

SENATE BILL 1869

By McNally

AN ACT to amend Tennessee Code Annotated, Section 3-9-103; Title 8, Chapter 25; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36; Title 8, Chapter 37 and Section 26-2-105, relative to retirement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-25-209, is amended by deleting the language "§ 8-35-406" and substituting instead the language "§ 8-25-207".

SECTION 2. Tennessee Code Annotated, Section 26-2-105(c), is amended by deleting the last sentence and substituting instead the following:

Notwithstanding this subsection (c) to the contrary, an optional retirement program established pursuant to title 8, chapter 25, part 2 shall honor claims under a qualified domestic relations order that complies with § 8-25-210.

SECTION 3. Tennessee Code Annotated, Section 8-36-903(a), is amended by deleting the language "in the retirement system" and by substituting instead "in the retirement system or in the optional retirement program established in chapter 25, part 2 of this title".

SECTION 4. Tennessee Code Annotated, Section 8-36-903, is amended by deleting subsection (b) and substituting instead the following:

(b) Any state employee or teacher who is a member of the retirement system or of the optional retirement program established in chapter 25, part 2 of this title on June 30, 2014, shall continue membership in the retirement system pursuant to the terms of chapters 34 - 37 of this title or in the optional retirement program pursuant to the terms of chapter 25, part 2 of this title, as applicable, that were in effect on June 30, 2014. Any person who reenters service as a state employee or teacher on or after July 1, 2014,

having previously served as a state employee or teacher prior to July 1, 2014, and who has not otherwise lost membership in the retirement system pursuant to § 8-35-104(a)(1) or (a)(2) or in the optional retirement program shall continue membership in the retirement system pursuant to the terms of chapters 34 - 37 of this title or in the optional retirement program pursuant to the terms of chapter 25, part 2 of this title, as applicable, that were in effect on June 30, 2014. A person loses membership in the optional retirement program by either annuitizing that person's entire account, rolling the person's entire account balance over to another plan, or by taking a distribution of the person's entire account balance.

SECTION 5. Tennessee Code Annotated, Section 8-36-903(e), is amended by deleting the language "of chapters 34 - 37 of this title" and substituting instead the language "of chapter 25, part 2 and of chapters 34 - 37 of this title".

SECTION 6. Tennessee Code Annotated, Section 8-36-903(d), is amended by deleting all language following the first sentence and substituting instead the following:

The election to transfer shall be made in the manner prescribed by the retirement system and filed with the retirement system. Any such election shall become effective on the first day of the month next following the month the election is filed with the retirement system, and shall be irrevocable. The actuarial value of accrued benefits earned prior to the effective date of the transfer shall be determined under the applicable provisions of the retirement system in effect on the date of the transfer. The teacher shall thereafter be subject to the applicable provisions of this part for all service rendered and compensation received by the teacher as a teacher with any elementary or secondary Tennessee public school system or as a future state employee.

SECTION 7. Tennessee Code Annotated, Section 8-25-203, is amended by deleting subsection (d) and substituting instead the following:

(d) The state treasurer may assess the costs associated with administering this program to the participating employees in order that such plan shall operate without administrative cost to or contribution from the state.

SECTION 8. Tennessee Code Annotated, Section 8-35-255, is amended by deleting from subsection (i) the language "§§ 8-36-124 and 8-36-209" and substituting instead "§§ 8-36-123(b), 8-36-124, and 8-36-209".

SECTION 9. Tennessee Code Annotated, Section 8-35-256, is amended by deleting from subsection (i) the language "§§ 8-36-124 and 8-36-209" and substituting instead "§§ 8-36-123(b), 8-36-124, and 8-36-209".

SECTION 10. Tennessee Code Annotated, Section 8-36-922, is amended by deleting from subdivision (d)(1) the language "subdivisions (d)(1)(A)-(F)" and substituting instead "subdivisions (d)(1)(A)-(E)".

