

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

400Y0224

## HOUSE BILL NO. 1018

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

1 FOR AN ACT ENTITLED, An Act to revise the computation of final average compensation  
2 for benefits relating to the South Dakota Retirement System.

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

4 Section 1. That § 3-12-89.4 be amended to read:

5 3-12-89.4. For any foundation member whose contributory service concluded before July 1,  
6 2021, the term, final average compensation, means the highest average annual compensation  
7 earned by a member during any period of twelve consecutive calendar quarters during the  
8 member's last forty calendar quarters of membership in the system including time during which  
9 the member was not a member but for which the member has received credit under the system.  
10 ~~If the compensation received in the last calendar quarter considered exceeds a set percentage of~~  
11 ~~the amount in the highest previous calendar quarter, or if the average compensation received in~~  
12 ~~the last four calendar quarters exceeds a set percentage of the amount earned in the highest~~  
13 ~~calendar quarter prior to the last four calendar quarters considered, only the lesser amount shall~~  
14 ~~be considered and the excess shall be excluded in the computation of final average~~  
15 ~~compensation. Those respective set percentages are as follows:~~



1 ~~(1) Before July 1, 2004, one hundred twenty-five percent and one hundred fifteen~~  
2 ~~percent;~~

3 ~~(2) Between July 1, 2004, and June 30, 2005, one hundred fifteen and one hundred ten~~  
4 ~~percent; and~~

5 ~~(3) After June 30, 2005, one hundred five percent and one hundred five percent.~~

6 For purposes of determining final average compensation if periods of contributory service  
7 are separated by breaks, any service earned from covered employment may be aggregated to  
8 constitute a period of twelve consecutive calendar quarters. For any member who has less than  
9 twelve but more than four calendar quarters of membership in the system, the member's final  
10 average compensation shall be based on the compensation received in all quarters of  
11 membership. For any member who has four calendar quarters of membership or less, the  
12 member's final average compensation shall be based on the member's annual compensation.

13 Section 2. That chapter 3-12 be amended by adding a NEW SECTION to read:

14 For any foundation member whose contributory service concluded after June 30, 2021, and  
15 before July 1, 2022, the term, final average compensation, means the highest average annual  
16 compensation earned by a member during any period of sixteen consecutive calendar quarters  
17 during the member's last forty calendar quarters of membership in the system, including time  
18 during which the member was not a member but for which the member has received credit  
19 under the system.

20 For any foundation member whose contributory service concluded after June 30, 2022, the  
21 term, final average compensation, means the highest average annual compensation earned by  
22 a member during any period of twenty consecutive calendar quarters during the member's last  
23 forty calendar quarters of membership in the system, including time during which the member  
24 was not a member but for which the member has received credit under the system.

1 For purposes of determining final average compensation if periods of contributory service  
2 are separated by breaks, any service earned from covered employment may be aggregated to  
3 constitute a period of consecutive calendar quarters.

4 For any member who has less than the number of calendar quarters of membership  
5 considered in the computation of the member's final average compensation, but more than four,  
6 the member's final average compensation shall be based on the compensation received in all  
7 quarters of membership. For any member who has four calendar quarters of membership or less,  
8 the member's final average compensation shall be based on the member's annual compensation.

9 Section 3. That chapter 3-12 be amended by adding a NEW SECTION to read:

10 For any foundation member whose contributory service concluded before July 1, 2020, if  
11 the compensation received in the last calendar quarter considered exceeds a set percentage of  
12 the amount in the highest previous calendar quarter, or if the average compensation received in  
13 the last four calendar quarters considered exceeds a set percentage of the amount earned in the  
14 highest calendar quarter prior to the last four calendar quarters considered, only the lesser  
15 amount shall be considered and the excess may not be included in the computation of final  
16 average compensation. Those respective set percentages are as follows:

- 17 (1) Before July 1, 2004, one hundred twenty-five percent and one hundred fifteen  
18 percent;
- 19 (2) Between July 1, 2004, and June 30, 2005, one hundred fifteen percent and one  
20 hundred ten percent; and
- 21 (3) After June 30, 2005, one hundred five percent and one hundred five percent.

22 Section 4. That chapter 3-12 be amended by adding a NEW SECTION to read:

23 For purposes of this section, the term, compensation year, means each separate, mutually  
24 exclusive period of four consecutive calendar quarters considered in the computation of final

1 average compensation. The earliest compensation year is the earliest four consecutive calendar  
2 quarters considered in the computation of final average compensation, and each subsequent  
3 compensation year is the subsequent period of four consecutive calendar quarters beginning  
4 after the earliest compensation year and continuing with each compensation year thereafter.

5 For any foundation member whose contributory service concluded after June 30, 2020,  
6 compensation is limited as follows:

7 (1) Compensation in the earliest compensation year is limited to one hundred five  
8 percent of the highest compensation received for any prior  
9 four-consecutive-calendar-quarter period during the member's last forty calendar  
10 quarters of membership in the system, including time during which the member was  
11 not a member but for which the member has received credit under the system; and

12 (2) Compensation for each subsequent compensation year is limited to one hundred five  
13 percent of the highest compensation considered for any prior compensation year, but  
14 the amount may not be less than the limit applied in subdivision (1).

