



2023 South Dakota Legislature

House Bill 1009

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 **An Act to update and clarify certain provisions relating to the South Dakota**
 2 **Retirement System.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 3-12C-101 be AMENDED:**

5 **3-12C-101.** Terms as used in this chapter mean:

- 6 (1) "Actuarial accrued liability," the present value of all benefits less the present value
 7 of future normal cost contributions;
- 8 (2) "Actuarial experience analysis," a periodic report that reviews basic experience
 9 data and furnishes actuarial analysis that substantiates the assumptions adopted
 10 for the purpose of making an actuarial valuation of the system;
- 11 (3) "Actuarial valuation," a projection of the present value of all benefits and the
 12 current funded status of the system, based upon stated assumptions as to rates of
 13 interest, mortality, disability, salary progressions, withdrawal, and retirement as
 14 established by a periodic actuarial experience analysis that takes into account
 15 census data of all active members, vested terminated members, and retired
 16 members and their beneficiaries under the system;
- 17 (4) "Actuarial value funded ratio," the actuarial value of assets divided by the actuarial
 18 accrued liability;
- 19 (5) "Actuarial value of assets," equal to the fair value of assets;
- 20 (6) "Actuarially determined contribution rate," the fixed, statutory contribution rate,
 21 no less than the normal cost rate with expenses assuming the minimum COLA, and
 22 no greater than the normal cost rate with expenses assuming the maximum COLA;
- 23 (7) "Air rescue firefighters," employees of the Department of the Military who are
 24 stationed at Joe Foss Field, Sioux Falls, and who are directly involved in firefighting
 25 activities on a daily basis;
- 26 (8) "Approved actuary," any actuary who is a member of the American Academy of
 27 Actuaries or an Associate or a Fellow of the Society of Actuaries who meets the

- 1 qualification standards of the American Academy of Actuaries to issue actuarial
2 opinions regarding the system or any firm retaining such an actuary on its staff
3 and who is appointed by the board to perform actuarial services;
- 4 (9) "Assumed rate of return," the actuarial assumption adopted by the board pursuant
5 to § 3-12C-227 as the annual assumed percentage return on trust fund assets,
6 compounded;
- 7 (10) "Beneficiary," the person designated by a member of the system to receive any
8 payments after the death of such member;
- 9 (11) "Benefits," the amounts paid to a member, spouse, child, or beneficiary as a result
10 of the provisions of this chapter;
- 11 (12) "Board," the Board of Trustees of the South Dakota Retirement System;
- 12 (13) "Calendar quarter," a period of three calendar months ending March thirty-first,
13 June thirtieth, September thirtieth, or December thirty-first of any year;
- 14 (14) "Campus security officers," employees of the Board of Regents whose positions are
15 subject to the minimal educational training standards established by the law
16 enforcement standards commission pursuant to chapter 23-3, who satisfactorily
17 complete the training required by chapter 23-3 within one year of employment,
18 and whose primary duty as sworn law enforcement officers is to preserve the safety
19 of the students, faculty, staff, visitors, and the property of the university. The
20 employer shall file with the system evidence of the appointment as a sworn law
21 enforcement officer at the time of employment and shall file evidence of
22 satisfactory completion of the training program pursuant to chapter 23-3 within
23 one year of employment;
- 24 (15) "Certified school employee," any employee of a participating unit who is required
25 to have a certificate as defined in subdivision 13-42-1(3);
- 26 (16) "Class A credited service," service credited as a Class A member of the system;
- 27 (17) "Class A member," any member other than a Class B member or a Class C member
28 and is either a foundation member or a generational member;
- 29 (18) "Class B credited service," service credited as a Class B member of the system;
- 30 (19) "Class B member," a member who is a justice, judge, state law enforcement officer,
31 magistrate judge, police officer, firefighter, county sheriff, deputy county sheriff,
32 correctional security staff, parole agent, air rescue firefighter, campus security
33 officer, court services officer, juvenile corrections agent, gaming enforcement
34 agent, conservation officer, or park ranger and is either a foundation member or a
35 generational member;

