asked the Board members to treat the benefits they oversee as if they are their own household, etc. With no other questions from the Board members, the Governor excused herself.

Chairman Bjontegard asked Mr. Avant to introduce himself to the Board. He introduced himself and explained his history of public employment.

## **III. COMMITTEE REPORTS**

### **A. FAAC COMMITTEE**

Mr. Matthews stated that the FAAC Committee does not have a report. He mentioned he will have something to present regarding technical amendments to Act 278. He also announced that he has represented Mr. Mike Madalena, an actuarial consultant who spoke at the previous month's Board meeting. He does not foresee any conflicts, but wished to disclose this information.

### **B. HEALTHCARE POLICY COMMITTEE**

Ms. Hartley reported that during the December 12, 2012 Health Care Policy Meeting, the committee took no action but heard more detailed information about plan options for reducing cost increases.

### **C. RETIREMENT POLICY COMMITTEE**

Mr. Sowards reported that the Retirement Policy Committee will not meet until after the beginning of the year. He mentioned that the statutorily required disability study submitted by PEBA staff to the General Assembly is included in the meeting materials. He explained that in a perfect world, this information would have been provided to the Retirement Policy Committee prior to being submitted on December 1, 2012—as required by law. Mr. Fusco asked PEBA staff to clarify his understanding of the intent of this report. He explained that it was requested based

upon the changes made to retirement legislation in July 2012 which would change the eligibility requirements for disability retirement under SCRS and PORS. He asked the financial impact of these changes. Mr. Van Camp explained that these changes also extend the period of time for approval of disability retirement claims from about 80 days to about 255 days. Mr. Bjontegard asked whether the extended time frames are related to an appeals process. Mr. Van Camp responded that this is a part of the extended time frame. Mr. Matthews also explained that this will reduce the number of approvals. Sheriff Lott stated that this change is of great concern to those in law enforcement. Mr. Van Camp explained that PORS was affected slightly differently from SCRS. He explained that PORS members will be approved for disability retirement based upon being unable to perform their previous jobs for the first 3 years. At that point, the claim would be reviewed to determine whether the members are unable to perform any occupation. If so, the disability retirement benefit would continue. If not, it would end after 3 years. Mr. Fusco expressed that he believes PEBA should look into the work processes that exist within the PEBA retirement systems. He expressed that the processes themselves contribute to the fiscal impact of the changes made to disability retirement. Mr. Sowards expressed his belief that the report is something the Board needs to look at, but not act on at this point.

#### **IV. EXECUTIVE DIRECTOR REPORT**

Mr. Blume asked staff to copy the rough draft agenda prepared for the January 2013 Board meeting at Wampee. He then announced that the Board would be meeting in executive session later in the day regarding certain topics of concern. He expressed appreciation that the Governor's comments were in line with the Health Care Policy Committee's discussions in the December 12, 2012 meeting. He also explained that there is still a need to clarify what responsibilities the Board holds with regard to making decisions. He expressed his belief that monthly meetings are burdensome on PEBA staff and that the Board should consider pursuing alternatives. Chairman Bjontegard expressed his agreement and suggested that the proposed changes to PEBA enabling legislation should include changing the frequency of required meetings. Ms. Hartley asked about the status of this legislation. Mr. Matthews explained that the proposed legislation is part of an ongoing discussion that is intended to clean up the enabling legislation. Ms. Hartley asked when this information would be prepared for review by the Board. Mr. Matthews explained that he would hope to have this for review at the January 2013 meeting in Wampee. Mr. Fusco asked whether staff is monitoring all legislation being submitted that would affect the matters over which the Board has authority. Mr. Van Camp responded that Ms. Gwen Bynoe of PEBA staff is responsible for monitoring all legislative initiatives to track their effects on PEBA matters. Mr. Blume then resumed discussion about the Wampee meeting agenda. He explained that the primary topic of interest at the January meeting will be considering value-based health care initiatives. He also suggested that the Board accept an additional session on that agenda which will allow GRS to make a presentation on the overall health of defined benefit plans. He also mentioned that the February meeting (which will occur on the second day of the Wampee retreat) will be primarily involved with hearing explanations of the valuations of the five retirement plans as of June 30, 2012. Chairman Bjontegard asked Mr. Matthews whether he could use a one-hour time slot on the second day of the Wampee meetings to explain the clean-up legislation. Mr. Matthews explained he should be able to do this in an hour. Mr. Blume explained that the time allotted for the GRS valuations may need to be

extended. Mr. Fusco also expressed his concern that the allotted fifteen minutes for each of the four speakers on the first day of the Wampee retreat is too short to be useful. Mr. Matthews agreed. Chairman Bjontegard suggested that the meeting resume at 1pm after lunch. Mr. Blume also added that he could shorten the later presentation. Chairman Bjontegard also suggested that the meeting begin at 9am on the first day.

**V. OLD BUSINESS**

Chairman Bjontegard passed around the copy of the Board's approved Bylaws for signatures. Mr. Matthews informed the members that there will be a revision in the language on page four of the Bylaws regarding insurance. This revision would change the wording to "shall insure its obligation hereunder from the insurers and in the amounts determined by the Board, *"if deemed reasonably necessary."*

**VI. NEW BUSINESS**

Chairman Bjontegard requested nominations for the Vice-Chair position. Mr. Sowards nominated Mr. Pearce for Vice-Chair. No other nominations were made. Ms. Boykin moved to accept Mr. Pearce as Vice-Chair. Ms. Hartley seconded. Unanimously approved.

**VII. EXECUTIVE SESSION PURSUANT TO S.C. CODE OF LAWS § 30-4-70(A)(2)**

At 2:05 p.m., upon motion by Mr. Sowards and seconded by Ms. Hartley, the Board voted unanimously to enter into executive session to discuss personnel issues and receive legal advice.

The Board exited Executive Session at 3:25 p.m. No action had been taken.

Mr. Matthews made a motion that the Board authorize legal staff to file an informational brief, amicus curiae, in the lawsuit currently pending in the South Carolina Supreme Court regarding health plan contribution rates.

The purpose of the brief will be to explain: (i) the fiscal consequences to the State's health insurance plans of the positions contended for by the parties to the lawsuit, (ii) the necessary choices to be faced by PEBA that would result from the several possible decisions of the Court, and (iii) the need, whatever the decision, for an expedited resolution, especially in light of the Court's current stay order.

**VIII. ROUND TABLE COMMENTS**

No further discussion.

There being no further business, Mr. Penn moved to adjourn, Mr. Matthews seconded and the Board voted unanimously to adjourn at 3:30 p.m.

**South Carolina Public Employee Benefit Authority  
Board of Directors Meeting**

**Wednesday, December 12, 2012, 1:00 p.m.**

Main Conference Room  
202 Arbor Lake Drive, Columbia, SC 29223

**Agenda**

**I. Call to Order**

- A. Adoption of Proposed Agenda
- B. Approval of Meeting Minutes — November 21, 2012

**II. Budget and Control Board and PEBA  
Governor Nikki R. Haley**

**III. Committee Reports**

- A. FAAC Committee
- B. Health Care Policy Committee
- C. Retirement Policy Committee

**IV. Executive Director's Report  
Wampee Update**

**BREAK**

**V. Old Business**

Signing of Bylaws- Adopted as Amended 11/21/2012

**VI. New Business**

Election of Vice-Chairman

**VII. Roundtable Discussion**

**VIII. Executive Session Pursuant to S.C. Code of Laws § 30-4-70(a)(2)**

**IX. Adjournment**

**DRAFT**

**South Carolina Public Employee Benefit Authority  
Meeting Minutes**

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**Board Members Present:**

Mr. Art Bjontegard, Chairman (in person)  
Mrs. Peggy Boykin (in person)  
Mr. Frank Fusco (in person)  
Ms. Cynthia Hartley (in person)  
Mrs. Stacy Kubu (in person)  
Sheriff Leon Lott (in person)  
Mr. Steve Matthews (in person)  
Mr. Joe "Rocky" Pearce (in person)  
Mr. John Sowards (in person)  
Mr. David Tigges (in person)

**Others present for all or a portion of the meeting:**

Bill Blume, Robbie Bell, Susan Brownlee, Travis Turner, Lil Hayes, Justin Werner, David Avant, Laura Smoak from the South Carolina Public Employee Benefit Authority (PEBA); Wayne Bell and Wayne Pruitt from the State Retirees Association; Sarah Corbitt from SCRSIC; Ed Poliakoff for TIAA-Cref; Daniel Brennan from the State Treasurer's Office; Adam Beam from *The State Newspaper*; Brooks Goodman from BlueCross BlueShield of South Carolina; Josh Rhodes from the SC Association of Counties; Jennifer Hyler and Joel Deason from Senate Finance; Mary Elizabeth Van Horne from Mullikin Law Firm; Mike MAdalena, Bill Hickman, and Amy Cohen from GRS.

**I. CALL TO ORDER; ADOPTION OF PROPOSED AGENDA**

Chairman Bjontegard called the meeting to order at 1:02 P.M. Sheriff Lott gave the invocation. Ms. Brownlee confirmed completion of oaths of office and statements of economic interest by the board members and meeting notice compliance with the Freedom of Information Act. Chairman Bjontegard asked attendees to introduce themselves.

**A. Adoption of Proposed Agenda**

Chairman Bjontegard requested a motion to adopt the proposed agenda. Mr. Sowards moved to adopt. Sheriff Lott seconded. The agenda was unanimously approved. Chairman Bjontegard asked Bill Blume to address the issue of his leaving to go to the Department of Revenue. Mr. Blume explained that this was a quick decision and action. Chairman Bjontegard wished Mr. Blume well.

**B. Approval of Meeting Minutes — October 16, 2012**

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Chairman Bjontegard requested motion to approve previous minutes. Mrs. Hartley moved to approve the minutes. Mr. Sowards seconded. The minutes were unanimously approved.

