



2025 South Dakota Legislature
House Bill 1029
ENROLLED

AN ACT

ENTITLED An Act to update provisions of 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. Terms 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 the census data of all active members, vested terminated members, retired members, and their beneficiaries under the system;
- (4) "Actuarial value of assets," equal to the fair value of assets;
- (5) "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;
- (6) "Air rescue firefighter," an employee of the Department of the Military who is stationed at Joe Foss Field, Sioux Falls, and who is directly involved in firefighting activities on a daily basis;
- (7) "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 the actuary on the firm's staff, and who is appointed by the board to perform actuarial services;
- (8) "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;
 - (9) "Beneficiary," the person designated by a member of the system to receive any payments after the death of the member;
 - (10) "Benefits," the amounts paid to a member, spouse, child, or beneficiary as a result of the provisions of this chapter;
 - (11) "Board," the Board of Trustees of the South Dakota Retirement System;
 - (12) "Calendar quarter," a period of three calendar months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first of any year;
 - (13) "Campus security officer," an employee of the Board of Regents whose position is subject to the minimal educational training standards established by the Law Enforcement Officers Standards Commission, pursuant to chapter 23-3, who satisfactorily completes the training required by chapter 23-3, within one year of employment, and whose primary duty as a sworn law enforcement officer 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;
 - (14) "Certified school employee," any employee of a participating unit who is required to have a certificate, as defined in § 13-42-1;
 - (15) "Class A credited service," service credited as a Class A member of the system;
 - (16) "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. A member is a Class A member until proof is supplied to the executive director that a member is a Class B member;
 - (17) "Class B credited service," service credited as a Class B member of the system;
 - (18) "Class B judicial member," any Class B member who is a justice, judge, or magistrate judge;
 - (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, emergency medical

- services personnel, campus security officer, court services officer, juvenile corrections agent, gaming enforcement agent, conservation officer, or park ranger, and is either a foundation member or a generational member;
- (20) "Class B public safety member," any Class B member other than a justice, judge, or magistrate judge;
- (21) "Class C credited service," service credited as a Class C member of the system;
- (22) "Class C member," any member of the cement plant retirement plan including any retiree or any vested member;
- (23) "Class D credited service," service credited as a Class D member of the system;
- (24) "Class D member," any member who was a member of the Department of Labor and Regulation employees' retirement plan as of June 30, 2020;
- (25) "Classified employee," an employee:
- (a) Of a public school district who is not required by law to be a certified school employee;
 - (b) Of a 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;
 - (c) Of a public corporation;
 - (d) Of a chartered governmental unit; or
 - (e) Who participates in the system and is not provided for elsewhere in this chapter;
- (26) "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;
- (27) "Conservation officer," an employee of the Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park who is employed pursuant to § 41-2-11 and whose position is subject to the requirements as to education and training provided for in chapter 23-3;
- (28) "Consumer price index," the consumer price index for urban wage earners and clerical workers calculated by the United States Bureau of Labor Statistics;
- (29) "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 provided for in § 3-12C-509 or 3-12C-511;

- (30) "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 Administration and the Bureau of Finance and Management, and determined by the board as Class B members;
- (31) "Court services officer," an individual appointed pursuant to § 26-7A-8;
- (32) "Covered employment," a member's employment as a full-time employee of a participating unit;
- (33) "Deputy county sheriff," an individual who is:
- (a) An employee of a county that is a participating unit;
 - (b) Appointed by the board of county commissioners, pursuant to §§ 7-12-9 and 7-12-10; and
 - (c) 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 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;
- (34) "Disability advisory committee," a committee composed of:
- (a) The secretary of the Department of Human Services or the secretary's designee;
 - (b) An attorney appointed by the executive director; and
 - (c) A physician appointed by the executive director;
- (35) "Effective date of retirement," the first day of the month in which a retirement benefit is payable;
- (36) "Eligible retirement plan," a plan described in section 402(c)(8)(B) of the Internal Revenue Code;
- (37) "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;
- (38) "Emergency medical services personnel," an individual who is licensed by the State Board of Medical and Osteopathic Examiners in accordance with chapter 36-4B and actively practices emergency medical services;

- (39) "Employer," this state and any department, bureau, board, or commission of this state, any political subdivision of this state, or any public corporation of this state that elects to become a participating unit;
- (40) "Employer contribution," an amount contributed by the employer of a contributing member, excluding any member contribution made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- (41) "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;
- (42) "Executive director," the executive director of the South Dakota Retirement System;
- (43) "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;
- (44) "Fair value funded ratio," the fair value of assets divided by the actuarial accrued liability;
- (45) "Fiduciary," any person who:
 - (a) Exercises any discretionary authority or control over the management of the system or the management or disposition of the system's assets;
 - (b) Renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so; or
 - (c) Has any discretionary authority or responsibility in the administration of the system;
- (46) "Foundation member," any member of the system whose contributory service began before July 1, 2017;
- (47) "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;
- (48) "Full-time employee," any employee who is considered full-time by the participating unit and is customarily employed by the participating unit for twenty hours or more a week and at least six months a year, regardless of classification of employment as seasonal, temporary, leased, contract, or any other designation;
- (49) "Fund," public employees' retirement fund or funds established for the administration of this chapter;

- (50) "Gaming enforcement agent," any employee of the South Dakota Commission on Gaming who is appointed pursuant to § 42-7B-56 and who must, as a condition of employment, be law enforcement certified;
- (51) "Generational member," any member of the system whose contributory service began after June 30, 2017;
- (52) "Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;
- (53) "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;
- (54) "Law enforcement officer," any agent of the Division of Criminal Investigation, officer of the South Dakota Highway Patrol, police officer, county sheriff, or deputy county sheriff;
- (55) "Member," any individual who is contributing or has made contributions to the system and is either a foundation member or generational member. An individual's membership ceases when the individual withdraws the individual's accumulated contributions after termination of employment;
- (56) "Member contribution," any amount contributed by a member, including any member contribution made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- (57) "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;
- (58) "Municipality," any incorporated municipal government under chapter 9-3, or any chartered governmental unit, as provided for in S.D. Const., Art. IX;
- (59) "Noncontributory service," for any foundation member, service delineated in subdivisions 3-12C-502(2), (5), (7), and (8), and for any generational member, service pursuant to § 3-12C-514;
- (60) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;

- (61) "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;
- (62) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;
- (63) "Other public service," service:
 - (a) For the government of the United States, including military service;
 - (b) For the government of any state or political subdivision thereof;
 - (c) For any agency or instrumentality of the government of the United States or the government of a state or political subdivision; or
 - (d) As an employee of an association of government entities described in this subdivision;
- (64) "Park ranger," an employee of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose position is subject to the requirements as to education and training provided for in chapter 23-3, and whose primary duty is law enforcement in the state park system;
- (65) "Parole agent," an employee of the Department of Corrections employed pursuant to § 24-15-14, who directly supervises parolees on a daily basis;
- (66) "Participating unit," this state, any department, bureau, board, or commission of this state, and any political subdivision or public corporation of this state that has employees who are members of the system;
- (67) "Plan year," a period extending from July first of one calendar year through June thirtieth of the following calendar year;
- (68) "Police officer," any employee in the police department of any participating municipality, holding the rank of patrol officer or probationary patrol officer, or holding a 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 a civilian employee of a police department nor any individual 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 that 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;

- (69) "Political subdivision," any municipality, school district, county, chartered governmental unit, public corporation or entity, and special district created for any governmental function;
- (70) "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;
- (71) "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;
- (72) "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;
- (73) "Qualified military service," service in the uniformed services, as defined in § 414(u)(5) of the Internal Revenue Code;
- (74) "Retiree," any foundation or generational member who retires with a lifetime benefit payable from the system;
- (75) "Retirement," the severance of a member from the employ of a participating unit with a retirement benefit payable from the system;
- (76) "Retirement benefit," the monthly amount payable upon the retirement of a member;
- (77) "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;
- (78) "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;
- (79) "State employee," an employee of any board, bureau, commission, or department of this state;

- (80) "Supplemental pension benefit," any single-premium immediate pension benefit payable pursuant to §§ 3-12C-1504 and 3-12C-1505;
- (81) "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;
- (82) "Supplemental pension contract record," the record of:
 - (a) Each supplemental pension participant reflecting relevant participant data;
 - (b) A designation of any beneficiary, if any;
 - (c) The amount of the participant's funds rolled into the fund;
 - (d) The provisions of the participant's supplemental pension contract; and
 - (e) Any supplemental pension payments made pursuant to the contract;
- (83) "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. For purposes of this chapter, "participant" means the same meaning as "supplemental pension participant";
- (84) "Supplemental pension spouse," any individual who was married to a supplemental pension participant at the time the participant entered into the supplemental pension contract;
- (85) "System," the South Dakota Retirement System created in this chapter;
- (86) "Trustee," a member of the Board of Trustees; and
- (87) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets.

Section 2. That § 3-12C-102 be AMENDED:

3-12C-102. For purposes of this chapter, "actuarial equivalent" means a benefit of equal value, computed on the basis of the interest rate, mortality, and baseline COLA assumptions adopted by the board for purposes of the actuarial valuation. If the board adopts a select and ultimate rate of interest, the interest rate is the ultimate rate. Mortality is based on a unisex rate that is fifty percent male and fifty percent female for employees and beneficiaries, based on the mortality rates for retired employees and beneficiaries, including, if the board adopts a generational mortality table, a generational projection of mortality improvement with the member's and beneficiary's ages as of the date of the

calculation assumed to be in the calendar year in which the plan year containing the date of the calculation begins. If the board adopts distinct mortality tables for the different categories of retired members or beneficiaries, the mortality rates must be based on a weighted blend of the tables with the weighting based on the percentage of accrued benefits for each category of members as the actuarial valuation immediately preceding the date of adoption of the mortality tables. The system must make the interest rate, mortality, and baseline COLA assumptions public.

Section 3. That § 3-12C-104 be AMENDED:

3-12C-104. For purposes of this chapter, "COLA" or "cost of living adjustment" means the annual increase, if any, as determined by § 3-12C-704, in the amount of the benefit provided on July first, compounded annually. No COLA may be provided unless the member has received benefit payments for at least the consecutive, twelve-month period before July first.

Section 4. That § 3-12C-105 be AMENDED:

3-12C-105. For purposes of this chapter, "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:

- (a) Any amount reported as wages, tips, and other compensation on the member's federal form W-2 wage and tax statement;
- (b) Any amount of contributions made on behalf of a member by an employer after June 30, 1984, pursuant to § 3-12C-401; and
- (c) Any amount contributed by a member to a plan that meets the requirements of § 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 5. That § 3-12C-106 be AMENDED:

3-12C-106. For purposes of this chapter, "contributing member" means any member for whom the system receives an employer contribution report. The employer contribution report must state any contributions made for the member by the employer and employee.