- 1 (20) "Class C credited service," service credited as a Class C member of the system;
- 2 (21) "Class C member," any member of the cement plant retirement plan including any
3 retiree or any vested member;
- 4 (22) "Class D credited service," service credited as a Class D member of the system;
- 5 (23) "Class D member," any member that was a member of the Department of Labor
6 and Regulation employees' retirement plan as of June 30, 2020;
- 7 (24) "Classified employee," an employee of a public school district who is not required
8 by law to be a certified school employee, an employee of any college or university
9 under the control of the Board of Regents who is not a faculty member or an
10 administrator and comes within the provisions of chapter 3-6D, an employee of a
11 public corporation, an employee of a chartered governmental unit, and any other
12 participating employee not elsewhere provided for in this chapter;
- 13 (25) "Comparable level position," a member's position of employment that is generally
14 equivalent to the member's prior position of employment in terms of required
15 education, required experience, required training, required work history,
16 geographic location, and compensation and benefits;
- 17 (26) "Conservation officers," employees of the Department of Game, Fish and Parks and
18 the Division of Wildlife or Division of Custer State Park who are employed pursuant
19 to § 41-2-11 and whose positions are subject to the requirements as to education
20 and training provided in chapter 23-3;
- 21 (27) "Consumer price index," the consumer price index for urban wage earners and
22 clerical workers calculated by the United States Bureau of Labor Statistics;
- 23 (28) "Contributory service," service to a participating unit during which contributions
24 were made to a South Dakota retirement system, which may not include years of
25 credited service as granted in § 3-12C-509 or 3-12C-511;
- 26 (29) "Correctional security staff," the warden, deputy warden, and any other
27 correctional staff holding a security position as verified by the Department of
28 Corrections and approved by the Bureau of Human Resources and the Bureau of
29 Finance and Management, and determined by the board as Class B members;
- 30 (30) "Court services officers," persons appointed pursuant to § 26-7A-8;
- 31 (31) "Covered employment," a member's employment as a full-time employee of a
32 participating unit;
- 33 (32) "Deputy county sheriff," an employee of a county that is a participating unit,
34 appointed by the board of county commissioners pursuant to §§ 7-12-9 and 7-12-
35 10, whose position is subject to the minimum educational and training standards

- 1 established by the law enforcement standards commission pursuant to chapter 23-
2 3. The term does not include jailers or clerks appointed pursuant to §§ 7-12-9 and
3 7-12-10 unless the participating unit has requested that the jailer be considered
4 as a deputy county sheriff and the board has approved the request;
- 5 (33) "Effective date of retirement," the first day of the month in which retirement
6 benefits are payable;
- 7 (34) "Eligible retirement plan," the term eligible retirement plan includes those plans
8 described in section 402(c)(8)(B) of the Internal Revenue Code;
- 9 (35) "Eligible rollover distribution," any distribution to a member of accumulated
10 contributions pursuant to § 3-12C-602. The term does not include any portion of a
11 distribution that represents contributions made to the system on an after tax basis
12 nor distributions paid as a result of the member reaching the required beginning
13 date;
- 14 (36) "Employer," the State of South Dakota and any department, bureau, board, or
15 commission of the State of South Dakota, or any of its governmental or political
16 subdivisions or any public corporation of the State of South Dakota that elects to
17 become a participating unit;
- 18 (37) "Employer contributions," amounts contributed by the employer of a contributing
19 member, excluding member contributions made by an employer after June 30,
20 1984, pursuant to § 3-12C-401;
- 21 (38) "Equivalent public service," any public service other than as a justice, a judge, or
22 a magistrate judge and comparable to Class B service as defined by this section, if
23 the service is in the employ of a public entity that is not a participating unit;
- 24 (39) "Fair value of assets," the total assets of the system at fair market value for
25 securities traded on exchanges; for securities not traded on exchanges, a value
26 based on similar securities; and for alternative investments, reported net asset
27 value;
- 28 (40) "Fair value funded ratio," the fair value of assets divided by the actuarial accrued
29 liability;
- 30 (41) "Fiduciary," any person who exercises any discretionary authority or control over
31 the management of the system or the management or disposition of its assets,
32 renders investment advice for a fee or other compensation, direct or indirect, or
33 has any authority or responsibility to do so, or has any discretionary authority or
34 responsibility in the administration of the system;

