

SENATE BILL 2324

By McNally

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 25; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36; Title 8, Chapter 37 and Title 8, Chapter 38, relative to public employee benefits.

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

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 25, Part 1, is amended by adding the following as a new appropriately designated section:

8-25-1___. Notwithstanding any other law to the contrary, any deferred compensation program established on behalf of state employees under this part or under part 3 of this chapter shall honor claims under a qualified domestic relations order at a time designated by the state treasurer. For purposes of this section, "qualified domestic relations order" has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the deferred compensation program participant.

SECTION 2. Tennessee Code Annotated, Section 8-25-105, is amended by adding the following sentences immediately after the first sentence in that section:

It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one (1) or more comingled funds in which assets in the custody of the state treasurer that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts, custodial accounts, retirement income accounts, governmental plans and tax-exempt trusts under the Internal Revenue Code of 1986 and Rev. Rul. 81-100, as modified by Rev. Ruls. 2004-

-67, 2008-40 and 2011-1 are pooled, solely for investment purposes, in a common or group trust fund. The assets so invested shall be subject to all the provisions of the group trust instruments establishing and governing such trust(s). Those instruments of group trusts, including any subsequent amendments, are hereby incorporated by reference and made a part of the plan.

SECTION 3. Tennessee Code Annotated, Section 8-25-301, is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one (1) or more comingled funds in which assets in the custody of the state treasurer that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts, custodial accounts, retirement income accounts, governmental plans and tax-exempt trusts under the Internal Revenue Code of 1986 and Rev. Rul. 81-100, as modified by Rev. Ruls. 2004-67, 2008-40 and 2011-1 are pooled, solely for investment purposes, in a common or group trust fund. The assets so invested shall be subject to all the provisions of the group trust instruments establishing and governing such trust(s). Those instruments of group trusts, including any subsequent amendments, are hereby incorporated by reference and made a part of the plan.

SECTION 4. Tennessee Code Annotated, Section 8-34-101(46)(B), is amended by deleting the words “or physical therapist” and by substituting instead the punctuation and words “, physical therapist, or occupational therapist”.

SECTION 5. Tennessee Code Annotated, Section 8-34-101(46)(B), is further amended by adding the following sentence immediately after the first sentence in that subdivision:

Notwithstanding the foregoing, a physical therapist and an occupational therapist employed with the Metropolitan Nashville Public Schools District shall not be included within the definition of teacher.

SECTION 6. Tennessee Code Annotated, Title 8, Chapter 34, Part 3, is amended by adding the following as a new appropriately designated section:

8-34-3__.

(a) There is established an administrative committee and an investment committee of the board whose membership shall be comprised of members of the board as appointed by the state treasurer. The primary purpose of the administrative committee shall be to assist the board in fulfilling its responsibilities with respect to political subdivisions petitioning for participation in the retirement system, the review and consideration of the actuarial and experience study results, and such other duties as may be prescribed by the chair of the board. The primary purpose of the investment committee shall be to assist the board in fulfilling its responsibilities with respect to the investments of retirement system assets. The state treasurer may also establish and appoint such other committees of the board as the chair of the board deems necessary to assist the board in the performance of its duties.

(b) The state treasurer shall serve as chair of the investment committee, and the director of the division of retirement shall serve as chair of the administrative committee. The chair of any other committees created pursuant to this section shall be determined by the chair of the board.

(c) Each committee shall meet at such times as deemed necessary by the chair of the respective committee in order to perform its responsibilities under this section, and shall keep a record of all its proceedings, which shall be open to public inspection. A report of any recommended action taken by a committee shall be presented to the full

board at the board's next regular meeting following the recommended action taken by the committee.

SECTION 7. Tennessee Code Annotated, Section 8-35-101(a), is amended by adding the following new sentence at the end thereof:

Notwithstanding this section or any other law to the contrary, no state department, commission, institution, board, agency, instrumentality or entity of or affiliated with state government shall be authorized to cover its otherwise eligible employees in the retirement system unless the general assembly approves the annual operating budget for the entity, or unless the entity has specific Tennessee state statutory authority to cover its otherwise eligible employees in the retirement system and the entity obtains written advice from nationally recognized counsel employed by the retirement system in the area of government employee benefit plans that the entity is eligible to participate in a governmental plan as defined by Internal Revenue Code Section 414(d), as amended. The foregoing also applies to any person seeking admission to the retirement system whose compensation is paid, in whole or in part, from funds not appropriated by the general assembly. Notwithstanding this section or any other law to the contrary, the funds necessary to fund any prior service of such persons must be appropriated by the general assembly or paid by another governmental entity.

