



2020 South Dakota Legislature
Senate Bill 31
ENROLLED

AN ACT

ENTITLED An Act to revise and repeal certain provisions relating to the South Dakota Retirement System.

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

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

3-12C-101. Definitions.

Terms as used in this chapter mean:

- (1) "Actuarial accrued liability," the present value of all benefits less the present value of future normal cost contributions;
- (2) "Actuarial experience analysis," a periodic report that reviews basic experience data and furnishes actuarial analysis that substantiates the assumptions adopted for the purpose of making an actuarial valuation of the system;
- (3) "Actuarial valuation," a projection of the present value of all benefits and the current funded status of the system, based upon stated assumptions as to rates of interest, mortality, disability, salary progressions, withdrawal, and retirement as established by a periodic actuarial experience analysis that takes into account census data of all active members, vested terminated members, and retired members and their beneficiaries under the system;
- (4) "Actuarial value funded ratio," the actuarial value of assets divided by the actuarial accrued liability;
- (5) "Actuarial value of assets," equal to the fair value of assets;
- (6) "Actuarially determined contribution rate," the fixed, statutory contribution rate, no less than the normal cost rate with expenses assuming the minimum COLA, and no greater than the normal cost rate with expenses assuming the maximum COLA;
- (7) "Air rescue firefighters," employees of the Department of the Military who are stationed at Joe Foss Field, Sioux Falls, and who are directly involved in firefighting activities on a daily basis;

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

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

or clerks appointed pursuant to §§ 7-12-9 and 7-12-10 unless the participating unit has requested that the jailer be considered as a deputy county sheriff and the board has approved the request;

- (31) "Effective date of retirement," the first day of the month in which retirement benefits are payable;
- (32) "Eligible retirement plan," the term eligible retirement plan includes those plans described in section 402(c)(8)(B) of the Internal Revenue Code;
- (33) "Eligible rollover distribution," any distribution to a member of accumulated contributions pursuant to § 3-12C-602. The term does not include any portion of a distribution that represents contributions made to the system on an after tax basis nor distributions paid as a result of the member reaching the required beginning date;
- (34) "Employer," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota that elects to become a participating unit;
- (35) "Employer contributions," amounts contributed by the employer of a contributing member, excluding member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- (36) "Equivalent public service," any public service other than as a justice, a judge, or a magistrate judge and comparable to Class B service as defined by this section, if the service is in the employ of a public entity that is not a participating unit;
- (37) "Fair value of assets," the total assets of the system at fair market value for securities traded on exchanges; for securities not traded on exchanges, a value based on similar securities; and for alternative investments, reported net asset value;
- (38) "Fair value funded ratio," the fair value of assets divided by the actuarial accrued liability;
- (39) "Fiduciary," any person who exercises any discretionary authority or control over the management of the system or the management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so, or has any discretionary authority or responsibility in the administration of the system;
- (40) "Foundation member," any member of the system whose contributory service began before July 1, 2017;

- (41) "Foundation retiree," any foundation member who has retired with a benefit payable from the system;
- (42) "Firefighter," any full-time firefighter who works at least twenty hours a week and at least six months a year. The term does not include any volunteer firefighter;
- (43) "Fund," public employees' retirement fund or funds established for the purposes of administration of this chapter;
- (44) "General employee," any full-time municipal employee who is not a firefighter or a police officer;
- (45) "Generational member," any member of the system whose contributory service began after June 30, 2017;
- (46) "Generational retiree," any generational member who has retired with a benefit payable from the system;
- (47) "Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;
- (48) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of January 1, 2020;
- (49) "Juvenile corrections agent," a designee of the secretary of corrections charged with the care, custody, and control of juveniles committed to the Department of Corrections until the age of twenty-one or a person who is charged with the care, custody, and control of juveniles at a juvenile corrections facility under the control of a participating unit;
- (50) "Law enforcement officer," any agent of the state division of criminal investigation, officer of the South Dakota Highway Patrol, police officer, county sheriff, deputy county sheriff, or firefighter;
- (51) "Member," any person who is contributing or has made contributions to the system and is either a foundation member or generational member. A person's membership ceases when the person withdraws his or her accumulated contributions after termination of employment;
- (52) "Member contributions," amounts contributed by members, including member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- (53) "Military service," a period of active duty with the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, or the United States Coast Guard, from which duty the member received an honorable discharge or an honorable release;