- 1 (42) "Foundation member," any member of the system whose contributory service
 2 began before July 1, 2017;
- 3 (43) "Foundation retiree," any foundation member who has retired with a benefit
 4 payable from the system;
- 5 (44) "Firefighter," any full-time firefighter who works at least twenty hours a week and
 6 at least six months a year. The term does not include any volunteer firefighter;
- 7 (45) "Full-time employee," any employee who is considered full-time by the
 8 participating unit and is customarily employed by the participating unit for twenty
 9 hours or more a week and at least six months a year, regardless of classification
 10 of employment as seasonal, temporary, leased, contract, or any other designation;
- 11 (46) "Fund," public employees' retirement fund or funds established for the purposes of
 12 administration of this chapter;
- 13 (47) "Gaming enforcement agent," any employee of the South Dakota Commission on
 14 Gaming who is appointed pursuant to § 42-7B-56 and who must, as a condition of
 15 employment, be law enforcement certified;
- 16 (48) "General employee," any full-time municipal employee who is not a firefighter or a
 17 police officer;
- 18 (49) "Generational member," any member of the system whose contributory service
 19 began after June 30, 2017;
- 20 (50) "Generational retiree," any generational member who has retired with a benefit
 21 payable from the system;
- 22 (51) "Health care provider," a physician or other health care practitioner licensed,
 23 registered, certified, or otherwise authorized by law to provide specified health
 24 services;
- 25 ~~(52) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of~~
 26 ~~January 1, 2022;~~
- 27 ~~(53)~~(52) "Juvenile corrections agent," a designee of the secretary of corrections charged
 28 with the care, custody, and control of juveniles committed to the Department of
 29 Corrections until the age of twenty-one or a person who is charged with the care,
 30 custody, and control of juveniles at a juvenile corrections facility under the control
 31 of a participating unit;
- 32 ~~(54)~~(53) "Law enforcement officer," any agent of the state division of criminal
 33 investigation, officer of the South Dakota Highway Patrol, police officer, county
 34 sheriff, deputy county sheriff, or firefighter;

- 1 ~~(55)~~(54) "Member," any person who is contributing or has made contributions to the
2 system and is either a foundation member or generational member. A person's
3 membership ceases when the person withdraws his or her accumulated
4 contributions after termination of employment;
- 5 ~~(56)~~(55) "Member contributions," amounts contributed by members, including member
6 contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- 7 ~~(57)~~(56) "Military service," a period of active duty with the United States Army, the
8 United States Navy, the United States Air Force, the United States Marine Corps,
9 or the United States Coast Guard, from which duty the member received an
10 honorable discharge or an honorable release;
- 11 ~~(58)~~(57) "Municipality," any incorporated municipal government under chapter 9-3 or
12 any chartered governmental unit under the provisions of Article IX of the
13 Constitution of the State of South Dakota;
- 14 ~~(59)~~(58) "Noncontributory service," for foundation members, service delineated in
15 subdivisions 3-12C-502(2), (5), (7), and (8), and for generational members,
16 service pursuant to § 3-12C-514;
- 17 ~~(60)~~(59) "Normal cost," the expected long-term cost of the system benefits and
18 expenses expressed as a percentage of payroll;
- 19 ~~(61)~~(60) "Normal retirement," the termination of employment and application for
20 benefits by a member with three or more years of contributory service or
21 noncontributory service on or after the member's normal retirement age;
- 22 ~~(62)~~(61) "Other public benefits," eighty percent of the primary insurance amount or
23 primary social security benefits that would be provided under federal social
24 security;
- 25 ~~(63)~~(62) "Other public service," service for the government of the United States,
26 including military service; service for the government of any state or political
27 subdivision thereof; service for any agency or instrumentality of any of the
28 foregoing; or service as an employee of an association of government entities
29 described in this subdivision;
- 30 ~~(64)~~(63) "Park rangers," employees of the Department of Game, Fish and Parks within
31 the Division of Parks and Recreation and whose positions are subject to the
32 requirements as to education and training provided in chapter 23-3 and whose
33 primary duty is law enforcement in the state park system;

1 ~~(65)~~(64) "Parole agent," an employee of the Department of Corrections employed
2 pursuant to § 24-15-14 who is actually involved in direct supervision of parolees
3 on a daily basis;

4 ~~(66)~~(65) "Participating unit," the State of South Dakota and any department, bureau,
5 board, or commission of the State of South Dakota, and any of its political
6 subdivisions or any public corporation of the State of South Dakota that has
7 employees who are members of the retirement system created in this chapter;

8 ~~(67)~~(66) "Plan year," a period extending from July first of one calendar year through
9 June thirtieth of the following calendar year;