SECTION 8. Tennessee Code Annotated, Section 8-35-209(a), is amended by deleting the words and punctuation “the Professional Educators of Tennessee, the Tennessee Association of Secondary School Principals, educational television associations,”.

SECTION 9. Tennessee Code Annotated, Section 8-35-209(g), is amended by deleting the same in its entirety and by redesignating the subsequent subsections accordingly.

SECTION 10. Tennessee Code Annotated, Section 8-35-217(b), is amended by deleting the existing language of the subsection and substituting instead the following:

If an employer does not extend social security coverage to its employees, the employer is authorized to set an alternate accrual rate, subject to the approval of the board.

SECTION 11. Tennessee Code Annotated, Sections 8-35-225 and 8-35-235, are amended by deleting them in their entireties.

SECTION 12. Tennessee Code Annotated, Section 8-35-226(a), is amended by deleting subdivisions (1) – (2), and by substituting instead the following:

(1) The chief legislative body of the city, special school district or county passes a resolution approved by a two-thirds ($\frac{2}{3}$) majority authorizing membership for such employees and accepting the liability therefor.

(2) Upon such authorization and assumption of the employer liability, any such employee who meets the requirements of § 8-35-203(a)(2)(A) and (B) shall be eligible to establish retirement credit for such periods of previous service as authorized for other employees of the city, special school district or county.

SECTION 13. Tennessee Code Annotated, Section 8-35-239, is amended by deleting the words “County Executives” wherever the same may appear and by substituting instead the words “County Mayors”.

SECTION 14. Tennessee Code Annotated, Section 8-35-255(i), is amended by adding the following sentence immediately after the first sentence in that subsection:

Further, the provisions of the hybrid plan established under chapter 36, part 9 of this title shall not apply unless the political subdivision subsequently elects to participate in such plan on a prospective basis pursuant to § 8-36-919.

SECTION 15. Tennessee Code Annotated, Section 8-35-256(i), is amended by adding the following sentence immediately after the first sentence in that subsection:

Further, the provisions of the hybrid plan established under chapter 36, part 9 of this title shall not apply unless the political subdivision subsequently elects to participate in such plan on a prospective basis pursuant to § 8-36-919.

SECTION 16. Tennessee Code Annotated, Section 8-35-319, is amended by deleting the same in its entirety and by transferring it to Tennessee Code Annotated, Title 8, Chapter 35, Part 2, as a new appropriately designated section.

SECTION 17. Tennessee Code Annotated, Section 8-36-108(a)(1)(A), is amended by deleting subdivisions (ii) and (iii), and by substituting instead the following:

(ii) If the member's surviving spouse is named, the annuity will continue to such spouse until death. If the named surviving spouse dies, then the annuity shall be divided equally among the member's surviving minor children. Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children;

(iii) If a surviving minor child or children are named, then the annuity shall be divided equally among them. Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children;

SECTION 18. Tennessee Code Annotated, Section 8-36-108(b)(1)(B), is amended by deleting the last sentence thereof and by substituting instead the following:

Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children.

SECTION 19. Tennessee Code Annotated, Section 8-36-108(b)(1)(C), is amended by deleting the second and third sentences thereof and by substituting instead the following:

Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children. On the first day of the month following the month in which the last surviving child dies or reaches age twenty-two (22), then the annuity shall be paid to the member's surviving spouse, if any, until the surviving spouse dies.

SECTION 20. Tennessee Code Annotated, Section 8-36-108(b)(5)(B), is amended by deleting the third and fourth sentences thereof and by substituting instead the following:

Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children. If the guaranteed minimum total value has not been paid out under this subdivision (b)(5)(B) in the form of an annuity by the first day of the month following the month in which the last surviving child dies or reaches age twenty-two (22), the remaining amount shall be divided equally among all the member's surviving children, regardless of age.