## **II. COMMITTEE REPORTS**

### **A. FAAC COMMITTEE**

Chairman Bjontegard requested discussion on the proposed Bylaws. Mr. Sowards asked whether the Bylaws are submitted upon recommendation of the FAAC Committee. Chairman Bjontegard explained that they are. Mr. Matthews explained that the committees may have non-Board members sit on committees, but that they cannot constitute a part of the required majority to make actions. Sowards questioned the provision about insurance. He suggested adding the language "if deemed reasonably necessary." Chairman Bjontegard requested a motion to approve the Bylaws. Matthews recommended acceptance of the Bylaws with Mr. Sowards' proposed change. Mr. Sowards recommended not allowing telephonic participation in executive session. Mr. Tigges agreed. Chairman Bjontegard suggested a change to exclude telephonic participation during executive sessions. Mr. Fusco expressed concern about the provision allowing destruction of the audio recordings of meetings after the minutes are approved. Mr. Sowards suggested not keeping them. Mr. Matthews asked counsel whether FOIA requires keeping the audio recordings. Counsel stated it does not. Chairman Bjontegard requested a vote. Mr. Sowards stated his two amendments (to exclude executive session from telephonic participation and to add the language to the insurance provision which states "if deemed reasonably necessary." Unanimously approved. Mr. Matthews explained that the insurer for PEBA agreed to expand coverage to all plans managed by PEBA without additional cost. Mr. Matthews then explained the proposed indemnification bill drafted by PEBA staff and the FAAC Committee, to protect PEBA Board Members in the same way that members of the Budget and Control Board and the SC Retirement Investment Commission members. He then described the operational budget discussion from the 11/7 FAAC Committee meeting. He explained the data security presentation given at the 11/7 meeting—which explained that PEBA is making good faith and comprehensive efforts to protect the security of its data. Chairman Bjontegard requested a motion to approve the indemnification bill and accept as information the operating budget and the report about data security. Mr. Matthews made the motion. Mr. Fusco asked why there is no language regarding the Budget and Control Board in PEBA's indemnification bill. Counsel explained that it was thought to be preferable to leave the B&C Board out of the bill to avoid future difficulties should the B&C Board cease to exist. Mrs. Boykin explained that the FAAC Committee discussed amending the submitted operating budget. She stated they can submit amendments in January when the House begins their budget debates. Chairman Bjontegard requested a vote on the proposed indemnification bill, which was unanimously approved.

### **B. HEALTHCARE POLICY COMMITTEE**

Committee Chair Hartley explained the presentation given by David Quiat in the 11/21 HCP Committee meeting concerning Long Term Care (LTC). She explained that PEBA staff recommended discontinuing the LTC program currently offered by PEBA as a result of the current vendor withdrawing from the business. Chairman Bjontegard requested vote on the LTC recommendation of the HCP Committee, which was unanimously approved. Mrs. Hartley introduced Bill Hickman, Mike Madalena, and Amy Cohen from Gabriel Roeder Smith & Company (GRS). She explained the plan design and budgeting presentation made by GRS in the 11/21/12 HCP Committee Meeting. She explained that in 2014, the State Health Plan can choose to remain grandfathered or become compliant to the Affordable Care Act of 2010 (ACA). She gave the numbers given by GRS during the 11/21 HCP Committee Meeting for increases to funding requirements both as a grandfathered plan and an ACA compliant plan. Mrs. Hartley explained that the HCP Committee

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recommends that the Board accept as information the plan actuaries' estimation of the required increase to funding requirements—which would be \$238.5 million—while maintaining the same plan design. Chairman Bjontegard requested a motion to accept this proposed increase. Mr. Sowards asked whether Ms. Hartley's proposal from the HCP Committee is based upon the information provided by the consultants and is well-informed. Ms. Hartley confirmed it is. Ms. Hartley made the motion to accept this proposed funding increase for the initial budget proposal. Mr. Madalena gave a brief explanation of the advantages and disadvantages of maintaining ACA grandfathered status or becoming ACA compliant. He explained that there are limits as to how much a plan may increase premiums as well as a differential limit between the employer and employee contributions. He explained that grandfathering allows the plan to avoid some of the costs associated with the requirements of ACA. He also explained that becoming ACA compliant would remove the limits to the premium increases and contribution differential. Mrs. Boykin asked whether maintaining grandfathered status for 2014 would preclude becoming ACA compliant later. Mr. Madalena responded that it would not. Chairman Bjontegard requested a vote on the HCP Committee's recommendation. The motion was unanimously approved.

### **III. EXECUTIVE DIRECTOR REPORT**

Bill Blume explained that there is a proposed meeting for January 31, 2013 and February 1, 2013 at Wampee. He explained that it would be educational in nature, with various speakers giving presentations. He suggested making decisions about the proposed speakers soon, as adequate notice would need to be given to the presenters. He explained that having the meeting on January 31, 2013 and February 1, 2013 would satisfy the statutory requirement that the Board meet monthly for both January and February. Mr. Sowards asked whether the operating budget that has already been approved included the expenses associated with the Wampee meetings. Mr. Blume explained it did include those expenses. Mr. Fusco explained that he would like to have a speaker from USC or MUSC to speak to the Board regarding research and statistics on health outcomes. Mrs. Hartley explained that the Board's focus should be on decreasing overall costs and in making changes that would have a more immediate impact on plan costs for 2014. Mr. Sowards asked whether a consultant has compared the State Health Plan design to others in the market to assess their value. Mrs. Hartley explained that GRS does that. Mr. Fusco suggested having PEBA staff provide the Board information about the primary drivers of plan expenses and recruiting speakers who can provide meaningful information on these primary drivers.

Mr. Blume explained that the financial statements for the retirement plans have not been finalized. He explained that the letters of representation have been signed by both the SCRSIC and PEBA.

### **IV. OLD BUSINESS**

Mr. Blume explained that the motion passed at the 10/16 PEBA Board meeting was rejected by the B&C Board. He proposed that the Board approve 5 separate motions and submit them to the B&C Board as 5 separate agenda items. He explained that the B&C Board rejected the two-tiered approach to the contribution increase for JSRS. He explained that the economics of the RSIC investments have yielded no return, despite an assumption of a 7% return. He explained that the numbers for contribution adjustments will become significantly higher regardless of whether the increase is split. Mr. Sowards proposed voting on 5 motions simultaneously and submitting them as 5 agenda items. He moved to approve the following: 1) accept as information the actuarial valuation

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of SCRS; 2) accept as information the actuarial valuation of PORS and increase the employer contribution by 12.84 percent; 3) accept as information the actuarial valuation of JSRS and increase the employer contribution by 47.33 percent; accept as information the actuarial valuation of GARS and increase the employer contribution to \$4.1 million; accept as information the actuarial valuation of National Guard Retirement System and increase the employer contribution to \$4.5 million. Mr. Matthews seconded. Mr. Fusco asked whether the B&C Board would have approved the action if it had not included the step contribution of the JSRS. Chairman Bjontegard confirmed he thought it would have. Mr. Blume agreed. Mr. Fusco asked whether the precedence of having to submit separate items for each system is how the Board would like to move forward. Chairman Bjontegard explained that the Board is in the position of having to submit things for the B&C Board's approval. Mr. Sowards explained that the law requires the Board to act once it accepts as information the actuarial valuations. The pending motions were approved unanimously.

**V. NEW BUSINESS**

There was no new business.

**VI. ROUNDTABLE DISCUSSION**

Mr. Matthews expressed encouragement about what the Board has already done and wished Mr. Blume well. Mr. Fusco commended the committees and the Board. Sheriff Lott expressed gratitude for the efforts of the Board and staff to educate members of the Board who are not familiar with the subject matter. Mr. Pearce commented on the volume of the information being given to the Board requiring action. Mrs. Kubu commented that since she does not live in Columbia, she does not get the State Newspaper. She suggested the Board be provided with links to those articles not published statewide.

**VII. EXECUTIVE SESSION TO DISCUSS EMPLOYMENT MATTERS AND DEVELOPMENT OF SECURITY PERSONNEL AND DEVICES PURSUANT TO S.C. CODE OF LAWS § 30-4-70(A)(1) AND (3)**

Chairman Bjontegard called an executive session at 2:30 p.m. The Board returned from executive session at 3:00 p.m. Chairman Bjontegard requested the record reflect that no actions were taken and no votes taken during executive session.

There being nothing further to discuss, Chairman Bjontegard requested a motion to adjourn. Mr. Fusco moved to adjourn and Mr. Tigges seconded. It was unanimously voted to adjourn at 3:01 p.m.

**REVISIONS TO THE DISABILITY RETIREMENT PROVISIONS OF THE SOUTH  
CAROLINA RETIREMENT SYSTEM AND SOUTH CAROLINA POLICE OFFICERS’  
RETIREMENT SYSTEM UNDER ACT 278 OF 2012**

*South Carolina Public Employee Benefit Authority*

**I. INTRODUCTION**

Pursuant to Act 278 of 2012, the South Carolina General Assembly enacted a number of significant changes to the State’s retirement systems that were designed to “constitute the most reliable and efficient means of addressing the long-term sustainability issues” of the systems.<sup>1</sup> Included among these changes were substantial reforms to the disability retirement provisions of the South Carolina Retirement System (“SCRS”) and the South Carolina Police Officers’ Retirement System (“PORS”) that go into effect for disability retirement applications filed after December 31, 2013. In general terms, these reforms change the current, job-specific eligibility standard for disability retirement benefits under SCRS and PORS to a new eligibility standard for SCRS and PORS disability retirement benefits that is tied to approval for Social Security disability benefits, and make adjustments to the calculation of those benefits.

Under Act 278, the newly-created South Carolina Public Employee Benefit Authority (“PEBA”) is required to conduct a study regarding the revisions to the disability retirement programs made by Act 278 and to report its findings to the Senate Finance Committee and the House Ways and Means Committee by December 1, 2012.<sup>2</sup> In particular, concerns have been raised regarding whether conditioning approval for retirement systems’ disability retirement benefits upon prior approval for Social Security disability benefits will unduly delay members from receiving disability benefits for which they are eligible. In response to that study requirement, PEBA hereby submits this report on the revisions to the disability retirement provisions of SCRS and PORS made by Act 278 to Senate Finance and House Ways and Means Committees. Part II of the report will describe some of the major concerns with the current disability retirement programs, while Part III of the report will compare the current program with the changes to the programs made by Act 278 and assess the impact of those changes. Finally,

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<sup>1</sup> Act 278 of 2012, Section 1(D).

<sup>2</sup> Act 278 of 2012, Section 73.

Part IV of the report will summarize the report and provide broader context for the General Assembly's consideration of the changes made by Act 278.