Section 6. That a NEW SECTION be added to chapter 3-12C:

A member's period of active membership in the system is established by the date of the employer contribution report to the system, which must include the member's initial employee and employer contributions. A member's active membership is terminated when the system receives notice of termination from an employer, accompanied by the member's final employee and employer contributions.

If the system receives any employee and employer contributions on behalf of a member during a calendar quarter, the member must be credited with a full calendar quarter of contributory service toward calculating the member's benefits or determining the member's eligibility for benefits, but not for determining whether a member's death was active status or inactive status.

Section 7. That § 3-12C-107 be AMENDED:

3-12C-107. For purposes of this chapter, "disability" or "disabled" means any medically determinable physical or mental impairment that prevents a member from performing the member's usual duties for the member's employer, even with accommodations, or performing the duties of a comparable level position for the member's employer. The term excludes any condition resulting from a willful, self-inflicted injury.

Section 8. That § 3-12C-108 be AMENDED:

3-12C-108. For purposes of this chapter, "effective rate of interest" means the interest at an annually compounded rate to be established by the board for each fiscal year. The rate may be no greater than ninety percent of the average ninety-one day United States treasury bill rate for the immediately preceding calendar year and in no

event may the rate be more than the rate established by the board pursuant to § 3-12C-227, for investment return for purposes of the actuarial valuation. If a member withdraws contributions pursuant to § 3-12C-602 or 3-12C-604, or if benefits are payable under § 3-12C-409, the interest must be as annually compounded on the preceding June thirtieth.

Section 9. That § 3-12C-109 be AMENDED:

3-12C-109. For purposes of this chapter, "minimum actuarial requirement to support benefits" means the normal cost and the interest on and amortization of the unfunded actuarial accrued liability over a period not to exceed twenty years, all expressed in terms of a percentage of covered payroll and based on the baseline COLA or the restricted COLA, as applicable. If the actuarial value of assets exceeds the actuarial accrued liability, the minimum actuarial requirement to support benefits includes recognition of the amount by which the actuarial value of assets exceeds the actuarial accrued liability. In no event may the recognition reduce the minimum actuarial requirement to support benefits to a percentage less than the contribution rate.

Section 10. That § 3-12C-110 be AMENDED:

3-12C-110. For purposes of this chapter, "spouse" means an individual who was married to the member at the time of the death of the member and whose marriage was both before the member's retirement and more than twelve months before the death of the member.

Section 11. That § 3-12C-111 be AMENDED:

3-12C-111. For purposes of this chapter, "terminated" means a complete severance of employment from public service of any member by resignation or discharge and involves the following termination proceedings routinely followed by the member's participating unit:

- (a) Payment to the member for unused vacation leave;
- (b) Payment to the member for unused sick leave;
- (c) Payment to the member for severance of an employment contract;
- (d) Severance of employer-provided health insurance coverage;
- (e) Severance of employer-provided life insurance coverage; or
- (f) Severance of any other employer-provided perquisite of employment granted by the member's participating unit to an active employee.

The term does not mean a leave of absence, layoff, vacation leave, sick leave, or jury duty.

Section 12. That § 3-12C-112 be AMENDED:

3-12C-112. For purposes of this chapter, "vested" means the right to a retirement benefit from the system, as provided for in this chapter, after three years of contributory service or noncontributory service, even if the member leaves the employment of a participating unit, provided the member does not withdraw accumulated contributions.

Section 13. That § 3-12C-203 be AMENDED:

3-12C-203. There is created a governing authority of the system known as the Board of Trustees. Voting representation on the board must 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 public safety member;
- (7) A Class B judicial member;
- (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 14. That a NEW SECTION be added to chapter 3-12C:

The executive director must be notified of a vacancy on the board by the vacating trustee, by the trustee's participating unit's governing body, by the trustee's employer, or by any other trustee. Upon the executive director's receipt of notice, the procedure to fill the vacancy is as follows:

- (1) The executive director shall notify all trustees of the vacancy;
- (2) If circumstances permit, the executive director must ask the vacating trustee to recommend a replacement to serve in the trustee's stead;
- (3) If the vacancy is for a trustee to serve on behalf of:
 - (a) An employer-represented group, the executive director must provide notice of the vacancy to the governing body of each participating unit affected by the vacancy and request the governing body's input in seeking a qualified candidate. The executive director shall solicit resumes of qualified individuals from governing bodies and interested individuals. The resumes must be submitted to the executive director. If a statewide association exists that is made up of members of the employer-represented group, the executive director must notify the association of the vacancy and request the association's input in seeking a qualified candidate; or
 - (b) An employee-represented group, the executive director must provide notice of the vacancy to all authorized agents for the group affected by the vacancy and request that all employees affected by the vacancy be notified of the vacancy. Any interested member of the represented group may submit a resume to the executive director. If a statewide association exists that is made up of members of the employee-represented group, the executive director must notify the association of the vacancy and request the association's input in seeking a qualified candidate;
- (4) The executive director shall provide to each trustee a copy of each resume received; and
- (5) At the next board meeting following a sufficient period of time to receive resumes, the board shall, by secret ballot, select a trustee from among the individuals who submitted resumes.

For purposes of this section, "represented group" means a group entitled to elect one or more trustees, pursuant to §§ 3-12C-203 and 3-12C-204. The group to which a trustee belongs is determined from the records of the system.

Section 15. That § 3-12C-207 be AMENDED:

3-12C-207. Each trustee shall receive per diem compensation and allowable expense reimbursement, pursuant to § 4-7-10.4.

Section 16. That § 3-12C-209 be AMENDED:

3-12C-209. The board shall appoint an executive director, qualified by training and experience, to serve at the pleasure of the board. The board shall fix the compensation for the executive director. The compensation must be based on a compensation policy, adopted by the board, which considers an analysis of the compensation and responsibilities of executive directors of regional statewide retirement systems. The board may adjust the salary of the executive director annually in accordance with the state employee salary policy, as enacted by the Legislature in each corresponding year.

The board shall report any change in the executive director's compensation above the state employee salary policy to the Retirement Laws Committee before July first for the upcoming fiscal year. The change in compensation above the state employee salary policy is effective if approved by a majority vote of the Retirement Laws Committee.

The executive director may hire additional employees as may be required to transact the business of the retirement system and shall fix the remuneration for the services.

The board shall require the bonding of the executive director in an amount set by the board and included under the state employees' blanket bond. The premium may be charged to the fund.

The executive director shall act as secretary of the board. Any document required to be filed with the board must be filed with the executive director.

Section 17. That § 3-12C-214 be AMENDED:

3-12C-214. If any change or error in the records of the system or any participating unit results in any person receiving from the system less than the person would have been entitled to receive had the records been correct, the executive director must correct the error and, as far as practicable, adjust the payment to provide the person the amount to which the person is correctly entitled.

If any change or error in the records of the system or any participating unit results in any person receiving from the system more than the person would have been entitled to receive had the records been correct, the executive director must correct the error and, as far as practicable, recover the overpayment to reflect the amount to which the person is correctly entitled. The board shall promulgate rules, pursuant to chapter 1-26,

concerning the methods by which an overpayment must be repaid, including an actuarial equivalent. The recovery of an overpayment is limited to the amount attributable to any error that occurred during the six-year period immediately before the discovery of the error. This limitation does not apply in the case of fraud, intentional misrepresentation, material omission, or other fault on the part of a member or beneficiary.

Upon request, a member of the system may, during business hours, inspect any file directly relating to the member and request the correction of any alleged errors in the file.

Section 18. That a NEW SECTION be added to chapter 3-12C:

Any member required to repay an overpayment of benefits may choose one of the following repayment methods:

- (1) Immediate repayment in a lump sum from other funds;
- (2) Repayment by monthly installments over a period not to exceed three years, plus interest at the system's assumed rate of return;
- (3) Repayment by monthly benefit reductions over a period not to exceed three years, plus interest at the system's assumed rate of return; or
- (4) Repayment by an actuarial equivalent reduction in monthly benefits as follows:
 - (a) If the member is a foundation member and does not have a spouse, the reduction must continue for the member's lifetime. If the member is a foundation member with a potential surviving spouse benefit payable, the reduction must reduce both the member's monthly benefits and the surviving spouse's monthly benefits and must continue for both the member's and the surviving spouse's lifetimes; or
 - (b) If the member is a generational member and elected a single life benefit, the reduction must continue for the member's lifetime. If the member is a generational member with a joint and survivor benefit payable, the reduction must reduce both the member's monthly benefits and the surviving spouse's monthly benefits and must continue for both the member's and the surviving spouse's lifetimes.

If a member required to repay an overpayment does not choose a repayment option within two months after being given notice of the overpayment, the member is deemed to have chosen to make repayment by an actuarial equivalent reduction in monthly benefits. If repayment is pursuant to an actuarial equivalent reduction by either the member's choice or the member's failure to choose a repayment option, system staff

must inform the member that the reduction is unlikely to result in repayment of the exact amount of the overpayment, plus interest if appropriate, and the member is presumed to understand.

If repayment is delayed for more than three months, interest on the overpayment amount must accrue during the period of delay at the system's assumed rate of return. If any overpayment is due to a system error, the executive director may absolve any interest accrual.

Section 19. That a NEW SECTION be added to chapter 3-12C:

Any person other than a member who is required to repay an overpayment of benefits may choose one of the following repayment methods:

- (1) Immediate repayment in a lump sum from other funds;
- (2) Repayment by monthly installments over a period not to exceed three years, plus interest at the system's assumed rate of return;
- (3) Repayment by monthly benefit reductions over a period not to exceed three years, plus interest at the system's assumed rate of return; or
- (4) Repayment by an actuarial equivalent reduction in monthly benefits that must continue as long as the benefit is paid.

If the person required to repay an overpayment is receiving a benefit from the system and does not choose a repayment option within two months after being given notice of the overpayment, the person is deemed to have chosen to make repayment by an actuarial equivalent reduction in monthly benefits. If repayment is pursuant to an actuarial equivalent reduction by either the person's choice or the person's failure to choose a repayment option, system staff must inform the person that the reduction is unlikely to result in repayment of the exact amount of the overpayment plus interest if appropriate, and the person is presumed to understand.

If repayment is delayed for more than three months, interest on the overpayment amount must accrue during the period of delay at the system's assumed rate of return. If any overpayment is due to a system error, the executive director may absolve any interest accrual.

Section 20. That a NEW SECTION be added to chapter 3-12C:

If a qualified domestic relations order provides that a member's former spouse must be treated as a beneficiary for any payment pursuant to § 3-12C-409, the provision must supersede any contrary beneficiary designation by the member. The provision of the

qualified domestic relations order and the member's beneficiary designation must be administered in a manner that gives full effect to the order and both proportional and equitable effect to the member's designation of any beneficiary.

