

FIRST REGULAR SESSION

SENATE BILL NO. 414

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1810S.011

AN ACT

To repeal sections 56.809 and 70.605, RSMo, and to enact in lieu thereof three new sections relating to retirement.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 56.809 and 70.605, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 29.212, 56.809, and
3 70.605, to read as follows:

**29.212. Any retirement system established by the state of
2 Missouri or any political subdivision or instrumentality of the state for
3 the purpose of providing retirement plan benefits for elected or
4 appointed public officials or employees of the state of Missouri or any
5 political subdivision of the state may be audited by the state auditor
6 every three years, or more frequently as otherwise required by law.**

56.809. 1. The general administration and the responsibility for the
2 proper operation of the fund are vested in a board of trustees of five
3 persons. Trustees shall be elected by a secret ballot vote of the prosecuting
4 attorneys and circuit attorneys of this state. Trustees shall be chosen for terms
5 of four years from the first day of January next following their election except
6 that the members of the first board shall be appointed by the governor by and
7 with the consent of the senate after notification in writing, respectively, by the
8 prosecuting attorneys and circuit attorneys of eighty percent of the counties in
9 the state, including a city not within a county, that the prosecuting attorney or
10 circuit attorney has elected to come under the provisions of sections 56.800 to
11 56.840. It shall be the responsibility of the initial board to establish procedures
12 for the conduct of future elections of trustees and such procedures shall be

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 approved by a majority vote by secret ballot of the prosecuting attorneys and
14 circuit attorneys in this state. The board shall have all powers and duties that
15 are necessary and proper to enable it, its officers, employees and agents to fully
16 and effectively carry out all the purposes of sections 56.800 to 56.840.

17 2. The board of trustees shall elect one of their number as chairman and
18 one of their number as vice chairman and may employ an administrator who shall
19 serve as executive secretary to the board. The Missouri office of prosecution
20 services, sections 56.750 to 56.775, may, in the discretion of the board of trustees,
21 act as administrative employees to carry out all of the purposes of sections 56.800
22 to 56.840. In addition, the board of trustees may appoint such other employees
23 as may be required. The board shall hold regular meetings at least once each
24 quarter. Other meetings may be called as necessary by the chairman or by any
25 three members of the board. Notice of such meetings shall be given in accordance
26 with chapter 610.

27 3. The board of trustees shall appoint an actuary or firm of actuaries as
28 technical advisor to the board of trustees.

29 4. The board of trustees shall retain investment advisors to be investment
30 advisors to the board.

31 5. The board of trustees may retain legal counsel to advise the board and
32 represent the system in legal proceedings.

33 6. The board shall arrange for annual audits of the records and accounts
34 of the system by a certified public accountant or by a firm of certified public
35 accountants. The state auditor [shall examine such audits at least] **may audit**
36 **the system** once every three years and report to the board of trustees and to the
37 governor.

38 7. The board of trustees shall serve without compensation for their
39 services as such; except that each trustee shall be paid from the system's funds
40 for any necessary expenses incurred in the performance of duties authorized by
41 the board.

42 8. The board of trustees shall be authorized to appropriate funds from the
43 system for administrative costs in the operation of the system.

44 9. The board of trustees shall, from time to time, after receiving the advice
45 of its actuary, adopt such mortality and other tables of experience, and a rate or
46 rates of regular interest, as shall be necessary for the actuarial requirements of
47 the system, and shall require its executive secretary to keep in convenient form
48 such data as shall be necessary for actuarial investigations of the experience of

49 the system, and such data as shall be necessary for the annual actuarial
50 valuations of the system.

51 10. The board of trustees shall, after reasonable notice to all interested
52 parties, hear and decide questions arising from the administration of sections
53 56.800 to [56.835] **56.840**; except that within thirty days after a decision or order,
54 any member, retirant, beneficiary or political subdivision adversely affected by
55 that determination or order may make an appeal under the provisions of chapter
56 536.