SECTION 11. Tennessee Code Annotated, Section 8-36-922(d)(1), is amended by deleting subdivisions (A)-(F) and substituting instead the following:

(A) Suspend or reduce, as necessary, the three percent (3%) maximum cost-of-living adjustment as provided for in § 8-36-701(b)(1). Any such suspension or reduction shall begin on the July 1 next following the actuarial valuation;

(B) Suspend or reduce, as necessary, the amount of employer contributions required to the defined contribution component of the plan and redirect such amount to the reserve trust account to fund the increase in the maximum unfunded liability;

(C) Increase the employee contributions required in § 8-36-904 by one percent (1%) of the participant's earnable compensation;

(D) Reduce the retirement allowance formulas in § 8-36-907 from one percent (1%) and one and six-tenths percent (1.6%) to such lesser amount as is necessary to reduce the unfunded liability to the maximum unfunded liability. The reduction in formulas shall only apply to future service accruals; and

(E) If the maximum unfunded liability is still exceeded, then the hybrid plan shall be suspended for future service accruals until such time as the unfunded liability equals or is less than the maximum unfunded liability.

SECTION 12. Tennessee Code Annotated, Section 8-36-919, is amended by adding the following language as a new subsection:

() Any political subdivision that participates in the hybrid plan that previously participated in the retirement system under the plan afforded under chapters 34 - 37 of this title that was established on July 1, 1972, may, by resolution legally adopted and approved by its chief governing body, authorize its current employees who continue to participate under the previous plan the option to transfer from the previous plan to the hybrid plan on a prospective basis, but only under the following conditions:

(1) The employee contribution rate in the previous plan must be the same as the employee contribution rate required under the hybrid plan;

(2) The election shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions, and the employee contributions shall be picked up in accordance with § 8-36-904(b);

(3) The option to transfer to the hybrid plan must meet all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the hybrid plan to maintain its status as a qualified plan under the Internal Revenue Code;

(4) The election to transfer shall be made in the manner prescribed by the retirement system and filed with the retirement system;

(5) The election shall become effective on the first day of the month next following the month the election is filed with the retirement system;

(6) The actuarial value of accrued benefits earned prior to the effective date of the transfer shall be determined under the applicable provisions of the previous plan in effect on the date of the transfer; and

(7) Any employee who elects to transfer shall be subject to the applicable provisions of this part on and after the effective date of the transfer.

SECTION 13. Tennessee Code Annotated, Section 8-25-204, is amended by deleting subsections (c) and (d) and substituting instead the following:

(c) Each eligible employee who elects to participate in an optional retirement program rather than the retirement system shall make the election in the manner prescribed by the state treasurer and shall file the election with the state treasurer and with the institution where the employee is employed. Any such election shall be irrevocable.

(d) Any such eligible employee who is not already a member of the retirement system and who has not accumulated creditable service thereunder as a member of a local retirement fund shall make this election on the employee's initial date of employment with a state-supported institution of higher education.

SECTION 14. Tennessee Code Annotated, Section 8-25-204, is amended by deleting from subsection (f) the language "until such employee makes the election as described in subsection (e)".

SECTION 15. Tennessee Code Annotated, Section 8-25-204, is further amended by deleting subsection (h).

SECTION 16. Tennessee Code Annotated, Section 8-35-206, is amended by adding the following new subsections:

(h) Notwithstanding any other law to the contrary, any employer that desires to participate in the retirement system on or after July 1, 2016, shall, as a condition of

participating, pay in a lump sum its accrued unfunded liability, if any, created on account of its participation. At the request of the employer, the state treasurer may, in the treasurer's sole discretion, allow the employer to amortize the accrued unfunded liability over a period of time not to exceed twenty (20) years from the date of participation.

(i) Any participating employer who desires to establish a benefit improvement authorized under chapters 34 - 37 of this title shall pay the estimated increased pension liability created by the improvement in a lump sum or through an increase in the employer's contribution rate for the next fiscal year (July 1 - June 30) following the adoption of the resolution by the employer. No former or current employee of the employer shall be entitled to the benefit improvement until the estimated increased pension liability has been totally funded by the employer. The retirement system or the retirement system's actuary shall determine the estimated increased pension liability and associated increased contribution rate for the employer.