## II. CONCERNS WITH THE CURRENT DISABILITY RETIREMENT PROGRAMS

There have been two primary concerns raised with regard to the current disability retirement programs under SCRS and PORS. The first is a concern that the rate of disability retirements under the plans has exceeded reasonable expectations of rates of disability among the membership. The second is a concern that the projections of service credit used to calculate disability retirement benefits under the plans are unrealistic and may not be an appropriate measure for calculating disability retirement benefits.

### A. *Rates of Disability*

One of the central concerns underlying the revisions to the disability retirement provisions of SCRS and PORS made in Act 278 was a concern regarding the rate of disability retirements under the two plans. In particular, it appears that the rate of disability retirement under both SCRS and PORS significantly exceeds the rate at which disability retirement benefits are awarded by similar plans in other states and by the Social Security Administration. For example, as of July 1, 2011, SCRS had 187,611 active members, 102,880 non-disability annuitants (i.e., service retirees and beneficiaries of retirees), and 12,492 disability retirees.<sup>3</sup> These 12,000 SCRS disability retirees constituted 10.8% of the total population of annuitants under the plan, and would represent about 6.7% of the active membership of the plan. These rates are similar for PORS. As of July 1, 2011, PORS had 26,650 active members, 11,352 non-disability annuitants, and 2,006 disability retirees.<sup>4</sup> Accordingly, for PORS, over 15% of the total population of annuitants under the plan are disability retirees, and those disability retirees would reflect a share of approximately 7.5% of the active membership of the plan.

However, an examination of results from a survey of public pension plans conducted by the National Association of State Retirement Administrators (NASRA) in July 2011 shows that, for the thirty-nine plans that reported usable data, the average percentage of annuitants that were disability retirees was 6.4% and that this population of disability retirees represented about 3.2%

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<sup>3</sup> Gabriel Roeder Smith & Company, South Carolina Retirement System (SCRS) Actuarial Valuation Report as of July 1, 2011, at 29 (Table 13).

<sup>4</sup> Gabriel Roeder Smith & Company, Police Officers Retirement System (PORS) Actuarial Valuation Report as of July 1, 2011, at 29 (Table 13).

of the active membership of the plans.<sup>5</sup> Similarly, data from the Social Security Administration for December 2011 shows that, in South Carolina, individuals receiving Social Security disability benefits make up approximately 6.3% of the State's population between the ages of 18 and 64.<sup>6</sup> Taken collectively, SCRS and PORS disability retirees make up 11.3% of the total annuitants of those plans and represent 6.8% of the active membership of those plans. These rates of disability retirement nearly double the average rate of disability retirement for other governmental pension plans and exceed the Social Security disability rates. A number of other governmental plans have adopted disability retirement standards that require a showing that a member is disabled from any gainful occupation, not just the member's particular job duties, in order to receive benefits,<sup>7</sup> and some plans have gone further and expressly made the payment of disability retirement benefits contingent upon an applicant's approval for disability benefits from the Social Security Administration.<sup>8</sup>

***B. Benefit Calculation***

Another concern reflected in the revisions to the disability retirement programs made in Act 278 is a concern regarding the projections of service credit used in the calculation of disability retirement benefits under SCRS and PORS. Under the current disability retirement provisions of SCRS and PORS, a member who has been approved for disability retirement benefits receives a benefit based upon the service retirement benefit that would have been payable had the member continued in service to age 65 for SCRS and age 55 for PORS, even if the projected service needed to reach that age exceeds the amount of service necessary for the member to reach service retirement eligibility at 28 years of service for SCRS and 25 years of

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<sup>5</sup> National Association of State Retirement Administrators, Survey of NASRA Members' Disability Processes and Benefits (September 2011), Responses to Questions 26-28.

<sup>6</sup> Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 30 (Table 8).

<sup>7</sup> National Association of State Retirement Administrators, Survey of NASRA Members' Disability Processes and Benefits (September 2011), Responses to Question 5.

<sup>8</sup> See, e.g., Okla. Stat. Ann. tit. 74, § 915(B) (conditioning disability retirement benefits under the Oklahoma Public Employees Retirement System upon prior approval for Social Security disability benefits); N.M. Stat. Ann. § 10-11-10.1(E) (requiring that a member of the New Mexico Public Employees Retirement Association be approved for Social Security disability benefits in order to continue to receive disability retirement benefits after one year).

service for PORS.<sup>9</sup> For example, consider a fairly typical scenario in which a 52-year-old member of SCRS with 22 years of service credit applies for disability retirement benefits. But for the member's disability, it is likely that the member would have continued to work for 6 more years and then retired at age 58 upon reaching the 28 years of service credit necessary for an unreduced service retirement benefit. However, if that 52-year-old member were approved for disability retirement benefits under SCRS, he would receive a disability retirement benefit that is calculated not based upon 6 years of projected service to reach 28 years of service credit, but upon 13 years of projected service to reach age 65, even though it is unlikely that the member would have continued to work an additional 7 years beyond the 28 years of service necessary for retirement and delayed his retirement until age 65.<sup>10</sup> This projection based only on age arguably ignores the reality that most members will retire *at the earlier* of reaching the age or years of service necessary for an unreduced retirement benefit. Thus, the current benefit calculation often includes more service credit in the disability calculation than the member would likely have earned without becoming disabled.

Based upon the responses to the NASRA survey of public pension plans conducted in July 2011, it appears that other plans that calculate disability retirement benefits based upon a member's service credit are roughly equally divided between plans that include some projection of service credit to a normal retirement age in the calculation and those that calculate disability retirement benefits based solely upon the member's accrued service credit at the time of retirement.<sup>11</sup> An approach to the calculation of disability retirement benefits that allowed a member early, unreduced access to the member's accrued retirement benefit, but did not include a projection of service credit, would also be consistent with the in-service death provisions of SCRS and PORS. Under these provisions, if certain age or service thresholds are met, a member's beneficiary is provided the option of receiving an annuity upon the member's in-service death before retirement, but this annuity is based upon the member's accrued service

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<sup>9</sup> See S.C. Code Ann. §§ 9-1-1560(B), 9-11-80(2) (Supp. 2011) (disability retirement benefit calculation); see also S.C. Code Ann. §§ 9-1-1510(2), 9-11-70(2) (Supp. 2011) (eligibility for retirement based upon service credit).

<sup>10</sup> S.C. Code Ann. § 9-1-1560(B).

<sup>11</sup> National Association of State Retirement Administrators, Survey of NASRA Members' Disability Processes and Benefits (September 2011), Response to Question 24.

credit at the time of his death and does not include any projection of service to a normal retirement age in the benefit calculation.<sup>12</sup>

### **III. COMPARISON OF CURRENT DISABILITY RETIREMENT PROVISIONS FOR SCRS AND PORS TO THE REVISIONS MADE BY ACT 278**

In light of the concerns discussed above, the retirement reform legislation enacted by the General Assembly in 2012 included substantial reforms to the disability retirement provisions of SCRS and PORS. Before these revisions are discussed in more detail below, it is important to note that any changes to the disability retirement programs in SCRS and PORS made by Act 278 only apply to members whose disability retirement applications are filed with PEBA after December 31, 2013.<sup>13</sup> Members who have already been approved for disability retirement benefits, or who file for such benefits prior to January 1, 2014, will continue to have their eligibility for benefits, both for initial approvals and subsequent reviews, evaluated under the current disability standards and will continue to have their benefits calculated under the current benefit provisions; the changes enacted by Act 278 will not affect these members. However, for members who apply for disability retirement after December 31, 2013, Act 278 makes significant changes to the disability retirement programs offered by SCRS and PORS in the substantive and procedural requirements for obtaining disability retirement benefits, the calculation of those benefits, and post-approval reviews of those benefits, as described below.

#### ***A. Substantive Requirements***

##### **1. Current Provisions**

The basic eligibility requirements for disability retirement benefits under SCRS and PORS are set out in Sections 9-1-1540 and 9-11-80 of the Code of Laws, both of which provide the same eligibility standards for the award of disability retirement benefits.<sup>14</sup> Under these provisions, a member of SCRS or PORS may be approved for disability retirement benefits if it is found that (1) “the member is mentally or physically incapacitated for the further performance

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<sup>12</sup> See S.C. Code Ann. §§ 9-1-1660, 9-11-130 (Supp. 2011).

<sup>13</sup> See Act 278 of 2012, Section 10 (amending Sections 9-1-1540, 9-1-1560, and 9-1-1570 of the Retirement Code) and Section 24 (amending Section 9-11-80 of the Retirement Code).

<sup>14</sup> S.C. Code Ann. §§ 9-1-1540, 9-11-80(1) (Supp. 2011).

of duty,” (2) “that the incapacity is likely to be permanent,” and (3) “that the member should be retired.”<sup>15</sup>

The first element of this standard— whether the member is incapacitated from the further performance of duty—has long been interpreted as a job-specific inquiry into whether the member is capable of performing the required duties of his or her particular job under the system at the time of his or her application. Under this standard, a member may be awarded disability retirement benefits if he or she is unable to perform *any* of the duties of his or her specific job, even if the member remains able to perform other available jobs or would be able to perform the duties of his or her job with certain accommodations.<sup>16</sup>

The second element requires that any such incapacity must be permanent in order to support a finding of disability. That is, unlike long-term disability benefits, disability retirement benefits may only be awarded if the member’s incapacity is expected to last for the rest of the member’s life.<sup>17</sup>

Finally, the third element examining whether a member “should be retired” requires a broad inquiry into whether the award of disability retirement benefits is appropriate in a particular case.<sup>18</sup> For example, if a member is permanently incapacitated from performing his job duties as the result of a medical condition that he has refused to seek treatment for, it may not be appropriate to award him disability retirement benefits based upon that condition.

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<sup>15</sup> Id. §§ 9-1-1540, 9-11-80(1). If a member has less than five years of earned service at the time of application, he is not eligible for disability retirement benefits unless he can also show that he is disabled “as a result of an injury arising out of and in the course of the performance of the member’s duties”—i.e., that his disability is the result of an on-the-job injury. Id.

<sup>16</sup> Cf. Knight v. Bd. of Trustees of Fireman’s Ret. & Pension Fund, 269 S.C. 671, 239 S.E.2d 720 (1977).