Section 21. That a NEW SECTION be added to chapter 3-12C:

The provisions of a qualified domestic relations order are prospective from the date of the order. Any division of benefits paid prior to the date of the order, service of the order upon the system, or qualification of the order by the system, whichever is later, must be the responsibility of the parties to the order. The executive director may agree to adjust future payments to remedy an error in prior payments, if the error in prior payments involved the system.

Section 22. That a NEW SECTION be added to chapter 3-12C:

The benefit to a surviving spouse upon the death of a member who had retired or reached normal retirement age is an independent benefit belonging to the surviving spouse for the purpose of administering an existing qualified domestic relations order.

Section 23. That § 3-12C-226 be AMENDED:

3-12C-226. To determine and verify the adequacy of any member and employer contributions to the system, an actuarial valuation of the system must be made annually by an approved actuary.

The actuarial valuation must provide:

- (1) A demonstration of the relationship of any current member and employer contributions, expressed as a percentage of payroll, to the minimum actuarial requirement to support benefits; and
- (2) The current year's actuarial value funded ratio and fair value funded ratio, as well as the ratios from the prior actuarial valuations.

For purposes of this section, "actuarial value funded ratio" means the actuarial value of assets divided by the actuarial accrued liability.

Section 24. That § 3-12C-227 be AMENDED:

3-12C-227. The actuarial valuation required by § 3-12C-226, must be based on actuarial assumptions adopted by the board, as a result of an actuarial experience analysis. The board may not make any change in the actuarial assumptions unless the

approved actuary retained to make the actuarial valuation certifies that the change is reasonable. If the board makes a change, the board must report the change to the Governor and to the Retirement Laws Committee. The report must include the actuary's and board's analysis of the conditions that led to the change.

Section 25. That § 3-12C-308 be AMENDED:

3-12C-308. Employees of an eligible political subdivision or public corporation not participating in the systems consolidated into the system created by this chapter, may become a participating unit in the system if the unit commits to deposit an amount equal to the present value of benefits earned to date, based on the employee's prior service to the unit to be covered by the system. The expense of the actuarial determination of this amount must be borne by the applicant. All eligible employees of an applicant shall participate in the system upon admission. If the unit is unable to deposit this amount in a single sum, the unit must have the option to pay the amount by periodic level installments over a period up to twenty years, the value of which, when discounted for compound interest at the assumed rate of return, is equal to the amount due at the date of participation.

For purposes of this section, "present value of benefits earned to date" means:

- (1) The present value of the benefits currently being paid to retired members, if included, and the retired members' beneficiaries;
- (2) The present value of the benefits payable to terminated members; and
- (3) The actuarial accrued liability of active members, based on the actuarial assumptions and methods used in the actuarial valuation.

Section 26. That § 3-12C-310 be AMENDED:

3-12C-310. If a participating unit determines that a governmental function is to be privatized after July 1, 1997, the participating unit must pass a resolution to that effect determining the date that its employees will cease to be public employees eligible for membership in the system. The participating unit shall notify the system and the employees affected of the resolution and, after the effective date, cease to make contributions to the system, as required in §§ 3-12C-401 and 3-12C-403. Any member affected by privatization is entitled to the benefits accrued as of the effective date under the provisions of chapter 3-12C. For the purposes of determining eligibility for vesting and early retirement pursuant to § 3-12C-1111, years of service with the successor employer must be considered.

Section 27. That a NEW SECTION be added to chapter 3-12C:

Acquisition of years of service toward vesting or early retirement granted, pursuant to § 3-12C-310, ceases upon the member's termination of employment with the private employer, even if the member later returns to employment with the employer. A member in continuing employment with the private employer need not terminate the private employment to receive a retirement benefit from the system. The member may not acquire additional years of service after the member begins receiving the benefit.

Section 28. That a NEW SECTION be added to chapter 3-12C:

Each participating unit shall appoint an employee to serve as an authorized agent between the participating unit and the system.

Section 29. That § 3-12C-402 be AMENDED:

3-12C-402. Each participating unit shall make an additional contribution in the amount of six and two-tenths percent of any foundation member's compensation in each calendar year that exceeds the maximum taxable amount for social security for the calendar year. The additional contribution may be made only for Class A foundation members and may not be treated as an employer contribution.

Section 30. That § 3-12C-403 be AMENDED:

3-12C-403. All employee and employer contributions to the system and the necessary supporting data must be transmitted by the employer at least monthly to the system. If the employer does not have a pay date in the month, no report is required in that month. Each monthly transmission for each respective calendar month must be dated no later than the last day of the month in which the transmission is required and must be completed by the fifteenth day of the following month. All supporting data must be transmitted electronically, in a format determined by system personnel. All contributions must be deposited with the state treasurer in the fund established to administer this chapter.

If any participating unit fails to deliver contributions with respect to compensation paid in any month and the necessary supporting data by the fifteenth day of the following month, the participating unit must pay to the system a penalty equal to five percent of the delinquent contributions. The delinquent contributions and the penalty must bear interest at the assumed rate of return from the date due until the date paid. In calculating

accumulated contributions, all contributions with respect to compensation paid in any fiscal year must be included in the calculation of interest credited for that fiscal year.

Section 31. That a NEW SECTION be added to chapter 3-12C:

If a participating unit has at least one pay date in a month, the participating unit must prepare at least one contribution report for the month. If a participating unit has no pay date in a particular month, no report is required for the month.

Each report must be dated no later than the last day of the month being reported.

Each report must state any pay date and associated contributions for the month. The report and associated contributions must be transmitted to the system as provided for in § 3-12C-403.

Section 32. That § 3-12C-407 be AMENDED:

3-12C-407. For any foundation member, "accumulated contributions" means the sum of:

- (1) All contributions made by the member and any member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;
- (2) For a member whose contributory service concluded after June 30, 2010, eighty-five percent of the employer contributions or noncontributory service, if the member had three years or more of contributory service, and fifty percent of the employer contributions, if the member had less than three years of service; or for a member whose contributory service concluded before July 1, 2010, one hundred percent of the employer contributions or noncontributory service, if the member had three years or more of contributory service, and seventy-five percent of the employer contributions, if the member had less than three years of service;
- (3) Member redeposits and member-credited service purchases pursuant to §§ 3-12C-504, 3-12C-509, and 3-12C-511; and
- (4) The effective rate of interest earned on the sum of subdivisions (1), (2), and (3) of this section.

Section 33. That § 3-12C-502 be AMENDED:

3-12C-502. For any foundation member, "credited service" means:

- (1) Years of service, or fractions thereof, for which a member contribution was made to the system;

- (2) Years of noncontributory service, or fractions thereof, credited before July 1, 1974, previously credited under the provisions of the retirement systems consolidated pursuant to § 3-12C-1601;
- (3) Any period of authorized leave of absence or sick leave with pay, for which a deduction for any member contribution was made, deposited, and credited to the fund;
- (4) Any period of authorized leave of absence or sick leave without pay or temporary layoff, during or for which a member obtained credit by payments to the fund made in lieu of salary deductions;
- (5) Any period during which a member is on an authorized leave of absence to enter military service, if the member fulfills the requirements set forth in § 3-12C-514;
- (6) Years of service, or fractions thereof, by faculty and administrators employed by the Board of Regents before April 1, 1964, credited pursuant to §§ 3-12C-1611 and 3-12C-1612;
- (7) Years of noncontributory service, or fractions thereof, earned before July 1, 1967, but not credited under the South Dakota public employee retirement system as it was consolidated pursuant to § 3-12C-1601, because the individual earned the service prior to attaining the age of thirty. The service must be credited only to an individual who was a contributing member on July 1, 1987. No service may be credited pursuant to this subdivision to any member who has withdrawn the member's accumulated contributions after July 1, 1967; and
- (8) Years of noncontributory service, or fractions thereof, earned by a member from July 1, 1967, to June 30, 1974, inclusive, but not credited under the South Dakota public employee retirement system because of the age and service restrictions established under that system.

Section 34. That § 3-12C-503 be AMENDED:

3-12C-503. For any generational member, "credited service" means the sum of the following:

- (1) Years of service, or fractions thereof, for which a member contribution was made to the system;
- (2) Any period of authorized leave of absence or sick leave with pay, for which a deduction for any member contribution was made, deposited, and credited to the fund;

- (3) Any period of authorized leave of absence or sick leave without pay or temporary layoff, during or for which a member obtained credit by payments to the fund made in lieu of salary deductions; and
- (4) Any period during which a member is on an authorized leave of absence to enter military service, if the member fulfills the requirements set forth in § 3-12C-514.

Section 35. That § 3-12C-504 be AMENDED:

3-12C-504. A current contributing member of the system may receive credited service by election to make, or have made on the member's behalf, contributions, based on the higher of the member's current compensation, or the member's final compensation calculated as if the member retired on the date of election, at an actuarially determined percentage times the member rate, for each year of service for which the member wishes to receive credit, if:

- (1) The current contributing member of the system could have established credit for any South Dakota public service by making contributions under this chapter or any prior law; or
- (2) The current contributing member was not permitted to establish credit for any South Dakota public service.

The amount of the credited service and the rate of contribution must be at class A rates, unless the service for which credit is sought was rendered as a class B member, in which case class B rates apply. If a participating unit has failed to pay any employer or member contribution to the system on behalf of a member, as required under this chapter or under any predecessor system consolidated pursuant to § 3-12C-1601, the amount due the system must be calculated in accordance with this section.

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

Section 36. That § 3-12C-514 be AMENDED:

3-12C-514. A member must receive credited service for leave of absence due to qualified military service, authorized in advance by the employer, without contribution by the employee or employer, if the member returns to the employ of a participating unit within one year from the member's date of discharge from the member's initial period of

qualified military service and if the member remains in the employ of a participating unit for at least one year. The member may not receive credited service for any voluntary extension of qualified military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty. Credited service granted under this section is only for the initial period that the member is performing qualified military service. No credited service granted under this section may be considered to represent either member contributions or an employer contributions for purposes of contribution withdrawals pursuant to this chapter.

If the member returns to the employ of the member's employer unit within one year of discharge from the initial period of qualified military service but does not remain in the employ of the unit for at least one year, the member must be granted credited service for the initial period of qualified military service pursuant to § 414(u)(8) of the Internal Revenue Code if the member deposits with the system employee contributions for the initial period of the qualified military service as provided for in § 414(u)(8)(C). The contributions must be made in a lump sum, must be based on the member's compensation immediately prior to the leave of absence, and must be without interest. The participating unit that was the member's employer prior to the leave of absence shall deposit any employer contributions in an equal amount with the system. Notwithstanding other provisions of this chapter, the member need not be a contributing member at the time the member deposits the contributions. The member is subject to the time limitations for payment as provided for in § 414(u)(8)(C).