SECTION 17. Tennessee Code Annotated, Section 3-9-103(b), is amended deleting the last sentence.

SECTION 18. Tennessee Code Annotated, Section 8-25-204(g), is amended by deleting subdivision (2) and substituting instead the following:

(2) The election must be made in the manner prescribed by the state treasurer and filed with the state treasurer and the institution where the employee is employed by no later than the end of the calendar year following the year the employee completes five (5) years of creditable service;

SECTION 19. Tennessee Code Annotated, Section 8-25-303(a), is amended by deleting from subdivision (1) the language "may elect on a form" and by substituting instead "may elect in the manner".

SECTION 20. Tennessee Code Annotated, Section 8-34-602(a), is amended by deleting the language "board of trustees on a form prescribed by the board" and substituting instead "retirement system in the manner prescribed by the retirement system".

SECTION 21. Tennessee Code Annotated, Section 8-34-604, is amended by deleting from subdivision (a)(1) the language "on a form prescribed by the board of trustees" and substituting instead "in the manner prescribed by the retirement system".

SECTION 22. Tennessee Code Annotated, Section 8-34-716(a), is amended by deleting the language "by completing the necessary forms" and substituting instead "in the manner prescribed by the retirement system".

SECTION 23. Tennessee Code Annotated, Section 8-34-716(b), is amended by deleting the language "in writing" and substituting instead ", in the manner prescribed by the retirement system,".

SECTION 24. Tennessee Code Annotated, Section 8-35-103(a), is amended by deleting all language immediately before the colon ":" and substituting instead the following:

Any person who becomes a part-time employee or who is currently serving as a part-time employee on July 1, 1984, may elect to join the Tennessee consolidated retirement system. The election shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system; provided, that the following employees shall not be eligible for membership

SECTION 25. Tennessee Code Annotated, Section 8-35-103(b), is amended by deleting the language "application is filed with the board" and substituting instead "election is filed with the retirement system".

SECTION 26. Tennessee Code Annotated, Section 8-36-106(b), is amended by deleting the language "The board, on receipt of such application, shall provide the applicant with

a form to be completed and returned to the board and upon receipt thereof, the board shall authorize such suspension, in which event" and substituting instead "Upon approval,".

SECTION 27. Tennessee Code Annotated, Section 8-35-109, is amended by deleting from subdivision (b)(2) the language "files with the board of trustees on a form prescribed by the board, a notice of such person's election to become a member of the system and is otherwise eligible for membership" and substituting instead "elects to become a member of the system and is otherwise eligible for membership. The election shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system".

SECTION 28. Tennessee Code Annotated, Section 8-35-125, is amended by deleting the language "sign and file with the retirement division a form whereon the member acknowledges" wherever it appears and substituting instead "acknowledge in the manner prescribed by the retirement system".

SECTION 29. Tennessee Code Annotated, Section 8-35-203(a), is amended by deleting from subdivision (1)(B)(ii) the language "on a form" and substituting instead "in the manner".

SECTION 30. Tennessee Code Annotated, Section 8-36-123(b), is amended by deleting from subdivision (1)(A) the language "on a form" and substituting instead "in the manner".

SECTION 31. Tennessee Code Annotated, Section 8-36-205(a), is amended by deleting from subdivision (3)(A) all language after the semicolon ";" and substituting instead the following:

provided, that such member acknowledges that by continuing in service the member forfeits any rights to retirement benefits, including the supplemental bridge benefit provided for in § 8-36-211, during the period of the member's continued service. The acknowledgment must be made in the manner prescribed by the retirement division and

must be filed with the retirement division on or before the first day of the month prior to the month in which the member attains sixty (60) years of age. Any such member who fails to file the acknowledgment at the time and in the manner prescribed by this subdivision (a)(3)(A) shall be retired on the first day of the month following the month in which the member attains sixty (60) years of age.