57 11. The board of trustees shall arrange for adequate surety bonds covering
58 the executive secretary and any other custodian of funds or investments of the
59 board. When approved by the board, such bonds shall be deposited in the office
60 of the Missouri secretary of state.

61 12. Subject to the limitations of sections 56.800 to [56.835] **56.840**, the
62 board of trustees shall formulate and adopt rules and regulations for the
63 government of its own proceedings and for the administration of the retirement
64 system.

65 13. The board of trustees shall be the trustees of the funds of the
66 system. Subject to the provisions of any applicable federal or state laws, the
67 board of trustees shall have full power to invest and reinvest the moneys of the
68 system, and to hold, purchase, sell, assign, transfer or dispose of any of the
69 securities and investments in which such moneys shall have been invested, as
70 well as the proceeds of such investments and such moneys.

71 14. Notwithstanding any other provision of the law to the contrary, the
72 board of trustees may delegate to its duly appointed investment advisors
73 authority to act in place of the board of trustees in the investment and
74 reinvestment of all or part of the moneys of the system, and may also delegate to
75 such advisors the authority to act in place of the board of trustees in the holding,
76 purchasing, selling, assigning, transferring or disposing of any or all of the
77 securities and investments in which such moneys shall have been invested, as
78 well as the proceeds of such investments and such moneys. Such investment
79 counselor shall be registered as an investment advisor with the United States
80 Securities and Exchange Commission.

81 In exercising or delegating its investment powers and authority, members of the
82 board of trustees shall exercise ordinary business care and prudence under the
83 facts and circumstances prevailing at the time of the action or decision. In so
84 doing, the board of trustees shall consider the long-term and short-term needs of

85 the system in carrying out its purposes, the system's present and anticipated
86 financial requirements, the expected total return on the system's investment, the
87 general economic conditions, income, growth, long-term net appreciation, and
88 probable safety of funds. No member of the board of trustees shall be liable for
89 any action taken or omitted with respect to the exercise of or delegation of these
90 powers and authority if such member shall have discharged the duties of his or
91 her position in good faith and with that degree of diligence, care and skill which
92 prudent men and women would ordinarily exercise under similar circumstances
93 in a like position.

94 15. The board shall keep a record of its proceedings which shall be open
95 to public inspection. It shall annually prepare a report showing the financial
96 condition of the system. The report shall contain, but not be limited to, an
97 auditor's opinion, financial statements prepared in accordance with generally
98 accepted accounting principles, an actuary's certification along with actuarial
99 assumptions and financial solvency tests.

70.605. 1. For the purpose of providing for the retirement or pensioning
2 of the officers and employees and the widows and children of deceased officers
3 and employees of any political subdivision of the state, there is hereby created
4 and established a retirement system which shall be a body corporate, which shall
5 be under the management of a board of trustees herein described, and shall be
6 known as the "Missouri Local Government Employees' Retirement System". Such
7 system may sue and be sued, transact business, invest funds, and hold cash,
8 securities, and other property. All suits or proceedings directly or indirectly
9 against the system shall be brought in Cole County. The system shall begin
10 operations on the first day of the calendar month next following sixty days after
11 the date the board of trustees has received certification from ten political
12 subdivisions that they have elected to become employers.

13 2. The general administration and the responsibility for the proper
14 operation of the system is vested in a board of trustees of seven persons: three
15 persons to be elected as trustees by the members of the system; three persons to
16 be elected trustees by the governing bodies of employers; and one person, to be
17 appointed by the governor, who is not a member, retirant, or beneficiary of the
18 system and who is not a member of the governing body of any political
19 subdivision.

20 3. Trustees shall be chosen for terms of four years from the first day of
21 January next following their election or appointment, except that of the first

22 board shall all be appointed by the governor by and with the consent of the
23 senate, as follows:

24 (1) Three persons who are officers or officials of political subdivisions, one
25 for a term of three years, one for a term of two years, and one for a term of one
26 year; and

27 (2) Three persons who are employees of political subdivisions and who
28 would, if the subdivision by which they are employed becomes an employer, be
29 eligible as members, one for a term of three years, one for a term of two years,
30 and one for a term of one year; and

31 (3) That person appointed by the governor under the provisions of
32 subsection 2 of this section. All the members of the first board shall take office
33 as soon as appointed by the governor, but their terms shall be computed from the
34 first day of January next following their appointment, and only one member may
35 be from any political subdivision or be a policeman or fireman.