Section 37. That § 3-12C-518 be AMENDED:

3-12C-518. A current contributing Class B public safety member may convert the following credited services as a Class A member with benefits, as provided for in § 3-12C-1106, to a credited service as a Class B public safety member with benefits, as provided for in § 3-12C-1107:

- (1) Credited service as a county sheriff or deputy county sheriff before January 1, 1980, or credited service as a county sheriff or deputy county sheriff while not certified from January 1, 1980, to June 30, 1988, inclusive;
- (2) Credited service as a police officer while not certified from July 1, 1983, to June 30, 1988, inclusive;
- (3) Credited service as a correctional security staff member before July 1, 1978;
- (4) Credited service as a conservation officer before July 1, 1983;
- (5) Credited service as a parole agent before July 1, 1991; and

(6) Credited service as an air rescue firefighter before July 1, 1992.

The current contributing Class B public safety member may, by election, make or have made on the member's behalf a contribution based on the higher of the member's current compensation, or the member's final average compensation calculated as if the member retired on the date of election, at an actuarially determined percentage times each year of service for which the member wishes to receive Class B credit. The provisions of this section also apply to a current contributing Class B public safety member who previously purchased equivalent public service pursuant to the provisions of § 3-12C-509.

Payment of a deposit with the system for the conversion of credited service in accordance with this section must 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, if 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 to the system. However, if a member dies before completion of the installment payments and the payments are being made by a participating unit, the amount must 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 a pro rata adjustment to the credited service, benefits payable under this chapter, or schedule of payments to allow for the default.

If the credited service of any member or group of members becomes a Class B credited service on a prospective basis after June 30, 1993, the prior credited service as a Class A member may be converted to Class B credited service in accordance with this section.

If a jailer becomes a Class B public safety member, the jailer is eligible to convert prior credited service as a jailer under this section.

Section 38. That § 3-12C-519 be AMENDED:

3-12C-519. If a current contributing Class B public safety member of this system has equivalent public service for which the member is not entitled to retirement benefits from another public retirement system, the member may elect to deposit or have deposited on the member's behalf an amount equal to an actuarially determined percentage times the appropriate Class B rate of contribution multiplied by the higher of the member's annual compensation at the time of making the election, or the member's final average compensation calculated as if the member retired on the date of the election,

for each year of equivalent public service for which the member wishes to receive credit as a Class B member.

Section 39. That § 3-12C-603 be AMENDED:

3-12C-603. A member who elects to withdraw accumulated contributions, as provided for in § 3-12C-602, or a member's surviving spouse or nonspouse beneficiary who receives a lump-sum payment pursuant to § 3-12C-409, may receive the distribution directly. An eligible rollover distribution may be transferred by the system in a direct rollover to no more than one eligible retirement plan under § 401, 403(b), 408, 408A, or 457(b) of the Internal Revenue Code, as identified by a member or a member's surviving spouse if the individual so elects. A member's nonspouse beneficiary may transfer a portion or all of the member's account by rollover to an eligible plan under § 408 or 408A.

The board shall promulgate rules pursuant to chapter 1-26, to comply with federal mandates regarding rollover distributions.

The system is not required to make an independent determination as to whether the plan identified by a member, surviving spouse, or nonspouse beneficiary qualifies as an eligible retirement plan. By electing a direct rollover and identifying the eligible retirement plan to which an eligible rollover distribution is to be made, a member, surviving spouse, or nonspouse beneficiary represents to the system that the identified plan qualifies as an eligible retirement plan. If a member, surviving spouse, or nonspouse beneficiary does not elect a direct rollover, the distribution must be issued in the name of, and directly to, that individual.

Section 40. That § 3-12C-702 be AMENDED:

3-12C-702. For purposes of determining eligibility for, and the amount of, any benefit payable pursuant to this chapter, the first day of the month in which an individual's birthday falls is considered the individual's birthday.

Section 41. That § 3-12C-703 be AMENDED:

3-12C-703. The COLA payable must be applied annually to all benefits except those based on the member's accumulated contributions, variable retirement account, or contribution credit. The COLA must be eliminated for any period of time that a retired member reenters covered employment in the system, unless the member retired as a Class B public safety member and subsequently has reentered covered employment as a

Class A member, or the member retired without a benefit suspension pursuant to § 3-12C-1402, and then reentered active status before July 1, 2004. The elimination of the COLA must cease when the member again retires and draws either a refund or an additional retirement benefit.

Section 42. That § 3-12C-711 be AMENDED:

3-12C-711. The board may promulgate rules, in accordance with chapter 1-26, to regulate the maximum annual benefit that may be paid to a member. The rules must be consistent with maintaining the tax qualification of the system. No benefit may exceed the limitations imposed by § 415 of the Internal Revenue Code, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code.

For purposes of administering the limitations imposed by § 415, "limitation year" means a period extending from July first of one calendar year through June thirtieth of the following calendar year.

Section 43. That a NEW SECTION be added to chapter 3-12C:

If a member has been credited with less than ten years of credited service, the maximum annual retirement benefit must be reduced by multiplying the maximum annual pension by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.

The limits as provided by § 415 of the Internal Revenue Code apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between ages sixty-two and sixty-five. The limits do not apply to any portion of a benefit resulting from required member contributions made on an after-tax basis.

If payment begins before age sixty-two, the limits are reduced so they are actuarially equivalent to a benefit beginning at age sixty-two.

For a police officer or firefighter who is a member of the system, the limit may not be reduced for retirement before age sixty-two, regardless of retirement age, provided that the member has completed at least fifteen years of credited service.

If a member's benefit is limited by the maximum annual retirement benefit, the member may be eligible for a benefit as determined by § 3-12C-1805. The interest assumption for purposes of determining actuarial equivalency under this section is five percent annually. The mortality assumption is the applicable mortality table under § 417(e)(3) of the Internal Revenue Code.

Section 44. That § 3-12C-804 be AMENDED:

3-12C-804. No application for disability benefits pursuant to § 3-12C-803, may be determined until the employer has certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or a comparable level position.

Section 45. That § 3-12C-808 be AMENDED:

3-12C-808. When a member who is receiving a disability benefit reaches age sixty-five, or at a later date if there are no eligible children, or if over age sixty at the time of commencement of disability, after a period of five years, the member's disability benefit must be terminated and thereafter the member must receive the benefit payable for service retirement at that age, calculated on the projected compensation and projected service. If a member who received a disability benefit returns to employment prior to normal retirement age, the member's credited service must include the time of disability.

If a member receiving a disability benefit ceases to be disabled, elects to convert to a retirement benefit, or is converted to a retirement benefit pursuant to this section, the disability benefit is terminated. The member shall receive credited service for the period that the member receives a disability benefit, except as provided for in this section, and not beyond the member's normal retirement age.

The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 46. That § 3-12C-809 be AMENDED:

3-12C-809. A member's disability benefit that was based on an application received by the system prior to July 1, 2015, must terminate thirty days after the earliest of the following:

- (1) The member is no longer disabled;
- (2) The member is no longer subject to the medical condition that caused the disability;
- (3) The member refuses to undergo a medical examination requested by the system for the purpose of reviewing the medical condition that caused the disability;
- (4) The member returns to continuous employment in the position the member held prior to becoming disabled; or

- (5) The member returns to continuous employment, including self employment and employment by an employer that is not a participating unit, in a comparable level position to what the member held prior to becoming disabled.

A member's disability benefit must terminate immediately if the member elects to convert to a retirement benefit or if member's disability benefit is converted to a service retirement benefit pursuant to § 3-12C-808. The member shall receive credited service for the period that the member received a disability benefit, but except as provided for in § 3-12C-808, not beyond the member's normal retirement age.

Section 47. That § 3-12C-901 be AMENDED:

3-12C-901. 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 must 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) of this section, 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) of this section exceeds one hundred percent of the member's projected compensation, the benefits payable under both subdivisions (1) and (2) of this section must 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) of this section and the member's accumulated contributions have not been withdrawn pursuant to § 3-12C-906, the spouse who has reached age sixty-five shall, upon the system's receipt of a completed application, 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. If the surviving spouse is eligible at the time of the member's death, the benefit is effective the first day of the month following the date on which the member's contributory service terminates. The benefit payable under this subdivision must 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.

For benefits payable pursuant to subdivision (1) or (2) of this section, the benefit is effective the first day of the month following the date on which the member's contributory service terminates and is payable upon the receipt of a completed application.

For purposes of this section, "care of children" means the responsibility for the maintenance, education, and supervision of one or more children.

Section 48. That § 3-12C-1001 be AMENDED:

3-12C-1001. Within three hundred sixty-five days of becoming a member, within ninety days of attaining age thirty-five, or within ninety days of the first anniversary of a marriage, a member may elect to provide the member's spouse with additional survivor protection by increasing the member's contribution by an additional one and five-tenths percent of compensation, which additional contribution may not be matched by the member's employer. The additional contribution must commence with the first payroll period following the date of the election. The additional contribution must continue until one of the following occurs:

- (1) The member's spouse attains the age sixty-five;
- (2) The death or disability of the member;
- (3) The death of the spouse;
- (4) The termination of the member's employment; or
- (5) The termination of the marriage through a divorce decree or an annulment.

The additional contribution may not be treated as a member contribution for purposes of determining the amount of refund of accumulated contributions. Contributions paid prior to January 1, 1979, must be considered part of accumulated contributions for determining the amount of refund if the member terminates employment. Notwithstanding any other provision of this section, a member who is currently contributing to the system may terminate the additional survivor protection under this

section, but all funds contributed for the additional survivor protection must remain with the system and may not be considered as part of the member's accumulated contributions.

For purposes of implementing this section, the one and two-tenths percent contribution for additional survivor protection was applied to all compensation received on or after July 1, 2004, regardless of when that compensation was earned, and the one and five-tenths percent of compensation must be applied to all compensation received on or after July 1, 2010, regardless of when the compensation was earned.

Section 49. That § 3-12C-1106 be AMENDED:

3-12C-1106. Upon retirement, a foundation member shall receive a normal retirement benefit, commencing at normal retirement age or thereafter as provided for in § 3-12C-1113, for Class A credited service, equal to the larger of one and seven-tenths percent of final average compensation for each year of Class A credited service before July 1, 2008, plus one and fifty-five hundredths percent of final average compensation for each year of Class A credited service after July 1, 2008, or two and four-tenths percent of final average compensation for each year of Class A credited service before July 1, 2008, plus two and twenty-five hundredths percent of final average compensation for each year of Class A credited service after July 1, 2008, less other public benefits.

For purposes of this section:

- (1) Federal military retirement or federal national guard retirement benefits are not other public benefits; and
- (2) Any Class A member with a period of employment with any public employer not covered by federal social security is presumed to be entitled to the maximum primary social security benefit permitted at the time of retirement. Class A credited service is all credited service under the system or any of the retirement systems consolidated pursuant to § 3-12C-1601.