- (54) "Municipality," any incorporated municipal government under chapter 9-3 or any chartered governmental unit under the provisions of Article IX of the Constitution of the State of South Dakota;
- (55) "Noncontributory service," for foundation members, service delineated in subdivisions 3-12C-502(2), (5), (7), and (8), and for generational members, service pursuant to § 3-12C-514;
- (56) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;
- (57) "Normal retirement," the termination of employment and application for benefits by a member with three or more years of contributory service or noncontributory service on or after the member's normal retirement age;
- (58) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;
- (59) "Other public service," service for the government of the United States, including military service; service for the government of any state or political subdivision thereof; service for any agency or instrumentality of any of the foregoing; or service as an employee of an association of government entities described in this subdivision;
- (60) "Park rangers," employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose positions are subject to the requirements as to education and training provided in chapter 23-3 and whose primary duty is law enforcement in the state park system;
- (61) "Parole agent," an employee of the Department of Corrections employed pursuant to § 24-15-14 who is actually involved in direct supervision of parolees on a daily basis;
- (62) "Participating unit," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, and any of its political subdivisions or any public corporation of the State of South Dakota that has employees who are members of the retirement system created in this chapter;
- (63) "Permanent full-time employee," any employee who has been placed in a permanent classification who is customarily employed by a participating unit for twenty hours or more a week and at least six months a year. The participating unit shall decide if an employee is a permanent full-time employee and that decision is conclusive;
- (64) "Plan year," a period extending from July first of one calendar year through June

thirtieth of the following calendar year;

- (65) "Police officer," any employee in the police department of any participating municipality holding the rank of patrol officer, including probationary patrol officer, or higher rank and whose position is subject to the minimum educational and training standards established by the law enforcement officers standards commission pursuant to chapter 23-3. The term does not include civilian employees of a police department nor any person employed by a municipality whose services as a police officer require less than twenty hours a week and six months a year. If a municipality which is a participating unit operates a city jail, the participating unit may request that any jailer appointed pursuant to § 9-29-25 be considered a police officer, subject to the approval of the board;
- (66) "Political subdivision" includes any municipality, school district, county, chartered governmental unit, public corporation or entity, and special district created for any governmental function;
- (67) "Present value of all benefits," the present value of all benefits expected to be paid to all retired, terminated, and active members and beneficiaries, based on past and future credited service and future compensation increases;
- (68) "Present value of benefits earned to date," the present value of the benefits currently being paid to retired members and their beneficiaries and the present value of benefits payable at retirement to active members, based on their earnings and credited service to date of the actuarial valuation;
- (69) "Projected compensation," a deceased or disabled member's final average compensation multiplied by the COLA commencing each July first for each complete twelve-month period elapsed between the date of the member's death or disability, whichever occurred earlier, and the date the member would attain normal retirement age or the benefit commences, whichever occurred earlier;
- (70) "Projected service," the credited service plus the service that the member would have been credited with at normal retirement age had the member continued in the system and received credit at the same rate the member was credited during the year covered by the compensation that was used in the calculation of the disability or family benefit;
- (71) "Qualified military service," service in the uniformed services as defined in § 414(u)(5) of the Internal Revenue Code;
- (72) "Required beginning date," the later of April first of the calendar year following the calendar year in which the member attains age seventy and one-half or April first

- of the calendar year following the calendar year in which the member retires;
- (73) "Retiree," any foundation or generational member who retires with a lifetime benefit payable from the system;
 - (74) "Retirement," the severance of a member from the employ of a participating unit with a retirement benefit payable from the system;
 - (75) "Retirement benefit," the monthly amount payable upon the retirement of a member;
 - (76) "Single premium," the lump-sum amount paid by a supplemental pension participant pursuant to a supplemental pension contract in consideration for a supplemental pension benefit;
 - (77) "Social investment," investment, divestment, or prohibition of investment of the assets of the system for purposes other than maximum risk-adjusted investment return, which other purposes include ideological purposes, environmental purposes, political purposes, religious purposes, or purposes of local or regional economic development;
 - (78) "State employees," employees of the departments, bureaus, commissions, and boards of the State of South Dakota;
 - (79) "Supplemental pension benefit," any single-premium immediate pension benefit payable pursuant to §§ 3-12C-1504 and 3-12C-1505;
 - (80) "Supplemental pension contract," any agreement between a participant and the system upon which a supplemental pension is based, including the amount of the single premium, the type of pension benefit, and the monthly supplemental pension payment amount;
 - (81) "Supplemental pension contract record," the record for each supplemental pension participant reflecting relevant participant data; a designation of any beneficiary, if any; the amount of the participant's funds rolled into the fund; the provisions of the participant's supplemental pension contract; and supplemental pension payments made pursuant to the contract;
 - (82) "Supplemental pension participant," any member who is a retiree receiving a benefit from the system, or, if the member is deceased, the member's surviving spouse who is receiving a benefit from the system, and who chooses to purchase a supplemental pension benefit pursuant to the provisions of this chapter;
 - (83) "Supplemental pension spouse," any person who was married to a supplemental pension participant at the time the participant entered into the supplemental pension contract;

- (84) "System," the South Dakota Retirement System created in this chapter;
- (85) "Trustee," a member of the board of trustees;
- (86) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets.