15 Compensation in excess of the limited amount may not be included in the computation of  
16 final average compensation but is payable pursuant to section 7 of this Act.

17 If the earliest compensation year includes one or more quarters from the earliest four  
18 consecutive calendar quarters in the member's last forty quarters of membership in the system,  
19 that compensation year may not be limited.

20 Compensation in the last calendar quarter considered in the computation of final average  
21 compensation is limited to one hundred five percent of the highest compensation considered for  
22 any prior calendar quarter during the member's last forty calendar quarters of membership in the  
23 system.

24 The final average compensation of any foundation member whose contributory service

1 concluded before July 1, 2022, may not be less than the member's final average compensation  
2 computed as of June 30, 2017.

3 Section 5. That § 3-12-502 be amended to read:

4 3-12-502. For any generational member, the term, final average compensation, means the  
5 highest average annual compensation earned by a member during any period of twenty  
6 consecutive calendar quarters during the member's last forty calendar quarters of membership  
7 in the system. ~~If the compensation received in the last calendar quarter considered exceeds one  
8 hundred five percent of the amount in the highest previous calendar quarter, or if the average  
9 compensation received in the last four calendar quarters exceeds one hundred five percent of  
10 the amount earned in the highest calendar quarter prior to the last four calendar quarters  
11 considered, only the lesser amount shall be considered and the excess shall be excluded in the  
12 computation of final average compensation.~~

13 For purposes of determining final average compensation if periods of contributory service  
14 are separated by breaks, any service earned from covered employment may be aggregated to  
15 constitute a period of twenty consecutive calendar quarters.

16 For any member who has less than twenty but more than four calendar quarters of  
17 membership in the system, the member's final average compensation shall be based on the  
18 compensation received in all quarters of membership. For any member who has four calendar  
19 quarters of membership or less, the member's final average compensation shall be based on the  
20 member's annual compensation.

21 Section 6. That chapter 3-12 be amended by adding a NEW SECTION to read:

22 For purposes of this section, the term, compensation year, means each separate, mutually  
23 exclusive period of four consecutive calendar quarters considered in the computation of final  
24 average compensation. The earliest compensation year is the earliest four consecutive calendar

1 quarters considered in the computation of final average compensation and each subsequent  
2 compensation year is the subsequent period of four consecutive calendar quarters beginning  
3 after the earliest compensation year and continuing with each compensation year thereafter.

4 For any generational member, compensation is limited as follows:

- 5 (1) Compensation in the earliest compensation year is limited to one hundred five  
6 percent of the highest compensation received for any prior  
7 four-consecutive-calendar-quarter period during the member's last forty calendar  
8 quarters of membership in the system, including time during which the member was  
9 not a member but for which the member has received credit under the system;
- 10 (2) Compensation for each subsequent compensation year is limited to one hundred five  
11 percent of the highest compensation considered for any prior compensation year, but  
12 the amount may not be less than the limit applied in subdivision (1).

13 Compensation in excess of the limited amount may not be included in the computation of  
14 final average compensation but is payable pursuant to section 7 of this Act.

15 If the earliest compensation year includes one or more quarters from the earliest four  
16 consecutive calendar quarters in the member's last forty quarters of membership in the system,  
17 that compensation year may not be limited.

18 Compensation in the last calendar quarter considered in the computation of final average  
19 compensation is limited to one hundred five percent of the highest compensation considered for  
20 any prior calendar quarter during the member's last forty calendar quarters of membership in the  
21 system.

22 Section 7. That chapter 3-12 be amended by adding a NEW SECTION to read:

23 For purposes of this section, the term, excess contributions, means the employer and  
24 member contributions on compensation not included in the computation of final average

1 compensation pursuant to sections 4 and 6 of this Act.

2 The excess contributions plus the credited investment return on the excess contributions are  
3 payable at the retirement, disability, or death of the member. The credited investment return,  
4 which shall be credited annually as of June thirtieth, is the South Dakota Investment Council's  
5 reported money-weighted investment return of the system, net of fees, for the completed fiscal  
6 year. Any excess contributions made during the fiscal year shall receive one-half year's credited  
7 investment return for that year. For any account distributed during the fiscal year, the estimated  
8 investment return shall be credited to the end of the month before the date on which the  
9 retirement benefit is paid or the disability benefit is paid or death occurred, as applicable.

10 The excess contributions plus credited investment return are payable to the member when  
11 the member commences a retirement benefit or a disability benefit or to the member's eligible  
12 child, eligible spouse, or beneficiary upon the death of the member. The amount is not payable  
13 to any member who withdraws his or her accumulated contributions from the system. For the  
14 purpose of paying a distribution, the amount payable is the total of excess contributions plus  
15 credited investment return or the total of excess contributions, whichever is greater. The amount  
16 may be paid in a lump sum, rolled over to the South Dakota deferred compensation plan, rolled  
17 over to another eligible plan, or used to purchase a supplemental pension benefit. However, the  
18 purchase of a supplemental pension benefit is only available upon the member's retirement.