Section 50. That a NEW SECTION be added to chapter 3-12C:

A member may not elect to change normal payment of the member's retirement annuity in favor of adjusted payments pursuant to § 3-12C-1112, or the opposite if more than one monthly retirement annuity payment has been made to the member. If a member who has received one adjusted payment, pursuant to § 3-12C-1112, elects to change to the normal method of payment, the system must deduct, in a lump sum, the amount of the resulting overpayment from the member's next monthly annuity payment. A deduction may be up to one hundred percent of the member's normal benefit and may

extend to subsequent benefit payments to eliminate the overpayment in the shortest time possible.

Section 51. That § 3-12C-1114 be AMENDED:

3-12C-1114. Upon the death of any foundation member who has reached normal retirement age or who has retired with a benefit payable from the system, the surviving spouse is eligible to receive a benefit, payable in monthly installments, equal to sixty percent of the retirement benefit that the foundation member was receiving or was eligible to receive at the time of death. The surviving spouse benefit of a spouse of a retiree is effective the first day of the month following the death of the member and is payable upon the receipt of a completed application. The surviving spouse benefit of a spouse of a member who had reached normal retirement age, but had not begun a retirement benefit, is effective the first day of the month following the date on which the member's contributory service terminates and is payable upon the receipt of a completed application.

Section 52. That a NEW SECTION be added to chapter 3-12C:

If a retired member becomes reemployed by the same employer unit the member retired from within one year after the member's retirement, the system may require both the member and the employer unit to certify that:

- (1) The member's termination was a complete severance of employment and the member has been separated from service for at least three consecutive calendar months prior to reemployment, as provided for in § 3-12C-1401;
- (2) All standard hiring and employment procedures of the employer unit were followed in the reemployment process; and
- (3) No prior agreement to reemploy the member, either overt or covert, existed between the member and the employer unit or any officer of the employer unit.

An employer unit's chief executive officer, the officer's agent, or the chair of the employer's governing commission or board shall provide the certification on behalf of the employer unit. The system must provide forms for the member's and the employer unit's certifications. An intentionally false certification is perjury, as provided for in § 22-29-9.1.

Section 53. That § 3-12C-1403 be AMENDED:

3-12C-1403. If less than three years of contributory service or noncontributory service is acquired after a retired member's reentry into covered employment, the

member upon subsequent retirement must receive a refund of the member's accumulated contributions.

If three years or more of contributory service or noncontributory service is acquired after a retired member's reentry into covered employment, the member upon subsequent retirement may receive either a refund of the member's accumulated contributions or an additional benefit based upon the member's credited service and final compensation earned during the reentry. Only the member's credited service from the subsequent employment must be taken into account in calculating a reduction pursuant to § 3-12C-1111, if any, in the member's additional benefit. The COLA applied to the original benefit pursuant to § 3-12C-703, must be eliminated for the period of reemployment, unless the member retired as a Class B public safety member and subsequently reentered covered employment as a Class A member.

The provisions of this section apply to any member who retired without any reduction in benefits pursuant to § 3-12C-1111, and who reenters covered employment after June 30, 2004, but before April 1, 2010.

Section 54. That § 3-12C-1405 be AMENDED:

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

The member's monthly retirement benefit is reduced by fifteen percent and the COLA is eliminated throughout the period that the member reenters covered employment. The reduction and elimination must cease if the member again terminates covered employment. The reduction and elimination do not apply if the member retired as a Class B public safety member and subsequently reenters covered employment as a Class A member.

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

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

Section 55. That a NEW SECTION be added to chapter 3-12C:

A participant's monthly supplemental pension benefit is based on the participant's single premium and the current interest rate assumption at the time of purchase, and must take into account the participant's age, gender, and marital status at the time of purchase. A participant has no expectation or fundamental right to any particular monthly benefit amount, including the amount of a monthly benefit being paid to another participant.

Section 56. That a NEW SECTION be added to chapter 3-12C:

The system may pay the participant's monthly supplemental pension benefit and the participant's monthly retirement benefit in separate payments. Each payment is a separate benefit, including provision of a separate Internal Revenue Service Form 1099-R for each payment by the system.

Section 57. That a NEW SECTION be added to chapter 3-12C:

A participant who is married at the time that the participant contracts for a supplemental pension benefit shall provide a copy of the participant's marriage license to the system.

Section 58. That a NEW SECTION be added to chapter 3-12C:

A supplemental pension spouse's benefit must receive an annual increase in the same manner as does a participant's benefit.

Section 59. That a NEW SECTION be added to chapter 3-12C:

For purposes of calculating any beneficiary payment, a participant's single premium does not increase in value during the period of the supplemental pension contract.

Section 60. That a NEW SECTION be added to chapter 3-12C:

Any supplemental pension benefit calculation or payment is deemed to be reasonable and made in good faith under § 401(a)(9) of the Internal Revenue Code.

Section 61. That a NEW SECTION be added to chapter 3-12C:

For purposes of this chapter, a member of the system who has received payment of at least one monthly retirement benefit is a retiree, even if the member has returned to employment with a member unit, either with or without suspension of the retirement benefit.

Section 62. That § 3-12C-1606 be AMENDED:

3-12C-1606. Notwithstanding the repeal on July 1, 1974, of chapters 3-12, 3-13, 9-15, 13-45, certain provisions of chapter 16-8, chapter 16-11A, and certain provisions of chapter 33-13, all members of systems established thereunder are entitled to retire at the age, with the length of service and the benefits available to the members, under those provisions or the provisions of this chapter.

For purposes of this section, the executive director shall retain as part of the permanent files all volumes of the South Dakota Codified Laws.

Section 63. That § 3-12C-1612 be AMENDED:

3-12C-1612. All benefits payable pursuant to § 3-12C-1106 must be reduced by the actuarial equivalent that could be purchased by a sum of money equal to twice the value of the Board of Regents' balance payable at the member's retirement. The Board of Regents is hereby authorized, if the Board of Regents receives member approval, to deposit with the system the individual balance accumulated in the regents retirement system during the period of April 1, 1964, to June 30, 1975. The deposit must not include the excess balance, as defined in § 3-12C-1608. The individual balance is considered a member contribution.

Section 64. That § 3-12C-1624 be AMENDED:

3-12C-1624. Any amount transferred to the system from the municipality of Aberdeen firemen's relief and pension fund, which under the fund was credited to the accounts of individual employees, is considered a member contribution.

Section 65. That § 3-12C-1628 be AMENDED:

3-12C-1628. Any amount transferred to the system from the city of Watertown firemen pension fund, which under the fund was credited to the accounts of individual employees, is considered a member contribution.

Section 66. That § 3-12C-1633 be AMENDED:

3-12C-1633. Any amount transferred to the system from the city of Mitchell firemen's pension plan, which under the plan was credited to the accounts of individual employees, is considered a member contribution.

Section 67. That § 3-12C-1639 be AMENDED:

3-12C-1639. Any amount transferred to the system from the city of Huron firemen pension fund, which under the fund was credited to the accounts of individual members, is considered a member contribution.

Section 68. That § 3-12C-1645 be AMENDED:

3-12C-1645. Any amount transferred to the system from the cement plant retirement fund pursuant to § 3-12C-1642, which under the cement plant retirement plan was credited to the accounts of individual members, is considered a member contribution.

Section 69. That § 3-12C-1702 be AMENDED:

3-12C-1702. For purposes of determining the benefits of a county sheriff or a deputy county sheriff for credited service earned prior to January 1, 1980, the benefits are calculated pursuant to § 3-12C-1106. For credited service after January 1, 1980, the benefits are calculated pursuant to § 3-12C-1107. Nothing in this chapter may be construed as an abridgement of the right of a sheriff to exercise the right to elect to participate pursuant to § 3-12C-303.

Section 70. That § 3-12C-1705 be AMENDED:

3-12C-1705. For purposes of determining the retirement benefits of a foundation member conservation officer for credited service earned before July 1, 1983, the benefits are calculated pursuant to § 3-12C-1106. For credited service earned after June 30, 1983, the benefits are calculated pursuant to § 3-12C-1107.

For purposes of credited service earned before July 1, 1983, a conservation officer has a normal retirement age of sixty-five. For purposes of credited service earned after

June 30, 1983, a foundation member conservation officer has a normal retirement age of fifty-five.

Section 71. That § 3-12C-1706 be AMENDED:

3-12C-1706. To determine the retirement benefits of a conservation officer employed by the Department of Game, Fish and Parks, Division of Custer State Park, and a park ranger, for credited service earned prior to July 1, 1995, the benefits are calculated pursuant to § 3-12C-1106. For credited service after June 30, 1995, the benefits are calculated pursuant to § 3-12C-1107.

Section 72. That § 3-12C-1801 be AMENDED:

3-12C-1801. For purposes of §§ 3-12C-1801 to 3-12C-1817, inclusive, a participant is a member, retiree, or the surviving spouse of a member or retiree, who is eligible to participate in the qualified benefit preservation arrangement as determined by § 3-12C-1804.

Section 73. That § 3-12C-1802 be AMENDED:

3-12C-1802. For purposes of §§ 3-12C-1801 to 3-12C-1817, inclusive, the qualified benefit preservation arrangement is an arrangement under section 415(m) of the Internal Revenue Code and established in § 3-12C-1803.

Section 74. That § 3-12C-1808 be AMENDED:

3-12C-1808. The system must determine the amount necessary to pay the benefits under § 3-12C-1805, for each calendar year. The required contribution is the aggregate of the benefits payable under § 3-12C-1805 to all participants for the calendar year and an amount determined to be a necessary and reasonable expense of administering the qualified benefit preservation arrangement. Contributions may not be calculated in a manner designed to pay future benefits under § 3-12C-1805. Each payment of contributions by an employer that would otherwise be made to the system fund must be reduced by the amount necessary to pay the benefits under § 3-12C-1805, and the contributions must be deposited in the qualified benefit preservation arrangement trust fund. Any employer contribution otherwise required under the terms of this chapter is divided into the contributions required to pay the benefits under § 3-12C-1805, and the contributions paid into and accumulated in the system fund to pay the maximum benefits

permitted. Any employer contribution to fund the benefits under § 3-12C-1805 may not be credited to or commingled with any contribution paid into and accumulated in the system fund. The amount deducted from an employer contribution and deposited into the qualified benefit preservation arrangement fund does not increase the amount of employer contributions required under the system fund. Any contribution not used to pay the benefits under § 3-12C-1805 for a current calendar year, together with any income accruing to the qualified benefit preservation arrangement fund, is used to pay the administrative expenses of the qualified benefit preservation arrangement for the calendar year. Any contribution not used to pay the benefits under § 3-12C-1805 for the current calendar year that remain after paying administrative expenses is used to fund administrative expenses or benefits of participants in future years.