Section 2. That § 3-12C-203 be AMENDED:

3-12C-203. Board of Trustees--Creation--Voting representation.

There is created a governing authority of the system known as the Board of Trustees. Voting representation on the board shall be the following:

- (1) Two state employee members;
- (2) Two certified school employee members;
- (3) A participating municipality member;
- (4) A participating county member;
- (5) A participating classified employee member;
- (6) A current contributing Class B member other than a justice, judge, or magistrate judge;
- (7) A justice, judge, or magistrate judge;
- (8) One head of a principal department established pursuant to § 1-32-2, or one head of a bureau under the Department of Executive Management established pursuant to § 1-33-3 appointed by the Governor;
- (9) An individual appointed by the Governor;
- (10) A county commissioner of a participating county;
- (11) A school district board member;
- (12) An elected municipal official of a participating municipality;
- (13) A retiree; and
- (14) A faculty or administrative member employed by the Board of Regents and not subject to the provisions of chapter 3-6D.

A representative of the State Investment Council shall serve as an ex officio nonvoting member.

Section 3. That § 3-12C-215 be AMENDED:

3-12C-215. Confidentiality of records--Exceptions.

Any information contained in any record pertaining to a member of the system is confidential and shall be used for the sole purpose of carrying into effect the provisions of this chapter, chapter 3-13, and chapter 3-13A. Any record containing the information is

not open to inspection by any person or entity except the member, the board, the employees of the system, or the member's employer. The information and records may be released to the member or with the member's consent. The information and records may also be released pursuant to a court order or subpoena.

Section 4. That § 3-12C-223 be AMENDED:

3-12C-223. Investment of assets by investment council--Pooling of funds--Standards for investment--Compliance with federal divestiture enactments.

The State Investment Council as provided in § 4-5-12 is responsible for the investment of the assets of the system. The Investment Council may pool the several retirement funds for investment purposes and the investment of the funds is not restricted by the provisions of § 4-5-26, but is governed by the provisions of § 4-5-27. The assets of the system may not be managed in any manner for the purposes of social investment. The State Investment Council shall invest member trust funds in a manner that is solely designed to provide for the exclusive benefit of the members and benefit recipients of the system. The foregoing provisions notwithstanding, the State Investment Council shall establish a shareholder activism policy to engage and promote compliance with federal divestiture enactments by the United States Congress and to recognize the risks associated with companies doing business in the countries identified. Once the United States Congress has acted, the State Investment Council may initiate the shareholder activism policy on its own accord, or shall do so at the direction of the Legislature by resolution. The State Investment Council shall report semi-annually on council actions related to the shareholder activism policy. The report shall include an analysis of the success of the policy in accomplishing the goal of promoting compliance with the federal enactments and its impact on all sales of affected companies.

Section 5. That § 3-12C-301 be AMENDED:

3-12C-301. Members of system.

All of the following permanent full-time employees are included as members in the system:

- (1) All state employees;
- (2) All certified school employees;
- (3) All justices, judges, and magistrate judges;
- (4) All police officers and firefighters of participating municipalities;
- (5) All general employees of participating municipalities;

- (6) All employees of participating counties;
- (7) All classified employees of school districts that are participating with the school districts' classified employees and all other classified employees;
- (8) All employees of the Board of Regents; and
- (9) All state law enforcement officers.

Section 6. That § 3-12C-304 be AMENDED:

3-12C-304. Continuation of previously established retirement plan--Vote of employees required to participate in consolidated system.

Any political subdivision or public corporation may operate a retirement plan created prior to July 1, 1974, unless the retirement plan of the political subdivision or public corporation is accepted in the system created by this chapter. Notwithstanding the provisions of this section and § 3-12C-306, no political subdivision or public corporation with a retirement plan may be accepted as a participating unit unless two-thirds of the members of the retirement plan vote to become members of the system created by this chapter.

Section 7. That § 3-12C-401 be AMENDED:

3-12C-401. Rate of contributions--Deduction from pay--Employer to make members' contributions.

Any employee included in § 3-12C-301 shall make a contribution to the system, except as specified in § 3-12C-1405, and the employer shall make an equal contribution to the system, except as otherwise specified, at the following rates:

- (1) Class A members: five percent of compensation through June 30, 2002, and six percent of compensation after June 30, 2002;
- (2) Justices, judges, and magistrate judges: nine percent of compensation;
- (3) All other Class B members: eight percent of compensation.

The employer shall cause to be deducted on each payroll of the employee for each payroll period the contribution payable by the employee as provided in this section.