<sup>17</sup> See Ex parte McFaddin, 254 S.C. 270, 274, 175 S.E.2d 218, 220 (1970) (holding that, to establish that a disability is permanent for the purpose of receiving state disability retirement benefits, an applicant must show that his “disability is of such nature that it will, regardless of medical and other treatment, continue throughout his lifetime so as to deprive him of the ability [to perform his prior job duties]”).

<sup>18</sup> See Brown v. S.C. Budget & Control Bd., Docket No. 05-ALJ-30-0217-CC (S.C. Admin. Law Ct. June 20, 2006) (holding that the “should be retired” element of the statutory standard for disability retirement benefits “requires an analysis of whether an award of disability retirement benefits would be proper based on the particular facts of the case”).

## 2. Act 278 Provisions

### a. SCRS

Under Act 278, Section 9-1-1540 is amended such that a member who applies for disability retirement benefits after December 31, 2013, is eligible to receive a disability retirement allowance from SCRS only upon prior approval for disability benefits from the Social Security Administration with an onset date within one year of the last day the member was on the payroll of a covered employer.<sup>19</sup> In order to be eligible for Social Security disability benefits, a person must not only have a physical or mental disability that prevents the individual from performing the duties of his current job, but must also be precluded by that disability from performing other work that exists in the national economy.<sup>20</sup> Under this heightened standard, and unlike the current standard for SCRS benefits, a person would not be eligible for disability retirement benefits if the individual could still perform other available work, even if the person can no longer perform the duties of his or her particular job at the time of the application.<sup>21</sup>

While a full discussion of the Social Security disability benefit program is beyond the scope of this report, a summary of the basic eligibility provisions and evaluation criteria for those benefits may provide helpful context for the discussion of the changes made by Act 278. To be eligible for Social Security disability benefits, a person must (1) be “insured” for Social Security disability benefits, (2) be younger than full retirement age for Social Security, (3) have filed an application for disability benefits, and (4) be under a “disability” as defined by the Social Security Act.<sup>22</sup> A person is considered “insured” for Social Security disability benefits if the person has sufficient recent work credits under Social Security to qualify for disability benefits, which generally means five years of such covered work within the past ten years.<sup>23</sup> If the first

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<sup>19</sup> Act 278 of 2012, Section 10(A).

<sup>20</sup> See generally 42 U.S.C. § 423(d)(1)(A) (defining “disability” under the Social Security Act as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months”).

<sup>21</sup> See generally 42 U.S.C. § 423(d)(2)(A) (providing that, under the Social Security Act, “[a]n individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy”).

<sup>22</sup> See 42 U.S.C. § 423(a)(1).

<sup>23</sup> See 42 U.S.C. § 423(c)(1).

three eligibility requirements are met, the Social Security Administration then uses a five-step sequential evaluation process in order to determine whether an applicant is disabled under the Social Security Act.<sup>24</sup>

This process first evaluates whether the applicant is currently engaged in any substantial gainful activity. If the applicant is working and earning income that exceeds the threshold for substantial gainful activity, the applicant is found not to be disabled. If the applicant is not engaged in gainful activity, the analysis proceeds to the second step of determining whether the applicant has a severe impairment that interferes with basic work-related activities. Any such impairment must be established by medically determinable evidence and must be expected to last at least twelve months or result in death. If the applicant does not have a severe impairment, the applicant is found not to be disabled. If the applicant's condition is found to be severe, the analysis proceeds to the third step which considers whether the applicant has a condition that meets or equals one of a list of impairments that are *per se* disabling. If the applicant's condition is one of the listed impairments or of equal severity to one of the listed impairments, the applicant is found to be disabled and benefits are awarded. If the applicant's condition is severe but does not meet or equal one of the listed impairments, the evaluation process moves to the fourth step of determining whether the applicant can perform his or her past relevant work, which includes any work performed by the applicant at the substantial gainful activity level over the past fifteen years. If the applicant is able to perform such past work, the applicant is found not to be disabled.

If the applicant is unable to perform his or her past relevant work, the sequential analysis proceeds to the fifth and final step, which evaluates whether the applicant is able to perform other work that exists in significant numbers in the national economy. In making this determination, the Social Security Administration considers the applicant's medical conditions, age, education, work experience, and any transferrable skills. If the applicant is able to perform such other work, the applicant is found not disabled. If, however, the applicant is unable to perform any other work, the applicant is found to be disabled and benefits are awarded. While the first four steps of the Social Security sequential evaluation process are similar to the disability criteria currently used to determine whether a member is entitled to disability

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<sup>24</sup> See, e.g., Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 3-4.

retirement benefits under SCRS or PORS, it is the fifth step of that process that largely distinguishes the total disability standard required for Social Security disability benefits from the own-occupation disability standard currently required for disability retirement under SCRS and PORS.<sup>25</sup>

#### **b. PORS**

For PORS, Act 278 did not amend the current job-specific disability standard for the initial eligibility determination for PORS disability retirement benefits in Section 9-11-80(1).<sup>26</sup> However, as explained below in Part III(D)(2)(b), after three years, a PORS disability retiree would have to be approved for Social Security disability benefits in order to continue to receive PORS disability retirement benefits thereafter.<sup>27</sup>

### **3. Impact of Act 278**

The consulting actuaries for SCRS and PORS, Gabriel Roeder Smith and Company, have projected that the implementation of the changes to the eligibility requirements for disability retirement benefits set out in Act 278 would result in a 20% reduction in the number of members who receive a disability allowance. As shown in Part III(B)(3) of this report, a comparison of recent approval rates for SCRS and PORS disability retirement applications to approval rates for Social Security disability applications would similarly suggest that a 20% reduction in disability retirements could be expected under the revisions made by Act 278. Based upon this expected decrease in disability retirements, the actuaries have projected that the changes to the eligibility requirements for disability retirement made under Act 278 would reduce the unfunded liability for SCRS by \$37.5 million and the unfunded liability for PORS by \$0.3 million.

#### ***B. Procedural Requirements***

##### **1. Current Provisions**

Sections 9-1-1540 and 9-11-80 also set out certain procedural requirements related to applications for SCRS and PORS disability retirement benefits. With regard to the timing of applications, in order to be eligible to apply for disability retirement benefits, a member of SCRS or PORS must be considered a “member in service” at the time the application is filed with

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<sup>25</sup> See generally e.g., Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 3-4.

<sup>26</sup> Act 278 of 2012, Section 24.

<sup>27</sup> Id.

PEBA.<sup>28</sup> A member is considered “in service” if he or she is not yet retired and it has not been more than 90 days since the last day the member was on the payroll of a participating employer, in either a paid status or on approved unpaid leave.<sup>29</sup>

Further, with regard to the review process, disability retirement benefits may only be awarded by PEBA “after a medical examination of the member.”<sup>30</sup> Accordingly, any award of disability retirement benefits must be based upon a review of the member’s medical records. As authorized by statute, PEBA contracts with the South Carolina Vocational Rehabilitation Department to gather and review applicants’ medical records and then make recommendations to PEBA regarding the initial approval or denial of the applications.<sup>31</sup> Upon receipt of the recommendation from the Vocational Rehabilitation disability examiner, PEBA reviews the recommendation and issues its initial staff determination on the disability claim. If PEBA approves the claim, the review process ends and PEBA will finalize the applicant’s claim for disability retirement benefits. If the claim is denied, the applicant may appeal that denial to the Director of the applicable retirement system by submitting a written claim for review within one year of his receipt of the decision to deny his application.<sup>32</sup>

When a disability claim is appealed to the Director, PEBA contracts with an independent vocational consultant to review and make a recommendation to the Director on the disability claim. The consultant reviews all of the medical and vocational records gathered by the Vocational Rehabilitation Department and submitted by the applicant and may hold an informal, non-adversarial administrative conference with the applicant. At the conclusion of that review, the consultant issues a written recommendation to the Director on whether to approve or deny the member’s application. Upon receipt of the recommendation, the Director reviews the consultant’s recommendation and issues a Final Agency Determination on the application. This Determination constitutes the final decision of PEBA concerning the applicant’s disability retirement claim.<sup>33</sup> If the Determination approves the applicant’s claim, PEBA will finalize the applicant’s claim for disability retirement benefits. If the Determination is unfavorable to the

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<sup>28</sup> S.C. Code Ann. §§ 9-1-1540, 9-11-80(1).

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> See S.C. Code Ann. § 9-21-50(A) (Supp. 2011).

<sup>33</sup> Id. § 9-21-50(E), (F).

applicant, the applicant may request a contested case before the South Carolina Administrative Law Court to challenge the determination.<sup>34</sup> This request for a contested case must be filed within thirty days of the applicant's receipt of the Final Agency Determination.<sup>35</sup> The contested case hearing before the Administrative Law Court is a *de novo*, trial-type hearing before an executive-branch administrative law judge that is similar in form to a civil bench trial. If PEBA's denial of the applicant's claim is sustained by the Administrative Law Court, the applicant may appeal that decision to the South Carolina Court of Appeals and pursue any other appeals available under the State's appellate court rules.<sup>36</sup>

## 2. Act 278 Provisions

### a. SCRS

The amendments made by Act 278 to Section 9-1-1540 retained the current requirement that an application for SCRS disability retirement benefits be filed while the member is considered a "member in service" with a participating employer in the system.<sup>37</sup>

But, under Act 278, a member who applies for disability retirement benefits after December 31, 2013, is eligible to receive a disability retirement allowance from SCRS only upon prior approval for disability benefits from the Social Security Administration if the onset date of the disability falls within one year of the last day the member was on the payroll of a covered employer. Thus, the review process for initial determinations on SCRS disability applications would no longer require an evaluation of the member's medical and vocational records, but rather would simply require the submission of proof of the member's approval for disability benefits from the Social Security Administration. The only evaluation that would be done by PEBA would be to confirm receipt of the Social Security Award Notice and ensure that the date of disability established by the Social Security Administration falls within one year of the end of

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<sup>34</sup> *Id.* § 9-21-60.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 9-21-70.