SECTION 21. Tennessee Code Annotated, Section 8-36-108(b)(5)(C), is amended by deleting the second sentence thereof and by substituting instead the following:

Each child shall receive such child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining minor children.

SECTION 22. Tennessee Code Annotated, Section 8-36-109(a)(3), is amended by deleting subdivisions (A) – (E) in their entireties and by substituting instead the following:

(A) Notwithstanding any other provision of the law to the contrary, if the member's spouse is the designated beneficiary on the date of the member's death, and if that spouse should thereafter die leaving a surviving minor child or children of the member, then the annuity the spouse was receiving under this subsection (a) shall be divided equally among the member's surviving minor children. Each child shall receive the child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining children.

(B) If the member's spouse is designated as the sole beneficiary on the date of the member's death, and if that spouse predeceased the member or died in a common accident or occurrence with the member, then the member's surviving minor child or children shall be entitled to the same annuity as set forth in subdivision (a)(3)(A).

SECTION 23. Tennessee Code Annotated, Section 8-36-610, is amended by deleting the same in its entirety and by substituting instead the following:

(a) If a retired member of the Tennessee consolidated retirement system, including a retired prior class member, has, under the options of provisions of the preceding systems in this part, designated the spouse of the retired member as such retired member's beneficiary on the death of the retired member, then if the surviving spouse should die after the death of the retired member, and there is surviving a minor child or children of the retired member, the same annuity paid to the surviving spouse shall be divided equally among the minor children. Each child shall receive the child's share until first day of the month following the month in which the child dies or reaches

age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining children.

(b) If the retired member's spouse is designated as the sole beneficiary on the date of the member's death, and if that spouse predeceased the retired member or died in a common accident or occurrence with the member, then the same annuity to which the spouse of the retired member would have been entitled had such spouse survived the retired member shall be divided equally among the retired member's minor children. Each child shall receive the child's share until the first day of the month following the month in which the child dies or reaches age twenty-two (22), whichever occurs first, at which time the annuity shall be redistributed equally among the remaining children.

SECTION 24. Tennessee Code Annotated, Section 8-36-902(a)(8), is amended by inserting the words and punctuation "state judges," immediately after the words and punctuation "district attorneys general," in the first sentence thereof.

SECTION 25. Tennessee Code Annotated, Section 8-36-903(b), is amended by deleting from the second sentence thereof the words and figures "who has not been refunded such previous service pursuant to § 8-37-210" and by substituting instead the words and figures "who has not otherwise lost membership in the retirement system pursuant to § 8-35-104(a)(1) or (a)(2)".

SECTION 26. Tennessee Code Annotated, Section 8-36-916(c)(1), is amended by deleting from the fourth sentence thereof the words "the maximum allowed under the Internal Revenue Code" and by substituting instead the words and figures "seven percent (7%) of the employee's salary".

SECTION 27. Tennessee Code Annotated, Section 8-36-920(d)(1), is amended by deleting all the words and punctuation immediately before the colon ":" and by substituting

instead the words “There shall be established within the hybrid plan benefits trust account a stabilization reserve trust account into which shall be deposited”.

SECTION 28. Tennessee Code Annotated, Section 8-36-920(d), is amended by adding the following new subdivision (d)(2) and by redesignating the existing subdivisions accordingly:

(2) Notwithstanding subdivision (d)(1)(A) above, any employer contributions attributable to federal funds shall not be deposited into the stabilization reserve trust account if such deposits are prohibited by an agency of the federal government or contrary to the advice of competent legal counsel or government accounting professionals of the retirement system.

SECTION 29. Tennessee Code Annotated, Section 8-37-104(a), is amended by deleting all the words and punctuation immediately before the first colon “:” and by substituting instead the following:

The board of trustees shall invest and manage assets solely in the interest of the beneficiaries of the retirement system in a manner consistent with § 35-14-107, the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management functions pursuant to § 35-14-111. Notwithstanding the foregoing, the power of investment of retirement system funds shall be subject to the approval by the board of trustees through its investment policy and in accordance with the following

SECTION 30. Tennessee Code Annotated, Section 8-37-104(a), is further amended by deleting subdivision (10)(B) in its entirety and by redesignating the existing subdivisions accordingly.