The system must account separately for the amounts determined to be necessary to provide the benefits under § 3-12C-1805 for each participant. The separate accounting does not constitute setting aside the amounts for the benefit of a participant. Benefits under § 3-12C-1805 must be paid from the qualified benefit preservation arrangement fund.

Any consultant or outside auditor, attorney, or actuary performing services for the system may also perform services for the qualified benefit preservation arrangement. Any fees attributable to services performed with respect to the qualified benefit preservation arrangement are payable solely from the qualified benefit preservation arrangement fund.

Section 75. That § 3-12C-1810 be AMENDED:

3-12C-1810. Any assets held by the qualified benefit preservation arrangement to assist in meeting the employer's obligations under the qualified benefit preservation arrangement, including all employer contributions made under the qualified benefit preservation arrangement, all property and rights acquired or purchased with these amounts, and all income attributable to these amounts must be held separate and apart from other funds of the employer and used exclusively for the uses and purposes of participants and general creditors, as set forth in this part. Participants have no preferred claim on, or any beneficial interest in, any assets of the qualified benefit preservation arrangement fund. Any rights created under this part are unsecured contractual rights of a participant against the employer. Any assets held by the qualified benefit preservation arrangement fund are subject to the claims of the employer's general creditors under federal and state law in the event of the employer's insolvency.

Income accruing to the qualified benefit preservation arrangement fund constitutes income derived from the exercise of an essential governmental function upon which the qualified benefit preservation arrangement fund is exempt from tax under §§ 115 and 415(m)(1) of the Internal Revenue Code.

Section 76. That § 3-13-55 be AMENDED:

3-13-55. The definitions contained in chapter 3-12C apply to this chapter unless the context clearly otherwise requires. Terms used in this chapter mean:

- (1) "Account," the record for each participant reflecting the amount of the participant's deferrals, allocated investment gains and losses, and administrative charges against those amounts;
- (2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;
- (3) "Accumulated deferred compensation," compensation deferred by a participant in the plan, plus any investment return thereon;
- (4) "Automatic enrollee," an individual who becomes an employee of an automatic enrollment unit;
- (5) "Automatic enrollment unit," any unit of state or local government that participates in the system and whose leadership chooses to provide automatic enrollment to the unit's employees;
- (6) "Compensation," total cash remuneration paid to an employee by a participating employer for personal services rendered to the participating employer;
- (7) "Deferred compensation" or "deferrals," the portion of a participant's compensation deferred pursuant to this plan, including, pre-tax contributions, designated Roth contributions, or both;
- (8) "Dependent," a participant's qualifying child or a participant's qualifying relative, as defined in § 152 of the Internal Revenue Code;
- (9) "Designated Roth contributions," a participant's deferred compensation that is includable in the participant's gross income at the time deferred and has been irrevocably designated as Roth contributions by the participant in accordance with federal law;
- (10) "Employee," an individual providing services to this state or a political subdivision of this state, for which compensation is paid by a participating employer, including:
 - (a) A member of the Legislature;

- (b) A member of a board or commission of this state or a political subdivision of this state;
 - (c) An individual employed by an agency, board, or commission of this state or a political subdivision of this state; and
 - (d) An individual furnishing services to this state or a political subdivision of this state pursuant to a contract as an independent contractor;
- (11) "Includible compensation," the compensation remaining after subtracting any pre-tax contributions under the plan;
 - (12) "Normal retirement date," the date a participant is eligible to retire, pursuant to chapter 3-12C, without reduced benefits;
 - (13) "Participant," an employee of a participating employer who elects to participate in the plan;
 - (14) "Participation agreement," the written agreement between an employer and an employee under which compensation is deferred pursuant to this plan;
 - (15) "Plan," the South Dakota deferred compensation plan as provided for in this chapter;
 - (16) "Pre-tax contribution," a participant's deferred compensation, which is not includable in the participant's gross income at the time deferred;
 - (17) "Plan year," a calendar year ending on December thirty-first;
 - (18) "Severance from employment," the complete severance of a participant's employment relationship with a participating employer, as set forth in § 457(d)(1)(A) of the Internal Revenue Code;
 - (19) "Third-party administrator," a person who, pursuant to contract, handles administration of the plan on behalf of the board and the executive director;
 - (20) "Unforeseeable emergency," a severe financial hardship to a participant resulting from:
 - (a) An illness or accident of the participant, a dependent of the participant, or a designated beneficiary of the participant;
 - (b) The funeral expenses of a dependent of the participant or a designated beneficiary of the participant;
 - (c) A severe loss of income that is beyond the control of the participant;
 - (d) The loss of the participant's property due to casualty;
 - (e) The imminent foreclosure or eviction from a participant's primary residence;or

- (f) Any other similar, extraordinary, and unforeseeable circumstance arising as a result of events beyond the control of the participant; and
- (21) "Vendor," a person selected by the state investment officer to provide investment or insurance products to the plan.

Section 77. That a NEW SECTION be added to chapter 3-13:

An eligible employee may become a participant by signing a participation agreement.

Participation is effective on the first available pay date following the execution of the participation agreement, subject to the timing of payroll processing by the participant's employer. If a participation agreement is untimely filed for a change to be made effective for the next following pay period, the change is effective in the subsequent pay period. If a new employee signs and files a participation agreement on the employee's date of hire, the agreement may become effective immediately.

The plan may not accept any deferrals unless a signed participation agreement is on file in the office of the executive director or the third-party administrator.

Section 78. That a NEW SECTION be added to chapter 3-13:

The executive director shall establish a participation agreement form that includes:

- (1) The name, address, social security number, and birthdate of the participant and the participant's beneficiary;
- (2) The name and address of the participant's employer;
- (3) The participant's selection of investment alternatives; and
- (4) Any other information necessary for the administration of the plan.

Section 79. That a NEW SECTION be added to chapter 3-13:

A participant may modify the terms of the participant's participation at any time, subject to the limitations contained in this chapter.

Section 80. That a NEW SECTION be added to chapter 3-13:

A participant may not defer less than twenty-five dollars per month.

Section 81. That a NEW SECTION be added to chapter 3-13:

Except as provided for in sections 98 and 99 of this Act, a participant may not defer more in any plan year than the lesser of:

- (1) The applicable dollar amount associated with a particular year pursuant to § 457(e)(15)(A) of the Internal Revenue Code, as indexed after 2006 pursuant to § 457(e)(15)(B) of the Internal Revenue Code; or
- (2) One hundred percent of the participant's includible compensation.

Section 82. That a NEW SECTION be added to chapter 3-13:

A participating employer or the system may make contributions to a participant's account on behalf of the participant, except during an automatic enrollee's ninety-day opt-out period, as provided for in section 133 of this Act. Any employer contributions must be pursuant to a written agreement, as provided for in § 3-13-49.1. The agreement may require contributions by a participant in order to qualify for an employer contribution and may establish employer contribution rates that partially or fully match the participant's contributions.

The board may establish any system contributions. The board may require a contribution by a participant in order to qualify for a system contribution and may establish system contribution rates that partially or fully match the participant's contribution. Any employer contribution or system contribution vests immediately with the participant.

Section 83. That a NEW SECTION be added to chapter 3-13:

A participant may cease making deferrals at any time.

Section 84. That a NEW SECTION be added to chapter 3-13:

A participant may designate a beneficiary to receive the participant's benefits under the plan in case of the death of the participant.

If the beneficiary does not survive the participant or if no beneficiary is designated, the participant's benefits are paid as follows:

- (1) To the participant's surviving spouse;
- (2) If there is no surviving spouse, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If there is no surviving spouse and there are no surviving children, then to the participant's estate.

Section 85. That a NEW SECTION be added to chapter 3-13:

A political subdivision may not maintain a deferred compensation plan as its principal retirement plan unless the deferred compensation plan was established prior to 1974. A deferred compensation plan established pursuant to chapter 3-13 may only be supplemental or secondary to the political subdivision's primary plan.

Section 86. That § 3-13-57 be AMENDED:

3-13-57. The board may establish a designated Roth contribution program within the deferred compensation plan. For purposes of this section, a "designated Roth contribution" means an elective salary deferral that is:

- (1) Designated irrevocably by the participant at the time of the deferred election as a designated Roth contribution that is being made in lieu of all or a portion of the pre-tax elective deferrals the participant is otherwise eligible to make under the plan; and
- (2) Treated by the employer as includable in the participant's income at the time the participant would have received that amount in compensation if the participant had not made a deferred election.

The board may promulgate rules, pursuant to chapter 1-26, relating to distributions, conversions, transfers, rollovers, and limitations with regard to the designated Roth contribution program in accordance with federal law.

Section 87. That a NEW SECTION be added to chapter 3-13:

Except as otherwise provided, a designated Roth contribution is treated as deferred compensation for all purposes under the plan.

Section 88. That a NEW SECTION be added to chapter 3-13:

A participant may designate that all or a portion of the participant's deferred compensation be treated as a designated Roth contribution. A participant may defer both designated Roth contributions and pre-tax contributions in the same year. The total deferrals may not exceed the annual deferral limit, as provided for in § 457(e)(15)(A) of the Internal Revenue Code.

Section 89. That a NEW SECTION be added to chapter 3-13:

Any political subdivision that participates in the system, as provided for in chapter 3-12C, or participates in a previously established retirement plan, as provided for in § 3-12C-304, is a participating employer in the plan.

Section 90. That a NEW SECTION be added to chapter 3-13:

Any employee receiving compensation from a participating employer may elect to participate in the plan.

Section 91. That a NEW SECTION be added to chapter 3-13:

If a participant receives approval of an unforeseeable emergency distribution, pursuant to section 115 of this Act, the participant must cease deferrals to the plan before the distribution may be completed.

Section 92. That a NEW SECTION be added to chapter 3-13:

Effective for each of the three calendar years immediately preceding a participant's normal retirement date, a participant may defer up to twice the dollar amount specified in section 87 of this Act.

Section 93. That a NEW SECTION be added to chapter 3-13:

Effective for any year that a participant attains age fifty years or older, or attains the age set forth in § 414(v)(2)(E) of the Internal Revenue Code, the participant may make an additional elective deferral equal to the applicable dollar amount associated with a particular year, pursuant to § 414(v)(2)(B) of the Internal Revenue Code, as indexed after December 31, 2006, pursuant to § 414(v)(2)(C) of the Internal Revenue Code, in addition to the participant's maximum deferral under section 87 of this Act.

Section 94. That a NEW SECTION be added to chapter 3-13:

A participant may not exercise the provisions of sections 98 and 99 of this Act in the same year.