36 4. Successor trustees elected or appointed as member trustees shall be
37 members of the retirement system; provided, that not more than one member
38 trustee shall be employed by any one employer, and not more than one member
39 trustee shall be a policeman, and not more than one member trustee shall be a
40 fireman.

41 5. Successor trustees elected as employer trustees shall be elected or
42 appointed officials of employers and shall not be members of the retirement
43 system; provided, that not more than one employer trustee shall be from any one
44 employer.

45 6. An annual meeting of the retirement system shall be called by the
46 board in the last calendar quarter of each year in Jefferson City, or at such place
47 as the board shall determine, for the purpose of electing trustees and to transact
48 such other business as may be required for the proper operation of the
49 system. Notice of such meeting shall be sent by registered mail to the clerk or
50 secretary of each employer not less than thirty days prior to the date of such
51 meeting. The governing body of each employer shall certify to the board the name
52 of one delegate who shall be an officer of the employer, and the members of the
53 employer shall certify to the board a member of the employer to represent such
54 employer at such meeting. The delegate certified as member delegate shall be
55 elected by secret ballot by the members of such employer, and the clerk or
56 secretary of each employer shall be charged with the duty of conducting such
57 election in a manner which will permit each member to vote in such

58 election. Under such rules and regulations as the board shall adopt, approved by
59 the delegates, the member delegates shall elect a member trustee for each such
60 position on the board to be filled, and the officer delegates shall elect an employer
61 trustee for each such position on the board to be filled.

62 7. In the event any member trustee ceases to be a member of the
63 retirement system, or any employer trustee ceases to be an appointed or elected
64 official of an employer, or becomes a member of the retirement system, or if the
65 trustee appointed by the governor becomes a member of the retirement system or
66 an elected or appointed official of a political subdivision, or if any trustee fails to
67 attend three consecutive meetings of the board, unless in each case excused for
68 cause by the remaining trustees attending such meeting or meetings, he or she
69 shall be considered as having resigned from the board and the board shall, by
70 resolution, declare his or her office of trustee vacated. If a vacancy occurs in the
71 office of trustee, the vacancy shall be filled for the unexpired term in the same
72 manner as the office was previously filled; provided, however, that the remaining
73 trustees may fill employer and member trustee vacancies on the board until the
74 next annual meeting.

75 8. Each trustee shall be commissioned by the governor, and before
76 entering upon the duties of his office, shall take and subscribe to an oath or
77 affirmation to support the Constitution of the United States, and of the state of
78 Missouri, and to demean himself faithfully in his or her office. Such oath as
79 subscribed to shall be filed in the office of the secretary of state of this state.

80 9. Each trustee shall be entitled to one vote in the board of trustees. Four
81 votes shall be necessary for a decision by the trustees at any meeting of the board
82 of trustees. Four trustees, of whom at least two shall be member trustees and at
83 least two shall be employer trustees, shall constitute a quorum at any meeting
84 of the board. Unless otherwise expressly provided herein, a meeting need not be
85 called or held to make any decision on a matter before the board. Each member
86 must be sent by the executive secretary a copy of the matter to be decided with
87 full information from the files of the board. The concurring decisions of four
88 trustees may decide the issue by signing a document declaring their decision and
89 sending the written instrument to the executive secretary, provided that no other
90 trustee shall send a dissenting decision to the executive secretary within fifteen
91 days after the document and information was mailed to him or her. If any trustee
92 is not in agreement with the four trustees, the matter is to be passed on at a
93 regular board meeting or a special meeting called for that purpose. The board

94 shall hold regular meetings at least once each quarter, the dates of these
95 meetings to be designated in the rules and regulations adopted by the
96 board. Other meetings as deemed necessary may be called by the chairman or by
97 any four trustees acting jointly.