10 ~~(68)~~(67) "Police officer," any employee in the police department of any participating
11 municipality holding the rank of patrol officer, including probationary patrol officer,
12 or higher rank and whose position is subject to the minimum educational and
13 training standards established by the law enforcement officers standards
14 commission pursuant to chapter 23-3. The term does not include civilian employees
15 of a police department nor any person employed by a municipality whose services
16 as a police officer require less than twenty hours a week and six months a year. If
17 a municipality which is a participating unit operates a city jail, the participating unit
18 may request that any jailer appointed pursuant to § 9-29-25 be considered a police
19 officer, subject to the approval of the board;

20 ~~(69)~~(68) "Political subdivision" includes any municipality, school district, county,
21 chartered governmental unit, public corporation or entity, and special district
22 created for any governmental function;

23 ~~(70)~~(69) "Present value of all benefits," the present value of all benefits expected to be
24 paid to all retired, terminated, and active members and beneficiaries, based on
25 past and future credited service and future compensation increases;

26 ~~(71)~~(70) "Present value of benefits earned to date," the present value of the benefits
27 currently being paid to retired members and their beneficiaries and the present
28 value of benefits payable at retirement to active members, based on their earnings
29 and credited service to date of the actuarial valuation;

30 ~~(72)~~(71) "Projected compensation," a deceased or disabled member's final average
31 compensation multiplied by the COLA commencing each July first for each complete
32 twelve-month period elapsed between the date of the member's death or disability,
33 whichever occurred earlier, and the date the member would attain normal
34 retirement age or the benefit commences, whichever occurred earlier;

- 1 ~~(73)~~(72) "Projected service," the credited service plus the service that the member
2 would have been credited with at normal retirement age had the member continued
3 in the system and received credit at the same rate the member was credited during
4 the year covered by the compensation that was used in the calculation of the
5 disability or family benefit;
- 6 ~~(74)~~(73) "Qualified military service," service in the uniformed services as defined in
7 § 414(u)(5) of the Internal Revenue Code;
- 8 ~~(75)~~(74) "Required beginning date," the later of April first of the calendar year following
9 the calendar year in which the member attains age seventy and one-half or April
10 first of the calendar year following the calendar year in which the member retires;
- 11 ~~(76)~~(75) "Retiree," any foundation or generational member who retires with a lifetime
12 benefit payable from the system;
- 13 ~~(77)~~(76) "Retirement," the severance of a member from the employ of a participating
14 unit with a retirement benefit payable from the system;
- 15 ~~(78)~~(77) "Retirement benefit," the monthly amount payable upon the retirement of a
16 member;
- 17 ~~(79)~~(78) "Single premium," the lump-sum amount paid by a supplemental pension
18 participant pursuant to a supplemental pension contract in consideration for a
19 supplemental pension benefit;
- 20 ~~(80)~~(79) "Social investment," investment, divestment, or prohibition of investment of
21 the assets of the system for purposes other than maximum risk-adjusted
22 investment return, which other purposes include ideological purposes,
23 environmental purposes, political purposes, religious purposes, or purposes of local
24 or regional economic development;
- 25 ~~(81)~~(80) "State employees," employees of the departments, bureaus, commissions, and
26 boards of the State of South Dakota;
- 27 ~~(82)~~(81) "Supplemental pension benefit," any single-premium immediate pension
28 benefit payable pursuant to §§ 3-12C-1504 and 3-12C-1505;
- 29 ~~(83)~~(82) "Supplemental pension contract," any agreement between a participant and the
30 system upon which a supplemental pension is based, including the amount of the
31 single premium, the type of pension benefit, and the monthly supplemental pension
32 payment amount;
- 33 ~~(84)~~(83) "Supplemental pension contract record," the record for each supplemental
34 pension participant reflecting relevant participant data; a designation of any
35 beneficiary, if any; the amount of the participant's funds rolled into the fund; the

- 1 provisions of the participant's supplemental pension contract; and supplemental
2 pension payments made pursuant to the contract;
- 3 ~~(85)~~(84) "Supplemental pension participant," any member who is a retiree receiving a
4 benefit from the system, or, if the member is deceased, the member's surviving
5 spouse who is receiving a benefit from the system, and who chooses to purchase
6 a supplemental pension benefit pursuant to the provisions of this chapter;
- 7 ~~(86)~~(85) "Supplemental pension spouse," any person who was married to a
8 supplemental pension participant at the time the participant entered into the
9 supplemental pension contract;
- 10 ~~(87)~~(86) "System," the South Dakota Retirement System created in this chapter;
- 11 ~~(88)~~(87) "Trustee," a member of the board of trustees;
- 12 ~~(89)~~(88) "Unfunded actuarial accrued liability," the actuarial accrued liability less the
13 actuarial value of assets.