<sup>37</sup> Act 278 of 2012, Section 10(A). These amendments also retained the current requirement that, in order to be eligible for disability retirement benefits, a member of SCRS must have at least five years of earned service for Class II members (or eight years of earned service for Class III members), unless the member is disabled as the result of an on-the-job injury. *Id.*

the member's covered employment.<sup>38</sup> This change would greatly streamline the review process for SCRS disability retirement benefits.<sup>39</sup>

However, because eligibility for SCRS disability retirement benefits is contingent upon approval for Social Security disability benefits, it is important to recognize the procedural requirements that govern the application and appeal process for Social Security disability benefits. Under the Social Security application process, an applicant files his or her application for disability benefits with the local Social Security office. Social Security staff first evaluates the application to ensure that the applicant meets the non-medical requirements for benefits, such as those related to age, work credits, and performance of substantial gainful activity. Then, if the applicant satisfies those requirements, the application is forwarded to the state's Disability Determination Services office for evaluation of the applicant's disability claim.<sup>40</sup> The disability examiners with the Disability Determination Services office review the applicant's claim under the sequential evaluation process discussed in Part III(A)(2)(a) above.

If the applicant's claim for disability benefits is denied after the initial review of his or her claim, there are four levels of appeals available to the applicant. First, the applicant may seek reconsideration of the denial with the Disability Determination Services. This reconsideration review is similar to the initial review, except that the claim is assigned to a different disability examiner and medical team. If the applicant is not approved after reconsideration, the applicant may request a hearing before a Social Security administrative law judge. If the administrative law judge sustains the denial of the applicant's disability claim, he or she may seek review of that denial before an Appeals Council made up of administrative appeals judges. Finally, if the Appeals Council upholds the denial of the claim, the applicant may file an action in federal district court to challenge the denial, and pursue any appeals available through

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<sup>38</sup> Act 278 of 2012, Section 10(A) (adding Section 9-1-1540(B)(2)).

<sup>39</sup> Any disputes regarding whether a member is eligible for disability retirement benefits under the new standard would continue to be resolved under the existing claims procedures, which provide for review by the Director of the system, contested case review by the Administrative Law Court, and appeals to the Court of Appeals, as described in Part III(B)(1) above.

<sup>40</sup> In South Carolina, the same office of Disability Determination Services with the Vocational Rehabilitation Department performs evaluations of Social Security disability benefit claims and claims for disability retirement benefits from SCRS and PORS.

the federal court system. At each level of appeal, the applicant must file his or her request for an appeal in writing within sixty days from the date of the notice of denial.<sup>41</sup>

**b. PORS**

Because Act 278 retains the current standard for initial determinations on PORS disability applications, the review process for initial PORS applications would remain unchanged from the current process described in Part III(B)(1) above, which includes the evaluation of the member's medical and vocational records by the Vocational Rehabilitation Department.<sup>42</sup>

**3. Impact of Act 278**

As noted above, concerns have been raised regarding whether conditioning approval for SCRS and PORS disability retirement benefits upon prior approval for Social Security disability benefits would cause undue delay in the receipt of disability retirement benefits for members of SCRS and PORS. In response to those concerns, the discussion below first examines how long it typically takes for an applicant for Social Security disability benefits to navigate the application and appeals process for the award of those benefits, and then considers the effect those time frames will have on applicants for SCRS and PORS disability retirement benefits in comparison to the current procedures.

For those Social Security disability claims requiring a medical determination, the Social Security Administration initial review process takes an average of 107 days between the date of filing and the date of decision.<sup>43</sup> Approximately 47.1% of the medical decisions on Social Security disability applications at the initial review level are approvals.<sup>44</sup> Although the overall

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<sup>41</sup> See generally e.g., Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 3-4 (describing Social Security application procedures, evaluation process, and appeal process).

<sup>42</sup> Act 278 of 2012, Section 24.

<sup>43</sup> Social Security Administration, Performance and Accountability Report for fiscal year 2011 (November 2011), at 58. This average processing time for initial disability claims is based upon data from 2008 through 2011.

<sup>44</sup> Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 144 (Table 60, Medical Decisions at the initial adjudicative level, by year of application and program, 1992-2010). The approval rate numbers used in this report were determined by averaging the results of the medical decisions made on applications for Social Security disability insurance filed by covered workers between 2006 and 2010, the most recent five-year period for which data was available. These numbers do not include results for applications that were denied for non-medical, technical reasons, such as where an applicant does not have sufficient work credit to be eligible for benefits; applications

processing time for initial decisions averages just over 100 days, the Social Security Administration has adopted and expanded a Quick Disability Determination program and a Compassionate Allowance program to expedite benefits to claimants whose medical conditions are so serious that they obviously meet the eligibility requirements for disability benefits. About 6% of all initial determinations are processed under these fast-track review processes, which provide decisions in as little as 10 to 14 days.<sup>45</sup> One would also expect that applicants who have been positively diagnosed with severe medical conditions that meet Social Security's list of *per se* disabling impairments would generally be approved during this initial review process.

An applicant who is denied at the initial review level may seek reconsideration of that denial within 60 days of the decision. The reconsideration process typically takes approximately 90 days and only about 12.2% of the medical decisions made at the reconsideration level are approvals.<sup>46</sup>

An applicant who remains denied at the reconsideration level may request a hearing on his claim before a Social Security administrative law judge within 60 days of the denial. Although the number of days for completion of an appeal before an administrative law judge has averaged 448 days over the last five years, the Social Security Administration has recently trimmed the average processing time for hearing requests to 360 days for fiscal year 2011, with a stated goal of reducing that time to 270 days in the future.<sup>47</sup> Nearly 60% of appeals to the administrative law judge hearing level are approved.<sup>48</sup> If an applicant is denied at the administrative hearing level, further appeals are available to an Appeals Council and subsequently to federal district court. The time for processing these appeals can range from roughly eight months for the Appeals Council to well more than a year for federal court

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for Supplemental Security Income, which is a needs-based disability program; and applications for Social Security disability benefits made by widowers or adult children of covered workers.

<sup>45</sup> Social Security Administration, Performance and Accountability Report for fiscal year 2011 (November 2011), at 56.

<sup>46</sup> Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 146 (Table 61, Medical Decisions at the reconsideration level, by year of application and program, 1992-2010).

<sup>47</sup> Social Security Administration, Performance and Accountability Report for fiscal year 2011 (November 2011), at 53-54.

<sup>48</sup> Social Security Administration, Fiscal Year 2011 Workload Data: Disability Appeals.

appeals.<sup>49</sup> While the approval rates of these levels are typically fairly low, around 2% or 3%, a number of claims are remanded from the Council and the courts for further review and possible approval.<sup>50</sup> When the results of all medical decisions made at the administrative law judge hearing level and above are taken together, approximately 82% of claims that reach the hearing level or above are approved.<sup>51</sup>

The table below compares approval and appeal rates and processing times for a hypothetical group of 1,000 disability applicants who are eligible to apply for benefits. The first column shows the approval and appeal rates and processing times for the current disability retirement programs for SCRS and PORS, with initial review by the Vocational Rehabilitation Department, administrative appeal to the Director of the Retirement Systems, and contested case review by the South Carolina Administrative Law Court. Similarly, the second column shows the approval and appeal rates and processing times that would typically be required for review of an application for disability benefits before the Social Security Administration, including initial review, review upon reconsideration, and subsequent appeals to the administrative law judge hearing level and above. Due to data limitations, the table consolidates the results for all appeals at the hearing level and beyond. The data used in this table is data averaged for the five-year period between 2006 and 2010, where available, and reflects decisions made on the merits of the disability applications (i.e., applications that are denied because the applicant is not eligible to apply for benefits or for other technical reasons are not included in the figures). In addition, the rows for the elapsed days since filing only include the processing time at each level and do not include any time that may elapse between a denial and an applicant's decision to appeal. Numbers of approvals and denials at each level are rounded to whole persons.

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<sup>49</sup> Social Security Administration, Performance and Accountability Report for fiscal year 2011 (November 2011), at 55.

<sup>50</sup> Social Security Administration, Fiscal Year 2011 Workload Data: Disability Appeals.

<sup>51</sup> Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 148 (Table 62, Medical Decisions at the hearing level or above, by year of application and program, 1992-2010).

**Projection Using 2006-2010 Approval Rates**

	<u>Current System</u>	<u>Act 278 with SSDI Approval</u>
Disability Decisions	1,000	1,000
<u>Initial Review Level</u>		
Initial Approval Rate	86%	47.1%
Initial Processing Time	74 days	107 days
Days Since Filing	74 days	107 days
Initial Approvals	860	471
Initial Denials	140	529
 <u>Director Review/Reconsideration Level</u>		
Appeal Rate	61.5%	60.5%
Appeals to Level 2	86	320
Level 2 Approval Rate	80%	12.2%
Level 2 Processing Time	71 days	Approx. 90 days
Days Since Filing	145	197 days
Level 2 Approvals	69	39
Level 2 Denials	17	281
 <u>Administrative Law Judge Hearing Level and above</u>		
Appeal Rate	50.6%	80%
Appealing to Level 3	9	225
Level 3 Processing Time	216 days	448 days <sup>52</sup>
Days Since Filing	361	645 days
Level 3 Approval rate	35.6%	82%
Level 3 Approvals	3	185
Level 3 Denials	6	40

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<sup>52</sup> As noted above, this processing time only includes appeals through the administrative law judge hearing level. Approvals under the Social Security system that required review by the Appeals Council or federal courts would require additional processing time, ranging from roughly eight months for Appeals Council review to periods of well over a year for federal court review.

	<u>Current System</u>	<u>Act 278 with SSDI Approval</u>
Total Approvals	932	695
Weighted Average Processing Time	80 days	255 days

For applications received after December 31, 2013, the provisions of Act 278 condition initial approval for SCRS disability retirement benefits upon prior approval for Social Security disability benefits. The projection above suggests that, under those provisions, a weighted average processing time for the approval of SCRS disability benefits conditioned upon Social Security approval would be approximately 255 days, or about eight and a half months, with an overall approval rate of 69.5%, compared with a weighted average processing time of 80 days with an approval rate of 93.2% under the current SCRS disability retirement program. Although roughly two-thirds of approved applicants under the revised provisions, including those with the most severe conditions, would receive their approvals at the initial review level within a time period comparable to the current system, approximately one quarter of approved applicants would have to pursue appeals at the Social Security hearing level to receive their approvals in a process that could take an additional twelve months or more.