Except for those contributions specified in § 3-12C-1405, contributions required of employees by this section shall be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal Revenue Code. The contributions shall be classified as employee contributions for all purposes under this chapter. An employee may not receive the amount of the contributions directly rather than as contributions under this section.

Section 8. That § 3-12C-901 be AMENDED:

3-12C-901. Family and surviving spouse benefits--Death of contributing member before retirement or death of member receiving disability based on application before July 1, 2015.

On the death of a contributing member before July 1, 2015, and before the earlier of the member attaining normal retirement age or the member's retirement, who has one or more years of contributory service; or if there has been a break in the member's employment of more than one year, one-half year of contributory service having been performed after the end of the last break; or if the member was receiving a disability benefit which commenced after July 1, 1974, and was based on an application received by the system before July 1, 2015, the following benefits shall be paid:

- (1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to forty percent of the member's projected compensation, plus ten percent of the projected compensation for each child to a maximum of six children;
- (2) The conservator or custodian of each child, on whose account there is no benefit payable under subdivision (1), shall receive on behalf of each child, to a maximum of five children, an annual amount, payable in monthly installments, equal to twenty percent of the member's projected compensation;
- (3) If the sum of benefits payable under subdivisions (1) and (2) exceeds one hundred percent of the member's projected compensation, the benefits payable under both subdivisions (1) and (2) shall be proportionally reduced so that the total of the benefits is equal to one hundred percent of the member's projected compensation; and
- (4) If there are no benefits being paid under subdivision (1) and the member's accumulated contributions have not been withdrawn pursuant to § 3-12C-906, the spouse who has reached age sixty-five shall receive a monthly payment equal to sixty percent of the amount which would have been payable to the deceased member at normal retirement age based on the member's credited and projected service, projected compensation, and projected primary social security. The benefit payable under this subdivision shall be increased by application of the COLA commencing each July first for each complete twelve-month period between the date the member would have reached normal retirement age and the date benefits commence to the spouse.

Family benefits begin to accrue on the first day of the month following the death of the member.

Section 9. That § 3-12C-507 be REPEALED.

3-12C-507. Purchase of prior service credit on tax-deferred basis.

Section 10. That § 3-12C-508 be REPEALED.

3-12C-508. Purchase of prior service credit by member of tax-qualifying purchase unit.

Section 11. That § 3-12C-105 be AMENDED:

3-12C-105. Compensation defined.

For the purposes of this chapter, the term, compensation, means gross wages paid to a member by the employer for credited service rendered during the period for which the payment was earned. Compensation includes any amount reported as wages, tips, and other compensation on the member's federal form W-2 wage and tax statement, except as otherwise excluded in this section; any amount of member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401; and any amount contributed by a member to a plan that meets the requirements of section 125, 401, 403, 408, or 457 of the Internal Revenue Code.

Compensation does not include any allowance, payment, or reimbursement for travel, meals, lodging, moving, uniforms, or any other expense that is incidental to employment and paid or reimbursed by the employer; any lump sum payment for sick leave; any lump sum payment for annual leave; any payment for, or in lieu of, insurance coverage of any kind or any other employee benefit paid by an employer directly to a member or directly to a third party on behalf of a member or a member and any dependent; any allowance or payment for housing or vehicles; any temporary payment paid as a lump sum or over a period of time that is not due to additional duties; any amount paid in a one-time lump sum payment or over a period of time and based on or attributable to retirement or an agreement to retire in the future or results in an incentive to retire; any payment made upon dismissal or severance; any worker's compensation payment; and any payment contingent on a member terminating employment at a specified time in the future paid or payable in a lump sum or over a period of time.

Section 12. That § 3-12C-517 be AMENDED:

3-12C-517. Valuation of purchased prior service credit--Installment payments--Death of member--Adjustment when installments not paid.

Payment of a deposit with the system for credited service pursuant to §§ 3-12C-504 to 3-12C-514, inclusive, shall be determined and due at the time the notice of intention to make the payment is received by the system. The amount due may be paid by periodic, level installments over a period of up to ten years, the value of which, when discounted for interest at the assumed rate of return, is equal to the amount due at the date of the notice. If a member dies before completion of the installment payments, the surviving spouse may complete the payments due the system, but, unless the payments are being made by a participating unit, the amount shall be paid in full within ninety days of the member's death or retirement. If the periodic payments are not completed or paid when due, the executive director may make an appropriate adjustment to the credited service, benefits payable under this chapter, or schedule of payments to allow for the default. Any member participating in installment payments pursuant to this section before July 1, 1989, shall have the balance due on July 1, 1989, recalculated pursuant to §§ 3-12C-504 and 3-12C-509 and shall have the installment payments due after June 30, 1989, recalculated accordingly.

An Act to revise and repeal certain provisions relating to the South Dakota Retirement System.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 31

2020 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2020

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 31
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State