14 **Section 2. That chapter 3-12C be amended with a NEW SECTION:**

15 For the purposes of this chapter, the term, Internal Revenue Code, or code, means
16 the Internal Revenue Code as in effect as of January 1, 2023.

17 **Section 3. That § 3-12C-509 be AMENDED:**

18 **3-12C-509.** If a current contributing member ~~of this~~with at least five years of
19 contributory service in the system has other public service for which the member is not
20 entitled to retirement benefits from another public retirement system, the member may
21 elect to deposit or have deposited on the member's behalf an amount equal to an
22 actuarially-determined percentage times the Class A rate of contribution multiplied by the
23 higher of the member's annual compensation at the time of making the election, or the
24 member's final compensation calculated as if the member retired on the date of the
25 member's election, for each year of other public service for which the member wishes to
26 receive credit as a Class A member.

27 The member rate in effect as of July 1, 2001, shall be used in calculation of the
28 purchase cost of any service performed prior to July 1, 2002, if a contract to purchase
29 such service was in place prior to July 1, 2004. The member rate in effect on and after
30 July 1, 2002, shall be the basis for calculation of the purchase cost of any service if the
31 contract to purchase such service is not in place until on or after July 1, 2004.

32 **Section 4. That § 3-12C-516 be AMENDED:**

1 **3-12C-516.** ~~Beginning January 1, 2009, to~~ To the extent required by § 414(u)(12)
2 of the Internal Revenue Code, a member receiving differential wage payments, as defined
3 under § 3401(h)(2) of the Internal Revenue Code, from a member's employer shall be
4 treated as employed by that employer, and the differential wage payment shall be treated
5 as compensation for purposes of calculating final average compensation and applying the
6 limits on annual additions under § 415(c) of the Internal Revenue Code. This provision
7 shall be applied to all similarly situated members in a reasonably equivalent manner.

8 **Section 5. That § 3-12C-1106 be AMENDED:**

9 **3-12C-1106.** Upon retirement, a foundation member shall receive a normal
10 retirement benefit, commencing at normal retirement age or thereafter as provided in
11 § 3-12C-1113, for Class A credited service, equal to the larger of one and seven-tenths
12 percent of final average compensation for each year of Class A credited service before July
13 1, 2008, plus one and fifty-five hundredths percent of final average compensation for each
14 year of Class A credited service after July 1, 2008, or two and four-tenths percent of final
15 average compensation for each year of Class A credited service before July 1, 2008, plus
16 two and twenty-five hundredths percent of final average compensation for each year of
17 Class A credited service after July 1, 2008, less other public benefits. For purposes of this
18 section, federal military retirement or federal national guard retirement benefits are not
19 other public benefits. For the purposes of this section, any Class A member ~~who did not~~
20 ~~participate in federal social security during the~~ with a period of credited service ~~employment~~
21 with any public employer not covered by federal social security shall be presumed to be
22 entitled to the maximum primary social security benefit permitted at the time of
23 retirement. Class A credited service includes all credited service under this or any of the
24 retirement systems consolidated pursuant to § 3-12C-1601.

25 **Section 6. That § 3-12C-1303 be AMENDED:**

26 **3-12C-1303.** The variable retirement account is payable to the generational
27 member when the member commences a retirement benefit or a disability benefit ~~or to~~
28 ~~the generational member's eligible spouse at the death of the member.~~ If a generational
29 member dies before commencing a benefit, the variable retirement account is payable at
30 the death of the member to the member's spouse who meets the requirements for an
31 immediate or deferred surviving spouse benefit under § 3-12C-1214 or 3-12C-1215. For
32 the purpose of paying a distribution, the variable retirement account is the amount in the

1 member's variable retirement account or the total of the variable retirement contributions
2 made on behalf of the member, whichever is greater.

3 The variable retirement account may be paid in a lump sum, rolled over to the
4 South Dakota deferred compensation plan, rolled over to another eligible plan, or used to
5 purchase a supplemental pension benefit.

6 The variable retirement account is not payable to any member who withdraws his
7 or her accumulated contributions from the system ~~and is not payable in the case of the~~
8 ~~death of a member without an eligible spouse.~~