Under Act 278, the current job-specific disability standard remains in place for the initial eligibility determination for PORS disability retirement benefits. Given that the initial approval for PORS disability retirement benefits is not conditioned upon approval for Social Security disability benefits, concerns regarding the length of time for processing Social Security disability applications would not generally affect PORS applicants. After three years, however, a PORS disability retiree who has not yet attained age 55 would have to be approved for Social Security disability benefits in order to continue to receive PORS disability retirement benefits thereafter. This three-year period would generally allow a PORS disability retiree sufficient time to apply for, and receive, Social Security disability benefits if the retiree is disabled from all gainful employment, or, in the alternative, to retrain and begin employment in a different occupation if the retiree is only incapacitated from performing his prior job duties.

**C. Benefit Calculation**

**1. Current Provisions**

**a. SCRS**

Under Section 9-1-1560, a member who has been approved for SCRS disability retirement benefits receives a benefit based upon the service retirement benefit that would have been payable had the member continued in service to age 65 at the member's current average final compensation, with an actuarial reduction based upon the contributions that would have been made during those years of projected service credit.<sup>53</sup> The statute also sets a floor for the benefit, providing that the yearly disability benefit may not be less than 15% of the member's average final compensation.<sup>54</sup>

**b. PORS**

For the calculation of PORS disability retirement benefits, Section 9-11-80 provides that the member's service credit is projected to age 55, rather than age 65, to reflect the lower retirement age for service retirement benefits under PORS, and makes no actuarial reduction of the benefit based upon the contributions that the member would have made during that projected service.<sup>55</sup> Otherwise the benefit is calculated the same as the SCRS disability benefit, including the minimum benefit of 15% of average final compensation.<sup>56</sup>

**2. Act 278 Provisions**

**a. SCRS**

Under Act 278, upon approval for disability retirement benefits, an SCRS disability retiree would receive a disability retirement benefit based upon the member's years of credited service at retirement, average final compensation at retirement, and the current benefit multiplier for service retirement benefits.<sup>57</sup> The calculation would not require any reductions for early retirement or unmade contributions, but would also no longer project any service credit beyond what the member had accrued at the time of retirement, unlike the current projection of credit to age 65. The provisions of Act 278 do, however, retain the floor benefit of 15% of the member's average final compensation.

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<sup>53</sup> S.C. Code Ann. § 9-1-1560(B) (Supp. 2011).

<sup>54</sup> *Id.* § 9-1-1560(D).

<sup>55</sup> *Id.* § 9-11-80(2).

<sup>56</sup> *Id.* § 9-11-80(6).

<sup>57</sup> Act 278 of 2012, Section 10(B) (adding Section 9-1-1560(E)).

**b. PORS**

Pursuant to Act 278, the revised disability retirement provisions retain the current benefit calculation for PORS disability retirees, with the exception that the projected service credit applied to the member’s benefit would be the lesser of the credit necessary to reach age 55 or 25 years of service, rather than simply projecting to age 55 in all cases.<sup>58</sup>

**3. Impact of Act 278**

The consulting actuaries for SCRS and PORS, Gabriel Roeder Smith and Company, have projected that the implementation of the changes to the benefit calculations for SCRS and PORS disability retirement allowances set out in Act 278 would reduce the unfunded liability of SCRS by \$184.5 million and of PORS by \$0.9 million. Notably, the actuaries found that the change in the calculation of the disability benefit allowances resulted in a larger reduction in the plans’ liabilities than the change in the eligibility provisions. The following examples illustrate the changes in the disability retirement benefit calculation for SCRS and PORS members. It must be cautioned that these examples do not necessarily reflect the average or typical reductions in benefits as the result of Act 278 and should not be extrapolated as such. Rather, these examples are intended solely to illustrate how the revised benefit calculation provisions of Act 278 would operate. All benefit amounts shown in these examples are monthly benefit amounts.

*Examples —SCRS*

Member Information			Current Provisions		Act 278 Provisions		Difference
Age	Current Service	AFC	Projected Service	Benefit Amount	Projected Service	Benefit Amount	
45	11 years	\$40,000	20 years	\$1,230	0	\$667	(\$563)
52	18 years	\$45,000	13 years	\$1,707	0	\$1,229	(\$478)
62	28 years	\$50,000	3 years	\$2,266	0	\$2,123	(\$143)

Generally speaking, a member of SCRS who retires under the revised provisions of Act 278 will receive a benefit that is less than the benefit that would have been payable under the current provisions, unless the member is over 65 years old or the member’s benefit is subject to the minimum benefit of 15% of average final compensation. The amount of the difference between the benefit amounts will vary greatly depending upon the member’s age, service credit, and average final compensation at the time of retirement. It should be noted that, although the SCRS disability benefit calculation under Act 278 does not include any increased benefits from

<sup>58</sup> Act 278 of 2012, Section 24 (amending Section 9-11-80(2)).

projected service, it still allows a member early access to unreduced retirement benefits based upon his or her accrued credit and earnings at the time of disability.

*Examples—PORS*

Member Information			Current Provisions		Act 278 Provisions		Difference
Age	Current Service	AFC	Projected Service	Benefit Amount	Projected Service	Benefit Amount	
35	10 years	\$35,000	20 years	\$1,873	15	\$1,560	(\$313)
45	20 years	\$40,000	10 years	\$2,140	5	\$1,783	(\$357)
52	27 years	\$45,000	3 years	\$2,408	0	\$2,167	(\$241)

The effect of the revised benefit calculations for PORS disability retirees will largely depend upon the age at which the member enrolled in PORS. In fact, any member of PORS who first enrolls in the system after age 30 and does not purchase any additional service credit would see no change in the calculation of his or her disability benefit as a result of Act 278, as the projected service necessary reach age 55 would be less than 25 years and would be the basis of the benefit calculation under the Act 278 provisions just as it would have been under the prior provisions. Members who enrolled in the system prior to age 30 (or who have credit in the system attributable to service before age 30) will receive a benefit that is less than the benefit that would have been payable under the current provisions, unless the member is over 55 years old or the member’s benefit is subject to the minimum benefit of 15% of average final compensation. However, it should be noted that PORS disability retirees still receive unreduced, projected service credit under the Act 278 provisions; the projection is simply capped such that the member does not receive a benefit based upon projected service that exceeds the amount necessary for normal service retirement eligibility.

**D. Post-Approval Reviews**

**1. Current Provisions**

Pursuant to Section 9-1-1570, PEBA may require an SCRS disability retiree to be re-examined once each year during the first five years following the member’s retirement and once in every three-year period thereafter until age 65.<sup>59</sup> When scheduled, these continuing disability reviews (“CDR”) are also conducted by the Vocational Rehabilitation Department and the

<sup>59</sup> S.C. Code Ann. § 9-1-1570 (Supp. 2011).

review is based upon the same job-specific standard as used in the review of the initial application.

The same CDR process applies to PORS disability retirees pursuant to Section 9-11-80, with the exception that such reviews cease at age 55 to reflect the earlier service retirement age under PORS.<sup>60</sup>

## **2. Act 278 Provisions**

### **a. SCRS**

Pursuant to Act 278, SCRS disability retirees under age 65 who applied for benefits after December 31, 2013, will be required to annually submit proof that they remain eligible to receive Social Security disability retirement benefits.<sup>61</sup> If the Social Security Administration determines that the disability retiree is no longer eligible to receive benefits for any reason, then the SCRS disability benefit ceases.<sup>62</sup>

If a disability retiree fails to provide proof of continuing eligibility for Social Security disability benefits to PEBA, the retiree's SCRS retirement allowance is discontinued until such proof is submitted.<sup>63</sup> If the failure to provide proof of continuing Social Security disability eligibility continues for a period of one year, the member's right to the disability retirement allowance may be revoked by PEBA.<sup>64</sup>

Disability retirees who retired based upon applications filed on or before December 31, 2013, would continue to be evaluated under the current continuing disability review standards.

### **b. PORS**

Although PORS disability retirees who retire under the revised provisions of Act 278 are initially approved on the current, job-specific disability standard, after three years of disability retirement they are required to submit proof that they have been approved for Social Security disability benefits in order to continue to receive PORS disability benefits.<sup>65</sup> After that initial three-year period, PORS disability retirees under the age of 55 are required to annually submit proof of their eligibility for Social Security disability benefits in order to continue to receive

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<sup>60</sup> S.C. Code Ann. § 9-11-80(3) (Supp. 2011).

<sup>61</sup> Act 278 of 2012, Section 10(C) (adding Section 9-1-1570(B)).

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Act 278 of 2012, Section 24 (adding Section 9-11-80(3)(B)).

those benefits.<sup>66</sup> As with SCRS, failure to provide proof of continuing eligibility for Social Security disability benefits will result in discontinuance of the PORS benefit until such proof is provided, and, if the failure to provide proof of continuing Social Security disability eligibility continues for a period of one year, the member's right to the disability retirement allowance may be revoked by PEBA.<sup>67</sup>

Given the heightened standard for Social Security disability benefits, PEBA's actuaries have projected that about 20% of PORS retirees who have not reached age 55 will be unable to qualify to receive Social Security disability benefits and to have benefits discontinued after three years.<sup>68</sup> These individuals will need to acquire skills, if necessary, and change careers to an occupation they can perform with their limitations. A disability benefit model that awards benefits initially based upon an own-occupation standard and then shifts to an any-occupation standard after two or three years for continued receipt of benefits has been adopted by retirement systems in other states and is similar to that used for long-term disability benefits offered through our State's insurance program.<sup>69</sup>

#### ***E. Post-Approval Employment***

##### **1. Current Provisions**

Under Section 9-1-1580, a disability retiree may return to gainful employment and earn up to the difference between the retiree's average final compensation (as adjusted for inflation) and his yearly disability benefit without affecting his disability benefits.<sup>70</sup> If the retiree has earnings from a gainful occupation in excess of that difference, his disability benefits are reduced proportionately so that his benefits when added to his earnings do not exceed his inflation-adjusted average final compensation.<sup>71</sup> Further, pursuant to Section 9-1-1590, if a disability retiree returns to employment for an SCRS employer and has earnings in excess of his adjusted average final compensation, his disability retirement benefit is terminated and the member is

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<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> See Part III(A)(3) above.

<sup>69</sup> National Association of State Retirement Administrators, Survey of NASRA Members' Disability Processes and Benefits (September 2011), Responses to Question 5.

<sup>70</sup> S.C. Code Ann. § 9-1-1580 (Supp. 2011).

