

2022 South Dakota Legislature

House Bill 1261**AMENDMENT 1261A FOR THE INTRODUCED BILL**

1 **An Act to establish emergency retire-rehire provisions for 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-401 be AMENDED:~~**

5 ~~**3-12C-401.** Any employee included in § 3-12C-301 shall make a contribution to the system,~~
6 ~~except as specified in § 3-12C-1405 and section 4 of this Act, and the employer shall make~~
7 ~~an equal contribution to the system, except as otherwise specified, at the following rates:~~

8 ~~(1) Class A members: five percent of compensation through June 30, 2002, and six percent~~
9 ~~of compensation after June 30, 2002;~~

10 ~~(2) Justices, judges, and magistrate judges: nine percent of compensation;~~

11 ~~(3) All other Class B members: eight percent of compensation.~~

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

14 ~~Except for those contributions specified in § 3-12C-1405, contributions required of employees~~
15 ~~by this section shall must be made by the participating unit pursuant to the provisions of~~
16 ~~§ 414(h)(2) of the Internal Revenue Code. The contributions shall must be classified as~~
17 ~~employee contributions for all purposes under this chapter. An employee may not receive the~~
18 ~~amount of the contributions directly rather than as contributions under this section.~~

19 **Section 1. That § 3-12C-703 be AMENDED:**

20 **3-12C-703.** The COLA payable ~~shall be~~ is applied annually to all benefits except
21 those based on the member's accumulated contributions, variable retirement account, or

1 contribution credit. However, the COLA ~~shall be~~ is eliminated for any period of time that a
2 retired member reenters covered employment in the system, unless ~~the~~ ;

3 (1) The member retired as a Class B member other than a justice, judge, or magistrate
4 judge and subsequently has reentered covered employment as a Class A member,
5 or unless the;

6 (2) The member retired without a benefit suspension pursuant to § 3-12C-1402 and
7 then reentered active status before July 1, 2004; or

8 (3) The member retired and then reentered employment with any participating unit
9 pursuant to section ~~4 2~~ of this Act.

10 ~~Such~~ The elimination ~~shall~~ must cease when the member again retires and draws
11 either a refund or an additional retirement benefit.

12 **~~Section 3. That § 3-12C-1401 be AMENDED:~~**

13 ~~**3-12C-1401.** Except as provided in § 3-12C-1401.1 and section 4 of this Act, a retired~~
14 ~~member's retirement is invalid if the member is reemployed by a participating unit unless the~~
15 ~~member's employment relationship with the initial participating unit has been terminated, as~~
16 ~~defined in this chapter and as required pursuant to Revenue Ruling 57-115 by the Internal~~
17 ~~Revenue Service, and the member has been separated from service for three consecutive~~
18 ~~calendar months after the member's effective date of retirement. The initial participating~~
19 ~~unit's system representative shall certify to the system that the termination of the~~
20 ~~employment relationship took place. In addition, any second participating unit shall subject~~
21 ~~the member to all proceedings and requirements associated with the hiring and employment~~
22 ~~of any new employee by the second participating unit, and that unit's system representative~~
23 ~~shall so certify to the system. If a single participating unit is both the member's initial~~
24 ~~participating unit and the member's second participating unit, the unit shall follow all~~
25 ~~termination procedures and all hiring procedures relative to the member as outlined by this~~
26 ~~section, and its chief executive officer, the officer's agent, or the chair of the unit's governing~~
27 ~~commission or board shall so certify.~~

28 **~~Section 4. That chapter 3-12C be amended with a NEW SECTION:~~**

29 ~~A retired member's retirement remains valid if the member comes back to work a full time,~~
30 ~~Class A credited service position for a participating unit at least thirty days after the~~
31 ~~termination of the member's employment with the participating unit or another participating~~
32 ~~unit, during which time the member had no contract or employment relationship with a~~
33 ~~participating unit, if:~~