98 10. The board of trustees shall elect one of their number as chairman, and
99 one of their number as vice chairman, and shall employ an executive secretary,
100 not one of their number, who shall be the executive officer of the board. Other
101 employees of the board shall be chosen only upon the recommendation of the
102 executive secretary.

103 11. The board shall appoint an actuary or a firm of actuaries as technical
104 advisor to the board on matters regarding the operation of the system on an
105 actuarial basis. The actuary or actuaries shall perform such duties as are
106 required of him or her under sections 70.600 to 70.755, and as are from time to
107 time required by the board.

108 12. The board may appoint an attorney-at-law or firm of attorneys-at-law
109 to be the legal advisor of the board and to represent the board in all legal
110 proceedings.

111 13. The board may appoint an investment counselor to be the investment
112 advisor of the board.

113 14. The board shall from time to time, after receiving the advice of its
114 actuary, adopt such mortality and other tables of experience, and a rate or rates
115 of regular interest, as shall be necessary for the actuarial requirements of the
116 system, and shall require its executive secretary to keep in convenient form such
117 data as shall be necessary for actuarial investigations of the experience of the
118 system, and such data as shall be necessary for the annual actuarial valuations
119 of the system.

120 15. The board shall keep a record of its proceedings, which shall be open
121 to public inspection. It shall prepare annually and render to each employer a
122 report showing the financial condition of the system as of the preceding June
123 thirtieth. The report shall contain, but shall not be limited to, a financial balance
124 sheet; a statement of income and disbursements; a detailed statement of
125 investments acquired and disposed of during the year, together with a detailed
126 statement of the annual rates of investment income from all assets and from each
127 type of investment; an actuarial balance sheet prepared by means of the last
128 valuation of the system, and such other data as the board shall deem necessary
129 or desirable for a proper understanding of the condition of the system.

130 16. The board of trustees shall, after reasonable notice to all interested
131 parties, conduct administrative hearings to hear and decide questions arising
132 from the administration of sections 70.600 to 70.755; except, that such hearings
133 may be conducted by a hearing officer who shall be appointed by the board. The
134 hearing officer shall preside at the hearing and hear all evidence and rule on the
135 admissibility of evidence. The hearing officer shall make recommended findings
136 of fact and may make recommended conclusions of law to the board. All final
137 orders or determinations or other final actions by the board shall be approved in
138 writing by at least four members of the board. Any board member approving in
139 writing any final order, determination or other final action, who did not attend
140 the hearing, shall do so only after certifying that he or she reviewed all exhibits
141 and read the entire transcript of the hearing. Within thirty days after a decision
142 or order or final action of the board, any member, retirant, beneficiary or political
143 subdivision adversely affected by that determination or order or final action may
144 take an appeal under the provisions of chapter 536. Jurisdiction over any dispute
145 regarding the interpretation of sections 70.600 to 70.755 and the determinations
146 required thereunder shall lie in the circuit court of Cole County.

147 17. The board shall arrange for adequate surety bonds covering the
148 executive secretary and any other custodian of the funds or investments of the
149 board. When approved by the board, said bonds shall be deposited in the office
150 of the secretary of state.

151 18. The board shall arrange for annual audits of the records and accounts
152 of the system by a certified public accountant or by a firm of certified public
153 accountants. The state auditor [shall examine such audits at least] **may audit**
154 **the system** once every three years and report to the board and the governor.

155 19. The headquarters of the retirement system shall be in Jefferson City.

156 20. The board of trustees shall serve as trustees without compensation for
157 their services as such; except that each trustee shall be paid for any necessary
158 expenses incurred in attending meetings of the board or in the performance of
159 other duties authorized by the board.

160 21. Subject to the limitations of sections 70.600 to 70.755, the board shall
161 formulate and adopt rules and regulations for the government of its own
162 proceedings and for the administration of the retirement system.

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