<sup>71</sup> Id.

restored to active membership in SCRS.<sup>72</sup> After age 65, a disability retiree is subject to the service retirement earnings limitation.<sup>73</sup>

PORS retirees are subject to a similar earnings limitation under Sections 9-11-80 and 9-11-90, again with the exception that the service retirement earnings limitation applies after age 55, rather than age 65.<sup>74</sup>

## 2. Act 278 Provisions

The revisions of Act 278 do not directly make any substantive amendments to the earnings limitations imposed upon SCRS and PORS disability retirees in the Retirement Code. However, it should be noted that, because Act 278 requires continued approval for Social Security disability benefits in order for a member to continue to receive SCRS or PORS disability benefits, if a disability retiree successfully re-enters the workforce with earnings that exceed the substantial gainful activity level and has his or her Social Security disability benefits discontinued accordingly, the retiree's SCRS or PORS disability retirement benefits would also be discontinued at the time the annual certification is required.<sup>75</sup>

## IV. SUMMARY AND CONSIDERATIONS

As part of its consideration of the reforms necessary to improve the fiscal stability of the State's retirement systems during the 2012 legislative session, the General Assembly addressed concerns that the disability retirement programs available under SCRS and PORS had rates of disability retirements that exceeded reasonable expectations of rates of disability among the membership and had benefit calculation provisions that paid benefits based upon projected service credit that exceeded not only the member's actual accrued service credit but, in many instances, normal expectations of the member's total service credit at retirement.

### *Benefit Eligibility*

The provisions of Act 278 address the issue of excessive disability approval rates in SCRS and PORS by conditioning the receipt of disability retirement benefits under those plans

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<sup>72</sup> *Id.* § 9-1-1590.

<sup>73</sup> *Id.* § 9-1-1580.

<sup>74</sup> S.C. Code Ann. §§ 9-11-80(4), (5), 9-11-90(1), (2) (Supp. 2011).

<sup>75</sup> *See, e.g.*, Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2011 (July 2012), at 6-7.

upon prior approval for disability benefits from the Social Security Administration.<sup>76</sup> In SCRS, approval for Social Security disability benefits is required for initial approval for disability retirement benefits; in PORS, Social Security disability approval is only required for the continued receipt of disability retirement benefits after three years. By shifting from the current “own occupation” disability retirement standard in SCRS and PORS to the “any occupation” standard of Social Security disability benefits, the number of SCRS and PORS members receiving a disability retirement allowance is expected to decrease by approximately 20%, resulting in a combined reduction of \$37.8 million in the plans’ unfunded liability.

Although the “own occupation” standard for disability retirement benefits is common among public pension plans, a number of other public pension plans have adopted an “any occupation” standard for the receipt of disability retirement benefits, either upon initial approval or subsequent reviews, and at least two plans have expressly conditioned the receipt of benefits upon prior approval for Social Security disability retirement benefits. And, arguably, the heightened “any occupation” standard of Social Security may be more appropriate than the current “own occupation” standard because the State should not be paying a lifetime retirement benefit to a person who remains able to perform other gainful occupations. From an efficiency standpoint, the new procedure requiring a disability retirement applicant to provide a prior Social Security approval letter will reduce administrative work for PEBA and will streamline the disability retirement process for all SCRS approvals and reviews and for PORS continuing disability reviews.

The length of time to receive approval for an SCRS disability retirement, however, can be expected to increase by about six months on average under the new disability procedure because of the length of the Social Security approval process. In particular, although roughly two-thirds of approved applicants under the revised provisions, including those with the most severe conditions, would receive their approvals at the initial review level within a time period comparable to the current system, approximately one quarter of approved applicants would have to pursue appeals at the Social Security hearing level to receive their approvals in a process that

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<sup>76</sup> As a reminder, the changes to the disability retirement programs made by Act 278 only apply to members of SCRS and PORS who apply for disability retirement after December 31, 2013. Members who are currently retired or who retire based upon an application filed on or before December 31, 2013, will not be affected by any of the revisions made by Act 278 to the disability retirement provisions.

could take an additional twelve months or more. However, it should also be noted that members of SCRS who are covered by the State's insurance program would also have access to long-term disability insurance benefits that would help bridge any gap between the end of an applicant's employment and his or her approval for disability retirement benefits.

Under the new PORS provisions, the current "own occupation" standard would apply for the initial three-year disability period. Thus, a PORS disability applicant would not have to wait for Social Security approval to begin receiving benefits, virtually eliminating the concern of delayed benefits for PORS retirees. After three years, the PORS disability retiree would have to meet the "any occupation" Social Security standard to continue to receive disability retirement benefits. This three-year period gives applicants ample time to apply for and receive Social Security benefits or to retrain and obtain other gainful employment. A disability benefit model that awards benefits initially based upon an own-occupation standard and then shifts to an any-occupation standard after two or three years for continued receipt of benefits has been adopted by retirement systems in other states and is similar to that used for long-term disability benefits offered through our State's insurance program.<sup>77</sup>

#### *Benefit Calculation*

The provisions of Act 278 address the concerns regarding the projection of service used to calculate disability retirement benefits under SCRS and PORS by eliminating such projections in SCRS and limiting the projections in PORS. Under Act 278, upon approval for disability retirement benefits, an SCRS disability retiree would receive a disability retirement benefit based upon the member's years of credited service at retirement, average final compensation at retirement, and the current benefit multiplier for service retirement benefits. The calculation would not require any reductions for early retirement or unmade contributions, but would also no longer project any service credit beyond what the member had accrued at the time of retirement, unlike the current projection of credit to age 65.

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<sup>77</sup> If the potential delay in the receipt of SCRS disability retirement benefits because of the processing time for Social Security disability benefits poses a concern for policy makers, the General Assembly could consider adopting the new PORS shifting standard for disability in SCRS. Because the actuaries project that the new PORS standard will result in a similar reduction in the ultimate rate of disability retirements as the new SCRS standard, the application of the PORS shifting standard to SCRS may not materially change the \$37.5 million in actuarial savings projected for SCRS as a result of the benefit eligibility changes made by Act 278.

Pursuant to Act 278, the revised disability retirement provisions retain the current benefit calculation for PORS disability retirees, with the exception that the projected service credit applied to the member's benefit would be the lesser of the credit necessary to reach age 55 or 25 years of service, rather than simply projecting to age 55 in all cases. However, it should be noted that PORS disability retirees still receive unreduced, projected service credit under the Act 278 provisions; the projection is simply capped such that the member does not receive a benefit based upon projected service that exceeds the amount necessary for normal service retirement eligibility.

The consulting actuaries for SCRS and PORS have projected that the implementation of the changes to the benefit calculations for SCRS and PORS disability retirement allowances set out in Act 278 would reduce the unfunded liability of SCRS by \$184.5 million and of PORS by \$0.9 million. Notably, the actuaries found that the change in the calculation of the disability benefit allowances resulted in a larger reduction in the plans' liabilities than the change in the eligibility provisions. A survey of other public pension plans reveals that other plans are roughly equally divided between plans that project service credit to calculate disability retirement benefits and those that calculate benefits based only on the amount of service credit attained at the time of disability retirement. Therefore, South Carolina would not be out of step with its peers in electing a system that calculates disability retirement based on credit at the time of disability. At a minimum, it would seem reasonable to limit any projections of service credit to the credit needed for a normal, unreduced service retirement benefit, whether based upon age or service credit.

Taken as a whole, the changes to the disability retirement provisions made by Act 278 are expected to reduce the ultimate number of disability retirements under SCRS and PORS by approximately 20% and reduce the unfunded liability by \$222 million for SCRS and \$1.2 million for PORS as a result of both the reduction in the number of retirements and the limitation on the benefit calculations.

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**SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY  
BOARD OF DIRECTORS  
BYLAWS  
(ADOPTED NOVEMBER 21, 2012)**

**I. PURPOSE**

The South Carolina Public Employee Benefit Authority Board of Directors (“Board”) is the governing body of the South Carolina Public Employee Benefit Authority (“PEBA”), established by Act No. 278 of 2012 of the South Carolina General Assembly, as codified in Title 9 of the Code of Laws, Chapter 11 of Title 1 of the Code of Laws, and Chapter 23 of Title 8 of the Code of Laws, as amended from time to time (“Governing Law”); and the Board has the powers and responsibilities set out in the Governing Law. PEBA is an administrative agency charged by the Governing Law with administering the State’s public employee insurance programs, its retirement programs, and, after December 31, 2013, its deferred compensation program.

**II. BOARD MEMBERSHIP**

**A. COMPOSITION**

- i. Members of the Board are “public officers” and “public officials” under the Code of Laws of South Carolina 1976, as amended.
- ii. The Board shall consist of the number of members selected in the manner set forth in the Governing Law; each member, prior to commencing performance of the member’s duties, must meet the qualifications, comply with the requirements, and take the oath of office set forth therein and elsewhere in the Code of Laws of South Carolina 1976, as amended.
- iii. At any regular meeting of the Board that includes a newly appointed or re-appointed Board member, it shall be announced on the record and included in the minutes that each such new or re-appointed members has complied with Section II.A.ii above.
- iv. Copies of records of appointments and of notarized oaths of all Board members will be maintained as exhibits to the meeting minutes.

**B. TERM OF OFFICE**

- i. Board members will serve for the periods determined in accordance with the Governing Law.
- ii. It shall be the responsibility of the Board secretary to notify the Secretary of State and the relevant appointing authority of any appointment to, resignation from, or vacancy in the membership of the Board and to insure that the requirements of Section II.A.ii above are met.

**III. GENERAL RESPONSIBILITIES AND DUTIES**

The Board will fulfill the responsibilities, perform the duties, and exercise the powers assigned to it by the Governing Law and other relevant provisions of the Code of Laws of South Carolina 1976, as amended.

In discharging his or her duties with respect to PEBA, a Board member is entitled to rely in good faith on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (1) one or more officers or employees of the State whom the Board member reasonably believes to be reliable and competent in the matters presented; (2) legal counsel, public accountants, actuaries, the South Carolina Retirement Systems Investment Commission or other persons as to matters the Board member reasonably believes are within the person's professional or expert competence; or (3) a committee of the board of directors of which a Board member is not a member if the Board member reasonably believes the committee merits confidence. A Board member is not acting in good faith under this section if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by this section unwarranted.