SECTION 32. Tennessee Code Annotated, Section 8-36-205(a), is amended by deleting from subdivision (3)(B) all language after the semicolon ";" and substituting instead the following:

provided, that such member acknowledges that by continuing in service the member forfeits any rights to retirement benefits, including the supplemental bridge benefit provided for in § 8-36-211, during the period of the member's continued service. The acknowledgment must be made in the manner prescribed by the retirement division and must be filed with the retirement division on or before the first day of the month prior to the month in which the member attains the age requirement established by the political subdivision under subdivision (a)(2). Any such member who fails to file the acknowledgment at the time and in the manner prescribed by this subdivision (a)(3)(B) shall be retired on the first day of the month following the month in which the member attains the age requirement established by the political subdivision under subdivision (a)(2).

SECTION 33. Tennessee Code Annotated, Section 8-36-501(a), is amended by deleting the language "on a form" and substituting instead "in the manner".

SECTION 34. Tennessee Code Annotated, Section 8-36-603, is amended by deleting the language "by completing the proper form" and substituting instead "in the manner".

SECTION 35. Tennessee Code Annotated, Section 8-36-803, is amended by deleting the language "execute an irrevocable nonelection form" and substituting instead "make an irrevocable election not to participate".

SECTION 36. Tennessee Code Annotated, Section 8-36-805, is amended by deleting the language "certifies in writing" wherever it appears and by substituting instead "certifies".

SECTION 37. Tennessee Code Annotated, Section 8-36-805, is further amended by deleting subdivision (5)(A) and substituting instead:

(A) Shall certify to the retirement division the member's name, period to be employed, number of days to be worked, compensation to be paid, and anticipated termination date. The certification shall be made in the manner prescribed by the retirement division and shall be filed annually, if applicable, and acknowledged by the member;

SECTION 38. Tennessee Code Annotated, Section 8-36-923(a), is amended by deleting all language following the first sentence and substituting instead the following:

The election shall be made in the manner prescribed by the state treasurer and shall be filed with the state treasurer and with the institution of higher education where the employee is employed. The election shall be made within the time frame described in § 8-25-204. In all cases of doubt, the state treasurer shall determine whether the person is eligible to participate in the optional retirement program.

SECTION 39. Tennessee Code Annotated, Section 8-37-503(a), is amended by deleting the language "preparing forms" and substituting instead "transmitting the information".

SECTION 40. Tennessee Code Annotated, Section 8-36-903, is amended by deleting subsection (c) and substituting instead the following:

(c)

(1) Membership in the hybrid plan or the optional retirement program, as applicable, shall not be required for any part-time state employee or part-time teacher who would otherwise be covered under this part, or for any state employee who has optional membership in the retirement system pursuant to chapters 34 - 37 of this title.

(2) Notwithstanding this subsection (c) or any other law to the contrary, any person who becomes a part-time state employee or a part-time teacher on or after July 1, 2016, and who otherwise would be covered under this part, shall upon initial date of hire file an irrevocable election to become or not to become a participant in the hybrid plan or in the optional retirement program described in § 8-36-923, as applicable. Any person serving as a part-time state employee or part-time teacher on June 30, 2016, and who otherwise would be covered under this part, but who did not elect to participate in the hybrid plan or in the optional retirement program described in § 8-36-923, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan or in the optional retirement program described in § 8-36-923, as applicable. This subdivision (c)(2) shall not be construed to prohibit an eligible employee from making the elections authorized in chapter 25, part 2 of this title.

(3) Notwithstanding this subsection (c), § 8-35-109, or any other law to the contrary, any person who becomes a state judge, an attorney general, or a member of the general assembly on or after July 1, 2016, and who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, upon the initial date of taking office, file an irrevocable election to become or not to become a participant in the hybrid plan. Any person serving as a state judge, attorney general, or member of

the general assembly on June 30, 2016, and who is not a participant in the hybrid plan or who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan.