Section 95. That a NEW SECTION be added to chapter 3-13:

A participant does not have actual ownership of deferrals and investments but has a contractual right to receive benefits under the plan. In accordance with § 457(g) of the

Internal Revenue Code, all amounts of compensation deferred under the plan, all property and rights purchased with the amounts, and all income attributable to the amounts must be held in trust for the exclusive benefit of the participant until paid or made available to the participant or the participant's beneficiary pursuant to the plan. Any trust under the plan must be established pursuant to a written agreement that constitutes a valid trust under the law of this state.

All amounts of compensation deferred under the plan must be transferred to a trust established under the plan not later than fifteen business days after the end of the month in which the compensation would otherwise have been paid to the employee.

Section 96. That a NEW SECTION be added to chapter 3-13:

Each participant may elect to have deferrals invested in one or more of the investment alternatives selected by the state investment officer. A participant may change the election for future deferrals at any time.

Section 97. That a NEW SECTION be added to chapter 3-13:

Subject to any limitations imposed by a vendor or by the third-party administrator, a participant may elect to transfer any portion of the account balance from one offered investment alternative to another at any time, provided notice is given to the third-party administrator. Any costs associated with a transfer are borne by the participant and are deducted from the account.

Section 98. That a NEW SECTION be added to chapter 3-13:

An account must be established for each participant's pre-tax contributions. A separate account must be established for each participant's designated Roth contributions. The accounts are the basis for any distribution to the participant or to the participant's beneficiary, surviving spouse, surviving children, or estate, pursuant to section 90 of this Act.

Section 99. That a NEW SECTION be added to chapter 3-13:

No contributions other than a designated Roth contribution and a properly attributable investment return may be credited to a participant's designated Roth account. The plan must maintain separate recordkeeping for each designated Roth account and must record the year that the participant first made a designated Roth contribution.

Section 100. That a NEW SECTION be added to chapter 3-13:

The total investment return on any offered investment must be allocated to the account of each participant based on the proportion the participant's account bears to all other accounts that have been invested in the same investment alternative. Allocations must be made on each accounting date. The last day of each calendar quarter is an accounting date. The board may provide additional accounting dates.

Section 101. That a NEW SECTION be added to chapter 3-13:

Each offered investment alternative must be valued on each accounting date. The valuation must be at market value. Any charges against the value must be explicitly disclosed.

Section 102. That a NEW SECTION be added to chapter 3-13:

Each participant must be provided with a statement of the participant's account no later than forty-five days after the close of each plan quarter.

Section 103. That a NEW SECTION be added to chapter 3-13:

A participant may select a normal retirement date. The normal retirement date may not be earlier than the date that the participant severs employment. If a participant does not select a normal retirement date, the participant's normal retirement date is as defined in chapter 3-12C.

Section 104. That a NEW SECTION be added to chapter 3-13:

If a participant returns to employment or enters into a contract with a participating employer within thirty days after a severance from employment, no severance from employment occurs for the purposes of the plan. If a participant provided contractual services to a participating employer, severance from employment occurs at the expiration of all contracts with a participating employer, without expectation of any future employment or contractual relationship with any participating employer.

Section 105. That a NEW SECTION be added to chapter 3-13:

Deferrals may be distributed only if one of the following conditions has occurred:

- (1) Severance from employment with a participating employer;

- (2) Death of the participant;
- (3) An unforeseeable emergency, set forth in section 115 of this Act;
- (4) Requirements are satisfied for an in-service distribution, as set forth in section 116 of this Act; or
- (5) A participant is called to perform qualified military service for a period in excess of thirty days.

Section 106. That a NEW SECTION be added to chapter 3-13:

The distribution of deferrals to a participant may begin no earlier than thirty days following the participant's severance from employment with a participating employer. Any irrevocable election of a benefit commencement date, made by a participant or a beneficiary prior to January 1, 2002, and any defaulted distribution other than a defaulted distribution to an annuity option, are revocable as of January 1, 2002. No distribution to an independent contractor of a participating employer may begin until one year after the date on which all contracts with any participating employer have expired. Notwithstanding the foregoing, a distribution of deferrals must be made in accordance with §§ 3-13-58 to 3-13-63, inclusive.

Section 107. That a NEW SECTION be added to chapter 3-13:

A participant may elect to receive the participant's distribution in any of the following forms:

- (1) A lump sum;
- (2) Equal monthly installments over a fixed period; or
- (3) Any other form offered by the third-party administrator.

The election must be made prior to the time any amounts become payable. A participant or a beneficiary who has chosen a payment form other than an annuity has the ability to change the payment option, subject to any administrative restrictions and charges established by the board.

If the distribution begins prior to the participant's death, the entire interest must be distributed over the life expectancy of the participant or the life expectancies of the participant and a designated beneficiary. Any amount not distributed during the participant's life must be distributed after the participant's death, at least as rapidly as under the distribution method being used on the date of the participant's death. If the distribution begins after the participant's death, the entire amount payable to the participant must be paid during a period of no more than five years, unless the distribution

commences within one year and the participant's spouse is the named beneficiary, then during the life expectancy of the surviving spouse.

Section 108. That a NEW SECTION be added to chapter 3-13:

A participant may direct from which contributions a distribution is made. The participant may direct that the withdrawal be taken from either pre-tax contributions or designated Roth contributions, or from both pre-tax contributions and designated Roth contributions.

Section 109. That a NEW SECTION be added to chapter 3-13:

If a participant suffers an unforeseeable emergency, the participant may request an immediate distribution of all or part of the participant's deferrals. The request must be made through an application to the third-party administrator. If the third-party administrator approves the request, the distribution must be made to the extent necessary to satisfy the need, including the payment of federal income tax withholding, if necessary. If the third-party administrator denies the request, the participant may appeal the denial by giving notice of an intention to appeal within thirty days after the date of the notice of denial. No distribution may be made to the extent that the unforeseeable emergency may be relieved:

- (1) Through reimbursement or compensation by insurance or otherwise;
- (2) By liquidation of the participant's assets to the extent that the liquidation does not cause severe financial hardship; or
- (3) By discontinuation of deferrals under the plan.

The need to send a participant's child to college, divorce proceedings, or the desire to purchase a home are not considered to be unforeseeable emergencies. Any amount that is distributed on account of an unforeseeable emergency is not an eligible rollover distribution, and the participant may not elect to have any portion of the distribution paid directly to an eligible retirement plan.

The provisions of this section do not apply if a distribution is made pursuant to section 116 of this Act.

Section 110. That a NEW SECTION be added to chapter 3-13:

Notwithstanding any other provision of this chapter, a participant may receive an in-service distribution from the plan, or the executive director may render an involuntary distribution to the participant, under the following conditions:

- (1) The participant is inactive in the plan and has made no deferrals for at least two years prior to the distribution;
- (2) The total distribution, whether elective, involuntary, or both, does not exceed five thousand dollars; and
- (3) The participant has not previously received an elective or an involuntary distribution under the plan.

If implementing subdivision (2) of this section, the value of a participant's nonforfeitable account balance must be determined without regard to the portion of the account balance attributable to rollover contributions, and earning allocable thereto, within the meaning of §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e) of the Internal Revenue Code.

If an involuntary distribution exceeds one thousand dollars and if the participant does not elect to have the distribution transferred to an eligible retirement plan pursuant to § 401(a)(31) of the Internal Revenue Code or does not elect to receive the distribution directly, the distribution must be transferred to an individual retirement plan of a designated trustee or issuer. The executive director shall notify the participant in writing that the distribution may be transferred to another individual retirement plan.

Section 111. That a NEW SECTION be added to chapter 3-13:

Any distribution under sections 112 and 113 of this Act is deemed to be reasonable and made in good faith under § 401(a)(9) of the Internal Revenue Code.

Section 112. That a NEW SECTION be added to chapter 3-13:

No employee of a participating employer and no spouse or dependent of the employee may act as or represent a third-party administrator or a vendor in a matter concerning the plan, except the State Investment Council and its employees may invest all or part of the fund.

Section 113. That a NEW SECTION be added to chapter 3-13:

A participant may not assign or otherwise alienate any right to benefits under the plan, except through the provisions of a qualified domestic relations order, as defined in § 414(p) of the Internal Revenue Code.

Section 114. That a NEW SECTION be added to chapter 3-13:

To the extent permitted by law, a participant may transfer a portion or all of the participant's account in another plan, which is eligible under § 401, 403(b), 408, or 457(b) of the Internal Revenue Code, into the plan by trustee-to-trustee transfer or by rollover. The plan must account for the amounts separately. A participant may rollover designated Roth contributions into the plan only if the contributions are a direct rollover from another plan that permits designated Roth contributions, as described in § 402A(e)(1) of the Internal Revenue Code, and only to the extent the rollover is permitted under § 402(c) of the Internal Revenue Code. The plan must establish and maintain separate recordkeeping for any Roth rollover paid to the plan from any eligible retirement plan and must record the year that the participant first made a designated Roth rollover.

Section 115. That a NEW SECTION be added to chapter 3-13:

For the purpose of acquiring credited service in a qualified governmental defined benefit retirement plan, as identified under § 401(a) and defined in § 414(d) of the Internal Revenue Code, a participant may transfer a portion or all of the participant's account in the plan by trustee-to-trustee transfer to the government defined benefit retirement plan.

Section 116. That a NEW SECTION be added to chapter 3-13:

A participant or a participant's surviving spouse may transfer a portion or all of the participant's account by rollover to another plan, which is eligible under § 401, 403(b), 408, 408A, or 457 of the Internal Revenue Code. A participant's beneficiary who is not the participant's surviving spouse may transfer a portion or all of the participant's account by rollover to a plan that is eligible under § 408 or 408A of the Internal Revenue Code.

Section 117. That a NEW SECTION be added to chapter 3-13:

A participant may convert the participant's pre-tax contributions to designated Roth contributions within the plan. The amount of the in-plan Roth conversion is subject to ordinary income taxes in the year of the conversion. Withholding of federal income tax

from the conversion amount is prohibited. Once an in-plan Roth conversion is processed, the conversion is irrevocable. The amount of an in-plan Roth conversion must continue to be taken into consideration for mandatory distributions. The plan must establish and maintain separate recordkeeping for any in-plan Roth conversion made within the plan and must record the year that the participant first made a conversion.

Section 118. That a NEW SECTION be added to chapter 3-13:

The plan and the plan's assets, until made available to a participant or a beneficiary, must be maintained in trust for the sole benefit of the participants of the plan.

Section 119. That a NEW SECTION be added to chapter 3-13:

Any form required under the plan which causes a change on a participant's payroll, is effective as early as the next available pay date, subject to the timing of payroll processing by the participant's employer. If a form is filed too late for a change to be made effective for the next following pay period, the change is effective in the subsequent pay period.