1 ~~(1) The salary of the position is seventy five percent or less of the salary the member received~~
2 ~~from the participating unit prior to termination;~~

3 ~~(2) The participating unit hiring the member certifies that it has not been successful in filling~~
4 ~~the position with a qualified candidate before hiring the member; and~~

5 ~~(3) The participating unit hiring the member contributes to the system twelve percent of the~~
6 ~~salary of the position, with no contribution from the member.~~

7 ~~A retired member reemployed under this section will continue to receive COLA increases and~~
8 ~~will not be subject to the benefit reduction referenced in § 3-12C-1405.~~

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

10 ~~A retired member may be reemployed in an emergency full-time position for a~~
11 ~~participating unit if:~~

12 ~~(1) The member has been separated from service for at least twelve consecutive~~
13 ~~months after the member's effective retirement date; and~~

14 ~~(2) The participating unit hiring the member demonstrates that a good faith effort, as~~
15 ~~described in section 3 of this Act, was made to hire appropriately qualified~~
16 ~~personnel who are not receiving a retirement benefit from the system.~~

17 ~~A retired member reemployed under this section will continue to receive COLA~~
18 ~~increases and will not be subject to the benefit reduction referenced in § 3-12C-1405 until~~
19 ~~June 30, 2025. However, all other provisions of § 3-12C-1405 apply.~~

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

21 ~~To demonstrate that a good faith effort was made, the participating unit shall~~
22 ~~provide the following documentation of actions taken to recruit an appropriately qualified~~
23 ~~person for the emergency position:~~

24 ~~(1) The participating unit's need for the emergency position and the efforts made to~~
25 ~~fill the position;~~

26 ~~(2) A plan for hiring appropriately qualified personnel without using the emergency~~
27 ~~position in the future;~~

28 ~~(3) A description of the retired member's experience, knowledge, and abilities; and~~

29 ~~(4) A certification that no formal or informal agreement existed to reemploy the retired~~
30 ~~member.~~

1 Participating units shall advertise the position in at least two publicly accessible
2 resources for at least one month, within the six months preceding the emergency
3 employment. All copies of postings must be included with the documentation.

4 **Section 4. That § 3-12C-1405 be AMENDED:**

5 **3-12C-1405.** Except as provided in § 3-12C-1405.1 ~~and section 4 of this Act~~, if a
6 retired member reenters covered employment at some time after the three consecutive
7 calendar months that start with the member's effective date of retirement, the member's
8 retirement benefits and continued membership ~~shall~~ must be administered pursuant to
9 this section.

10 ~~The~~ Except as provided in section 2 of this Act, the member's monthly retirement
11 benefit ~~shall be~~ is reduced by fifteen percent and the COLA ~~shall be~~ is eliminated
12 throughout the period that the member reenters covered employment. The reduction and
13 elimination ~~shall cease~~ ceases if the member again terminates covered employment.
14 However, the reduction and elimination do not apply if the member retired as a Class B
15 member other than a justice, judge, or magistrate judge and subsequently reenters
16 covered employment as a Class A member.

17 The contributions required of the member ~~shall~~ must be deposited by the member's
18 participating unit with the system for the benefit of the member to be transferred to an
19 account within the deferred compensation program established pursuant to chapter 3-13.
20 The contributions shall be governed by § 457 of the Internal Revenue Code. However, the
21 contributions required of the member's employer unit ~~shall~~ must be deposited into the
22 fund created by this chapter, but with no association or credit to the member. The member
23 may not earn any additional benefits associated with the period that the member reenters
24 covered employment.

25 The provisions of this section do not apply to a Class D member who reenters
26 covered employment.

27 **Section 5.** The provisions of this Act are repealed on June 30, 2025. Upon repeal, the Code
28 Commission, pursuant to § 2-16-9, shall remove ~~section 4 sections 2 and 3 of this act~~ Act
29 from the Code and revert in word and substance the Code sections amended by this Act to
30 their status immediately prior to the effective date of this Act.