(4) Notwithstanding this subsection (c), § 8-35-113(c), or any other law to the contrary, any member of the state election commission who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, on the first day following completion of five (5) years of service on the commission, file an irrevocable election to become or not to become a participant in the hybrid plan. Any member of the state election commission who has completed a minimum of five (5) years of service on the commission as of June 30, 2016, and who is not a participant in the hybrid plan or who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan.

(5) The elections provided for in this subsection (c) shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system. The elections provided for in this subsection (c) shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions, and the employee contributions shall be picked up in accordance with § 8-36-904(b).

SECTION 41. Tennessee Code Annotated, Section 8-36-919(a), is amended by adding the following as a new subdivision (3):

(3) Any person who is employed by a political subdivision that is admitted into the hybrid plan on or after July 1, 2016, and who has optional membership pursuant to this section, shall, upon the date approval is given, file an irrevocable election to become or not to become a participant in the hybrid plan. Any employee of a political subdivision who had optional membership in the hybrid plan on June 30, 2016, and who has not elected to participate, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan. The elections provided for in this subdivision (a)(3) shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system. The elections provided for in this subdivision (a)(3) shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions and the employee contributions shall be picked up in accordance with § 8-36-904(b).

SECTION 42. Tennessee Code Annotated, Section 8-36-919(a), is further amended by deleting subdivision (2)(B).

SECTION 43. Tennessee Code Annotated, Title 8, Chapter 36, Part 9, is amended by adding the following as a new section:

(a) Any participant who previously served as a state employee or teacher whose membership in the retirement system was optional, but who elected not to participate, may establish retirement credit in the hybrid plan for the previous service pursuant to § 8-36-905.

(b) Any political subdivision employee participant who previously served in a position having optional membership in the retirement system, but who elected not to participate, may be eligible to establish retirement credit in the hybrid plan for the previous service pursuant to § 8-36-905 if the following conditions are met:

(1) The political subdivision is a participating employer in the hybrid plan and the prior service was rendered to that political subdivision;

(2) The chief legislative body of the political subdivision passes a resolution authorizing an actuarial study to determine the liability associated with the prior service, and accepting responsibility for the costs of the study; and

(3) Following receipt of the actuarial study, the chief legislative body of the political subdivision passes a resolution authorizing the prior service and accepting the liability for the credit.

(c) To establish credit under this section, a member must have at least one (1) year of current membership service or previous service established pursuant to chapter 35, part 2 of this title and must establish credit for all back service before such service is creditable, except as otherwise provided in chapters 34 - 37 of this title.

SECTION 44. Tennessee Code Annotated, Section 8-36-919(a)(2), is amended by deleting the language:

Notwithstanding § 8-36-904 or any other law to the contrary, any political subdivision described in subdivision (a)(2)(A) may elect to set the employee contribution rate for its employees at the same rate as required under the political subdivision's preexisting plan. The election must be made by the political subdivision prior to the political subdivision's effective date of participation in the hybrid plan and must be approved by the board of trustees. If the approved employee contribution rate is set at an amount less than five percent (5%) of the employees' earnable compensation, the four percent-employer contribution rate described in § 8-36-922 shall be increased by the percentage difference between five percent (5%) and the approved employee contribution rate.

and substituting instead the following:

Notwithstanding § 8-36-904 or any other law to the contrary, any political subdivision described in subdivision (a)(2)(A) shall set the employee contribution rate for its employees at the same rate as required under the political subdivision's preexisting plan. The political subdivision shall submit to the retirement system a duly executed adoption resolution as provided in subdivision (a)(1) prior to the political subdivision's effective date of participation in the hybrid plan, which must be approved by the board of trustees. If the employee contribution rate is set at an amount less than five percent (5%) of the employees' earnable compensation, the four percent (4%) employer contribution rate described in § 8-36-922 shall be increased by the percentage difference between five percent (5%) and the employee contribution rate.