Section 120. That a NEW SECTION be added to chapter 3-13:

If, due to an error, a participant defers more than the permissible amount, the third-party administrator may correct the error by returning the excess deferral to the participant. For any plan year in which a participant makes both pre-tax contributions and designated Roth contributions, any corrective distribution must be taken first from the participant's designated Roth contributions, and then, if required, from the pre-tax contributions. A participant may elect a different method of distribution.

Section 121. That a NEW SECTION be added to chapter 3-13:

If, due to a payroll error, a participant's deferral is deposited in an investment alternative other than the one selected by the participant, the third-party administrator may correct the error by transferring the participant's deferral to the proper investment alternative, subject to any limitations that may be imposed by the vendor. No retroactive adjustment may be made.

Section 122. That a NEW SECTION be added to chapter 3-13:

Any participating employer may become an automatic enrollment unit. Automatic enrollment includes automatic escalation for any participating employer becoming an automatic enrollment unit after June 30, 2015. The decision to become an automatic enrollment unit must be made by the elected official, the appointed official, or the governing body in charge of the participating employer. The participating employer shall become an automatic enrollment unit after notice of the decision has been delivered in writing to the system. An automatic enrollment unit may choose to rescind the status at a later date and may do so by delivering written notice of the decision to the system. If a rescission occurs, the status of any automatic enrollee who was enrolled in the plan is not affected.

Section 123. That a NEW SECTION be added to chapter 3-13:

A participating employer who became an automatic enrollment unit prior to July 1, 2015, may elect to add automatic escalation for the participating employer's current and future permanent employees. The decision must be made by the elected official, the appointed official, or the governing body in charge of the unit and is effective after notice of the decision has been delivered in writing to the system.

Section 124. That a NEW SECTION be added to chapter 3-13:

An automatic enrollment unit may elect to commence automatic escalation in either January or July. Automatic escalation commences the January or July immediately after the automatic enrollment unit's decision is delivered in writing to the system, as long as notice of the decision is received no later than September fifteenth for a January start or March fifteenth for a July start. If the notice of the unit's decision is received after those dates, automatic escalation commences the following January or July, as elected by the unit.

Section 125. That a NEW SECTION be added to chapter 3-13:

Any individual who becomes a permanent employee of a participating employer, after the participating employer becomes an automatic enrollment unit, becomes an automatic enrollee in the plan. Any permanent employee of the state who is not contributing to the plan on June 30, 2019, becomes an automatic enrollee in the plan on July 1, 2019. Any other permanent employee who is not contributing to the plan and who

is employed by an automatic enrollment unit that elects automatic enrollment, pursuant to section 132 of this Act, becomes an automatic enrollee in the plan.

Section 126. That a NEW SECTION be added to chapter 3-13:

An automatic enrollment unit other than the state may elect to automatically enroll the unit's permanent employees who are not contributing to the deferred compensation plan. The automatic enrollment unit may elect to commence automatic enrollment for the employees on the January or July immediately after the automatic enrollment unit's decision is delivered in writing to the system. The notice of the decision must be received no later than September fifteenth for a January start or March fifteenth for a July start.

Section 127. That a NEW SECTION be added to chapter 3-13:

Upon initially becoming an automatic enrollee, twenty-five dollars per month must be deferred to the plan from the compensation of an automatic enrollee, unless the automatic enrollee elects not to participate in the plan within ninety days after the automatic enrollee's first pay date and gives notice of that election to the system, or unless the automatic enrollee elects to defer an increased amount. The deferred compensation and associated gains or losses of an automatic enrollee who elects not to participate must be refunded to the automatic enrollee within thirty days of receipt of the final contribution by the plan. An automatic enrollee who elects not to participate is not barred from future voluntary participation in the plan.

Section 128. That a NEW SECTION be added to chapter 3-13:

Beginning in 2016 and each year thereafter, automatic escalation for an automatic enrollee means an additional ten dollars per month must be deferred to the plan from the compensation of an automatic enrollee of an automatic enrollment unit that elected automatic escalation or became an automatic enrollment unit after June 30, 2015. If the enrollee has one or more investment alternatives or a Roth account, or any combination thereof, the additional dollars must be prorated in the same manner as the enrollee's deferral before the escalation. No automatic escalation may occur for an automatic enrollee unless at least one year has passed from the enrollee's hire date on which the enrollee became an automatic enrollee. In addition, no automatic escalation may occur for an automatic enrollee who opts out of automatic escalation or has lowered the automatic enrollee's deferral to zero.

Section 129. That a NEW SECTION be added to chapter 3-13:

Automatic enrollment, pursuant to section 131 of this Act, is deemed a contract to participate, and to defer the amount specified in section 133 of this Act or revised by section 134 of this Act, or specified by the enrollee, until the automatic enrollee chooses to withdraw from the plan.

Section 130. That a NEW SECTION be added to chapter 3-13:

The deferred compensation of an automatic enrollee must be deposited in a qualified default investment alternative selected by the state investment officer pursuant to § 3-13-51.1, unless the automatic enrollee affirmatively selects another investment alternative within the plan. The state investment officer shall select a qualified default investment alternative for deferrals from automatic enrollees during the initial ninety-day opt-out period and may select an alternative qualified default investment alternative for accumulated deferrals and subsequent deferrals from automatic enrollees who exceed the ninety-day opt-out period but do not select another investment alternative. Neither the state investment officer, the system, the third-party administrator, nor the automatic enrollment unit may be held liable for any loss sustained by an automatic enrollee whose deferrals are either voluntarily or involuntarily invested in either qualified default investment alternative.

Section 131. That a NEW SECTION be added to chapter 3-13:

Within fifteen days of the system's receipt of the automatic enrollee's initial deferral, the system shall provide notice to the automatic enrollee of the enrollee's right not to participate in the plan.

Within one year after an automatic enrollee's first compensation deferral and annually thereafter, the system shall provide notice to the automatic enrollee of the enrollee's right to amend the deferral amount and the enrollee's right to amend the choice of investment alternatives.

Section 132. That a NEW SECTION be added to chapter 3-13:

The system shall provide no less than sixty days' notice of each annual automatic escalation, pursuant to section 134 of this Act. An enrollee may elect not to participate in automatic escalation or may elect to defer an additional amount that is less than or greater than ten dollars. The enrollee shall annually provide notice of any election no later than

December fifteenth for an enrollee of an automatic enrollment unit that elected a January start or June fifteenth for an enrollee of an automatic enrollment unit that elected a July start. If the enrollee elects not to participate or to defer a lesser amount after the applicable date provided in this section, the system may not refund the automatic escalation amount to the enrollee. If an enrollee elects not to participate in automatic escalation or elects to defer an additional amount that is less than or greater than ten dollars, the status of the automatic enrollee, pursuant to section 131 of this Act, is not affected.

Section 133. That a NEW SECTION be added to chapter 3-13:

Automatic enrollment or automatic escalation, pursuant to this chapter, does not require advance authorization by the automatic enrollee. This section is an exception to the provisions of any state law requiring employee authorization for a payroll deduction or any similar ordinance of a local automatic enrollment unit.

Section 134. That § 3-13A-2 be AMENDED:

3-13A-2. The definitions contained in chapter 3-12C, apply to this chapter, unless otherwise specified. Terms used in this chapter mean:

- (1) "Account," the record for each participant reflecting the amount of the participant's special pay transmitted to the fund, allocated investment gains and losses thereon, and administrative charges against those amounts;
- (2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;
- (3) "Direct rollover," a payment by the program to an eligible retirement plan specified by the plan participant;
- (4) "Eligible retirement plan," one of the following plans that accepts a participant's or a participant's surviving spouse's rollover distribution:
 - (a) An individual retirement account described in § 408(a) of the Internal Revenue Code;
 - (b) An individual retirement annuity described in § 408(b) of the Internal Revenue Code;
 - (c) A Roth individual retirement plan described in § 408A of the Internal Revenue Code;
 - (d) An annuity plan described in § 403(a) of the Internal Revenue Code;
 - (e) A qualified plan described in § 401 of the Internal Revenue Code; or

- (f) An individual retirement plan or individual retirement annuity in the case of an eligible rollover distribution to a beneficiary who is not a participant's surviving spouse;
- (5) "Eligible rollover distribution," any distribution of all or any portion of the balance to the credit of the participant. An eligible rollover distribution does not include:
 - (a) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and the participant's designated beneficiary, or for a specified period of ten years or more;
 - (b) Any distribution to the extent the distribution is required under § 401(a)(9) of the Internal Revenue Code; or
 - (c) Any other distribution that is reasonably expected to total less than two hundred dollars during a single plan year;
- (6) "Fund," the South Dakota special pay fund established pursuant to § 3-13A-3;
- (7) "Normal retirement date," the date a participant may retire, pursuant to the provisions of chapter 3-12C, without reduced benefits;
- (8) "Participant," a terminated employee of a participating unit who has reached the calendar month before the month of the employee's fifty-fifth birthday and who received six hundred dollars or more in special pay;
- (9) "Participating unit," the State of South Dakota, the South Dakota Board of Regents, or any other political subdivision of the state that participates in the program;
- (10) "Plan year," a calendar year ending on December thirty-first;
- (11) "Program," the South Dakota special pay retirement program, created pursuant to § 3-13A-1;
- (12) "Special pay," compensation other than regular salary or wages granted to a participant and transferred in a lump sum to the fund at the termination of the participant's employment;
- (13) "Third-party administrator," a person who, pursuant to contract, handles administration of the program on behalf of the board and the executive director; and
- (14) "Vendor," a person selected by the state investment officer to provide investment or insurance products to the program.

Section 135. That a NEW SECTION be added to chapter 3-13A:

For purposes of participation in the program, the first day of the month in which a member's birthday falls is the member's birthday.

Section 136. That a NEW SECTION be added to chapter 3-13A:

Pursuant to § 3-13A-20, a participant or a participant's surviving spouse may elect, at the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an eligible retirement plan specified by the participant or the surviving spouse if the plan is an eligible plan under § 401, 403(b), 408, 408A, or 457 of the Internal Revenue Code. A participant's beneficiary who is not the participant's surviving spouse may elect, at the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to a plan specified by the beneficiary, if the plan is an eligible plan under § 408 or 408A of the Internal Revenue Code.

Section 137. That a NEW SECTION be added to chapter 3-13A:

A participant's compensation, for purposes of the application of § 3-13A-5, paid or made available during a plan year, must include:

- (a) Any elective deferral, as defined in § 402(g)(3) of the Internal Revenue Code; and
- (b) Any amount that is contributed or deferred by the participant's employer at the election of the participant and which is not includible in the gross income of the participant by reason of § 125, 132(f)(4), or 457(b) of the Internal Revenue Code.

An Act to update provisions of the South Dakota Retirement System.

I certify that the attached Act originated in the:
House as Bill No. 1029

Received at this Executive Office this ____ day of _____, 2025 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2025

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2025 at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1029
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State