SECTION 31. Tennessee Code Annotated, Section 8-37-104(e), is amended by deleting the same in its entirety and by substituting instead the following:

(e) The board may adopt a group trust instrument for the purpose of pooling funds of the retirement system with other assets in the custody of the state treasurer, solely for investment purposes, that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts, custodial accounts, retirement income accounts, governmental plans and tax-exempt trusts under the Internal Revenue Code of 1986 and Rev. Rul. 81-100, as modified by Rev. Ruls. 2004-67, 2008-40 and 2011-1. Such group trust declaration shall, upon its adoption by the board, convert the trust established for the retirement system into the group trust. The board will act as trustee for the group trust under the terms and conditions of the group trust declaration. The board may amend the terms of the group trust from time to time. The terms of the group trust, including any subsequent amendments, are hereby incorporated by reference and made a part of the retirement system. Simultaneously with the adoption of the group trust declaration, there shall be established a sub trust for the retirement system which will exclusively hold all of the assets of the retirement system. On the date of creation of the group trust, one hundred percent (100%) of the interest in the group trust will be allocable to the sub trust for the retirement system. The assets of the sub trust invested in the group trust shall be subject to all the provisions of the group trust instruments establishing and governing such trust.

SECTION 32. Tennessee Code Annotated, Section 8-37-104, is amended by adding the following new subsection (b) and by redesignating the existing subsections accordingly:

(b) In addition to complying with the investment requirements contained in subsection (a), the board may utilize, through its investment policy, the investment options contained in §§ 56-3-303, 56-3-304, 56-3-305 and 56-3-306 for the investment of the retirement system funds. By utilizing these investment options, the investments shall be subject to the limitations, restrictions, conditions, qualifications, requirements, terms

and approvals contained within §§ 56-3-303, 56-3-304, 56-3-305 and 56-3-306, unless the board establishes different limitations, restrictions, conditions, qualifications, requirements, terms and approvals through its investment policy for the investment options.

SECTION 33. Tennessee Code Annotated, Section 8-37-108(a), is amended by deleting the language “nominate” and replace it with the language “appoint”.

SECTION 34. Tennessee Code Annotated, Section 8-37-108(a), is further amended by adding the following section at the end of the subsection:

The state treasurer and the chief investment officer for the Tennessee consolidated retirement system shall be ex officio, non-voting members of the council.

SECTION 35. Tennessee Code Annotated, Section 8-37-108(c), is amended by deleting the third sentence in the subsection in its entirety and replacing it instead with the following:

Both members shall have at least five (5) years’ professional experience as a portfolio manager, economist or investment manager in any field for which investments of Tennessee consolidated retirement system funds are authorized or as a teacher at the post-secondary level in accounting, economics, finance or other related field.

SECTION 36. Tennessee Code Annotated, Section 8-37-108(e), is amended by adding the language, “, to the extent approved by the state treasurer.” at the end of the language in the subsection.

SECTION 37. Tennessee Code Annotated, Section 8-37-108(g), is amended by deleting the language “quarterly” and replacing it instead with the language “semi-annually”.

SECTION 38. Tennessee Code Annotated, Section 8-37-109(a), is amended by deleting the language contained in the subsection and replacing it instead with the following:

It is the duty of the investment advisory council to review the information furnished to it and provide such investment advice as the council deems appropriate to the state treasurer and the chief investment officer for the Tennessee consolidated retirement system.

SECTION 39. Tennessee Code Annotated, Section 8-37-109(b), by deleting the subsection in its entirety.

SECTION 40. Tennessee Code Annotated, Section 8-37-115(a), is amended by deleting the last three sentences thereof in their entireties.

SECTION 41. Tennessee Code Annotated, Section 8-37-301, is amended by adding the following new subsection at the end thereof:

(d) The assets accumulated in the state accumulation fund on behalf of kindergarten through twelfth grade teachers shall be used exclusively for the benefit of such teachers. The assets accumulated in the state accumulation fund on behalf of state employees, including the employees of public institutions of higher education, shall be used exclusively for the benefit of such employees.

SECTION 42. Tennessee Code Annotated, Section 8-38-108(c), is amended by deleting the same in its entirety.

SECTION 43. 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 44. This act shall take effect upon becoming a law, the public welfare requiring it.