SECTION 45. Tennessee Code Annotated, Section 8-35-203(a), is amended by deleting subdivision (1)(B)(iii) and substituting instead the following:

(iii) Notwithstanding § 8-37-202 or any other law to the contrary, any employer described in subdivision (a)(1)(B)(i) shall set the employee contribution rate for its employees at the same rate as required under the employer's preexisting plan. The employer shall submit to the retirement system a duly executed adoption resolution as provided in § 8-35-201 prior to the employer's effective date of participation, which must be approved by the board of trustees.

SECTION 46. Tennessee Code Annotated, Section 8-37-104(a), is amended by adding the following as a new subdivision:

Relative to the retirement system's transactions that require collateralization, the board of trustees shall have the authority to pledge, post, accept, and rehypothecate a counterparty's collateral and allow other entities or individuals to rehypothecate the retirement system's collateral;

SECTION 47. Tennessee Code Annotated, Section 8-37-104(a), is amended by adding the following as a new subdivision:

The board of trustees shall have the power and authority to invest in publicly listed investment companies, including, but not limited to, unit investment trusts, exchange-traded funds, open-ended mutual funds, and close-ended mutual funds;

SECTION 48. Tennessee Code Annotated, Section 8-37-104(a), is amended by adding the following as a new subdivision:

The board of trustees shall have the power and authority to invest currency;

SECTION 49. Tennessee Code Annotated, Section 8-37-104(a), is amended by adding the following as a new subdivision:

The total sum invested in real property and private equity, as authorized and described in § 8-37-104(a)(9) and (a)(10)(A), shall not exceed forty percent (40%) of the total funds of the retirement system;

SECTION 50. Tennessee Code Annotated, Section 8-37-104(a)(2), is amended by deleting the language "exceeding one (1) year in maturity".

SECTION 51. Tennessee Code Annotated, Section 8-37-104(a), is amended by deleting subdivision (5) and substituting instead the following:

(5) The board of trustees shall have the power and authority to invest in derivative instruments for hedging, replication, or income-generating purposes. For the purposes of this subdivision (a)(5), "derivative transaction" includes, but is not limited to, an agreement, option or instrument, or any series or combinations of an agreement, option or instrument: to make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or that has a price, performance, value, or cash flow based primarily upon the actual or expected price, yield, level, performance, value or cash flow of one (1) or more

underlying interests. Derivative instruments include, but are not limited to, options, warrants (not attached to another investment), caps, floors, collars, swaps, security-based swaps, security-based swap agreements, mixed swaps, swaptions, forwards, futures, and any other agreements, options or instruments substantially similar thereto, or any series or combinations thereof. Derivative instruments do not include collateralized mortgage obligations, treasury-inflation protected securities, other asset-backed securities, principal-protected structured securities, and floating rate securities;

SECTION 52. Tennessee Code Annotated, Section 8-37-104(a), is amended by deleting subdivision (9)(A).

SECTION 53. Tennessee Code Annotated, Section 8-37-104(a)(10), is amended by deleting subdivision (A)(i) and substituting instead the following:

(i) The board of trustees shall have the power and authority to establish an investment policy to permit the retirement system to invest system assets in private equity. Private equity investments may include, but shall not be limited to, strategic lending, domestic and international venture capital, corporate buyouts, mezzanine and distressed debt, special situations, and secondary funds.

SECTION 54. Tennessee Code Annotated, Section 8-37-104, is amended by deleting subsection (b).

SECTION 55. Tennessee Code Annotated, Section 8-37-115, is amended by deleting subsection (c) and substituting instead the following:

(c) An organization created pursuant to this section may enter into such agreements as it may deem necessary or advisable in carrying out any purpose for which the organization was created. Any such agreement may contain terms and conditions determined by the board of trustees to be appropriate, including, but not limited to, indemnification, liquidated damages, warranties of title to real estate, and

choice of law. Any such agreements authorized by this section shall be exempt from the requirements contained in title 12, chapters 3 and 4.

SECTION 56. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 57. This act shall take effect upon becoming a law, the public welfare requiring it.