#### **IV. BOARD MEETINGS**

##### **A. REGULAR MEETINGS**

- i. The Board shall meet at such times and intervals and in such places as it may determine to be necessary to meet its responsibilities, but not less often than may be required by law.
- ii. At or before its final regular meeting of any calendar year, the Board shall establish the calendar for its regular meetings during the upcoming calendar year.

##### **B. SPECIAL MEETINGS**

- i. The Chairman of the Board or the Executive Director of PEBA or any two members of the Executive Committee may call a special meeting of the Board upon not less than forty-eight (48) hours notice, sent to members of the Board via e-mail to the e-mail address provided by the Board members to PEBA for that purpose.
- ii. The calling authority or the Board secretary may send the notice, which shall state the date, time, place, and purpose of the meeting; and the business to be transacted at such special meeting shall be limited to such purpose.
- iii. Any member may waive notice of any meeting. Except as provided in the next sentence, the waiver must be in writing, signed by the member entitled to the notice, and filed with the minutes or corporate records. The attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business and at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting, and does not thereafter vote for or assent to action taken at the meeting.

##### **C. QUORUM**

A majority of the statutorily authorized number of Board members shall constitute a quorum for the transaction of business at any meeting of the Board.

##### **D. MANNER OF ACTING**

- i. Required Vote. The act of the majority of the members present at a meeting at which a quorum is present when the vote is taken shall be the act of the Board, unless, by law, a supermajority is required.
- ii. Telephone Meeting. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A

member participating in a meeting by this means is deemed to be present in person at the meeting. No member may participate in Executive Session by telephone.

- iii. Failure To Object To Action. A member who is present at a meeting of the Board or a committee of the Board when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; or (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the Executive Director immediately after adjournment of the meeting. The right of dissent or abstention is not available to a member who votes in favor of the action taken.

#### **E. EXECUTIVE SESSION**

The Board and its Committees may enter executive session during a public meeting in the manner and for the purposes authorized under the Code of Laws of South Carolina 1976, as amended.

#### **F. ATTENDANCE**

The attendance of members at Board meetings and of Board committee members at committee meetings shall be recorded, and the Board secretary shall transmit each member's attendance record for the preceding six (6) months to that member's appointing authority in each January and July.

### **V. COMMITTEES**

#### **A. CREATION OF COMMITTEES**

The Board may create one or more committees, and the Chairman shall appoint members of the Board to serve on them. Each committee must have not fewer than two nor more than five Board members. The term of committee members shall be annual and shall run from July 1 through the succeeding June 30; provided, however, that committee members shall serve at the pleasure of the Chairman. Each committee shall have a chairman who shall be appointed by the Chairman of the Board. Each committee may appoint one or more non-Board members to serve as voting members of a committee if the committee finds that the non-Board members possess expertise, skills or qualifications that would aid the committee in fulfilling its responsibilities. Such non-Board members may vote only on committee matters and may not vote at meetings of the Board as a whole.

#### **B. REQUIRED PROCEDURES**

The provisions of these By-Laws that govern meetings, notice and waiver of notice, executive sessions, and voting requirements of the Board apply to committees and their members. A majority of Board members assigned to a committee of Board members constitutes a quorum for that committee to conduct business, and a majority of the Board members present must vote for an item for the committee to take official action on the item.

#### **C. AUTHORITY**

The authority of committees of the Board shall be limited to information-gathering and advice and recommendations to, and on behalf of, the Board, and to ministerial acts. Authority delegated to the Board by law may be exercised only by the Board. Committees may invite administrators,

consultants, staff, external auditors, and/or others to attend meetings and provide pertinent information as necessary.

**D. FINANCE, ADMINISTRATION, AUDIT AND COMPLIANCE COMMITTEE**

The Finance, Administration, Audit and Compliance Committee (FAAC) will gather, analyze, and study information concerning PEBA's governance, financial reporting, audits, budgets, and regulatory compliance and will make recommendations and reports to the Board on those matters.

**E. RETIREMENT POLICY COMMITTEE**

The Retirement Policy Committee will gather, analyze, and study information concerning issues arising out of PEBA's administration of the retirement plans set out in Title 9 of the Code, and after December 31, 2013, the Deferred Compensation Program, and will make recommendations and reports to the Board on those matters.

**F. HEALTH CARE POLICY COMMITTEE**

The Health Care Policy Committee will gather, analyze, and study information concerning issues arising out of PEBA's administration of the insurance plans set out in Chapter 11 of Title 1 of the Code, and will make recommendations and reports to the Board on those matters.

**G. EXECUTIVE COMMITTEE**

The Executive Committee consists of the Board's Chairman, and the Chairmen of the Finance, Administration, Audit and Compliance Committee, the Retirement Policy Committee, and the Health Care Policy Committee. The Executive Committee shall be responsible for evaluations of performance and changes in compensation for the Board's Executive Director.

**VI. INDEMNIFICATION OF BOARD MEMBERS**

PEBA shall indemnify and hold harmless members of the Board from and against all liabilities, costs, fees, and expenses, incurred as a result of their acts taken in their official capacity or as a result of allegations regarding those acts, to the full extent permitted by law, and shall insure its obligation hereunder from the insurers and in the amounts determined by the Board deemed reasonably necessary.

**VII. OFFICER SELECTION PROCESS**

- A.** The officers of the Board will be a Chairman, a Vice-Chairman, a secretary of the Board and the Executive Director of PEBA.
- B.** The Chairman and the Executive Director shall be selected in accordance with the Governing Law. At its regularly scheduled meeting in January 2014, the Board shall select one of its nonrepresentative members to serve as Chairman until the election held in July 2014. Beginning with the regular meeting scheduled for July 2014, the Board shall, in each regular meeting held in the month of July of even-numbered years, select one of its nonrepresentative members to serve as Chairman for the ensuing twenty-four months. If there is a vacancy in the Chairman position, the Vice-Chairman shall serve as Chairman until the next regularly scheduled meeting. At its next regularly scheduled meeting, the Board shall select a nonrepresentative member to serve as Chairman until the next election held in July of even-numbered years.

- C. The Chairman shall (1) preside and conduct meetings of the Board, (2) convene and adjourn meetings, (3) appoint committee chairmen, and (4) propose agendas for Board meetings.
- D. The Executive Director shall be the principal executive officer PEBA and, subject to the control of the Board of directors, shall, in general, perform and fulfill the statutory duties, responsibilities and powers conferred upon that office, and supervise and control all of the business and affairs of PEBA and have responsibility for the development and implementation of the strategic direction and initiatives of PEBA.
- E. The Board shall, in each regular meeting held in the month of July of even-numbered years, select a Vice-Chairman from among its nonrepresentative members to serve for the ensuing twenty-four months. If there is a vacancy in the Vice Chairman position, at its next regularly scheduled meeting, the Board shall select a nonrepresentative member to serve as Vice Chairman until the next election held in July of even-numbered years. In the absence of the Chairman, the Vice Chairman shall preside at Board meetings.
- F. The Board shall, from time to time and with the advice of the Executive Director, select from among the PEBA employees, a person to serve as secretary of the Board, to serve at the pleasure of the Board. The secretary of the Board shall have the responsibilities prescribed herein and such other duties as the Board may from time to time require, including: (a) keep the minutes of the proceedings of the Board; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; and (c) be custodian of the records of the Board.

## **VIII. RULES OF ORDER**

- A. Board meetings should proceed in an informal and collegial manner with a design towards reaching consensus when possible.
- B. The Chairman shall call for motions on items. Items presented to the Board for vote shall require a motion by a Board member other than the Chairman and a second of that motion by another Board member other than the Chairman.
- C. The item can then be discussed by the Board. The Chairman shall manage the discussion of the item and may participate in the discussion.
- D. The Chairman shall call for a vote on the item.
- E. Questions of reconsideration, tabling or amendment of motions, etc., are all decided by majority vote.
- F. The Board and its Committees may utilize the rules of order prescribed for small assemblies or similar small bodies in the most recently published revision of Robert's Rules of Order as a guide in conducting its meetings. Robert's Rules of Order shall not be binding on the Board, however. Rather, such rules of order will be construed to promote the orderly and efficient conduct of business and to avoid procedural complexity which may delay or hinder the taking of action required by law or advisable in the prudent exercise of the Board's fiduciary responsibilities.

**G.** The order of business will be at the discretion of the Chairman in the absence of instructions from the Board, but will normally be as follows:

- i. Call to Order
- ii. Approval of previous Board meeting minutes
- iii. Committee Reports
- iv. Executive Director Report
- v. Other Business
- vi. Adjournment

## **IX. MEETING MINUTES**

- A.** Minutes of the Board's meetings will be taken in accordance with law, and such records are open to public inspection.
- B.** The Chairman will cause the minutes of all Board meetings to be prepared, recording therein the time and place of each meeting, the names of the Board members present, and the actions of the Board giving the affirmative and dissenting votes, except where the action is unanimous, and when requested, a Board member's dissent or approval with reasons.
- C.** The Chairman will cause the minutes to be presented for approval at the next regular Board meeting. Board minutes will focus on describing any actions that occurred, and will provide sufficient detail to evidence the Board's due diligence in the matter. The minutes of a meeting during which an executive session is held will reflect the topic of the discussion at the executive session.
- D.** The minutes as approved by the Board, will be preserved as a part of the public record of the Board, and will be kept open to public inspection in accordance with law.
- E.** Board proceedings will be recorded on audio. The audio recordings will be kept at least until official minutes of the meeting are approved, after which time they may be destroyed.

## **X. REVIEW, HISTORY, AND AMENDMENT**

- A.** The Board will review the PEBA Bylaws at least every three years to ensure that they remain relevant and appropriate.
- B.** No provision within these Bylaws shall apply to the extent that it is in conflict with any provision of the Code of Laws of South Carolina, 1976, as amended. In the event of such conflict, the applicable Code provision shall apply in all respects.
- C.** As indicated by the signatures of the Board members below, these Bylaws were adopted by a majority of the Board members at a duly convened meeting of the Board on November 21, 2012.
- D.** These Bylaws may be amended only upon a majority vote of the Board members at a duly convened meeting of the Board upon proper notice pursuant to the FOIA. For purposes of this provision, majority shall mean a majority of the total membership of the Board, not simply a majority of the Board members present at any meeting convened for the purpose of amending the Bylaws.

As approved and adopted:

**THE BOARD OF DIRECTORS FOR THE  
SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY**

By: \_\_\_\_\_ By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_