2023 South Dakota Legislature

House Bill 1009

ENROLLED

AN ACT

ENTITLED An Act to update and clarify certain provisions relating to the South Dakota Retirement System.

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

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

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

(1) "Actuarial accrued liability," the present value of all benefits less the present value of future normal cost contributions;

(2) "Actuarial experience analysis," a periodic report that reviews basic experience data and furnishes actuarial analysis that substantiates the assumptions adopted for the purpose of making an actuarial valuation of the system;

(3) "Actuarial valuation," a projection of the present value of all benefits and the current funded status of the system, based upon stated assumptions as to rates of interest, mortality, disability, salary progressions, withdrawal, and retirement as established by a periodic actuarial experience analysis that takes into account census data of all active members, vested terminated members, and retired members and their beneficiaries under the system;

(4) "Actuarial value funded ratio," the actuarial value of assets divided by the actuarial accrued liability;

(5) "Actuarial value of assets," equal to the fair value of assets;

(6) "Actuarially determined contribution rate," the fixed, statutory contribution rate, no less than the normal cost rate with expenses assuming the minimum COLA, and no greater than the normal cost rate with expenses assuming the maximum COLA;

(7) "Air rescue firefighters," employees of the Department of the Military who are stationed at Joe Foss Field, Sioux Falls, and who are directly involved in firefighting activities on a daily basis;

(8) "Approved actuary," any actuary who is a member of the American Academy of Actuaries or an Associate or a Fellow of the Society of Actuaries who meets the

qualification standards of the American Academy of Actuaries to issue actuarial opinions regarding the system or any firm retaining such an actuary on its staff and who is appointed by the board to perform actuarial services;

(9) "Assumed rate of return," the actuarial assumption adopted by the board pursuant to § 3-12C-227 as the annual assumed percentage return on trust fund assets, compounded;

(10) "Beneficiary," the person designated by a member of the system to receive any payments after the death of such member;

(11) "Benefits," the amounts paid to a member, spouse, child, or beneficiary as a result of the provisions of this chapter;

(12) "Board," the Board of Trustees of the South Dakota Retirement System;

(13) "Calendar quarter," a period of three calendar months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first of any year;

(14) "Campus security officers," employees of the Board of Regents whose positions are subject to the minimal educational training standards established by the law enforcement standards commission pursuant to chapter 23-3, who satisfactorily complete the training required by chapter 23-3 within one year of employment, and whose primary duty as sworn law enforcement officers is to preserve the safety of the students, faculty, staff, visitors, and the property of the university. The employer shall file with the system evidence of the appointment as a sworn law enforcement officer at the time of employment and shall file evidence of satisfactory completion of the training program pursuant to chapter 23-3 within one year of employment;

(15) "Certified school employee," any employee of a participating unit who is required to have a certificate as defined in subdivision 13-42-1(3);

(16) "Class A credited service," service credited as a Class A member of the system;

(17) "Class A member," any member other than a Class B member or a Class C member and is either a foundation member or a generational member;

(18) "Class B credited service," service credited as a Class B member of the system;

(19) "Class B member," a member who is a justice, judge, state law enforcement officer, magistrate judge, police officer, firefighter, county sheriff, deputy county sheriff, correctional security staff, parole agent, air rescue firefighter, campus security officer, court services officer, juvenile corrections agent, gaming enforcement agent, conservation officer, or park ranger and is either a foundation member or a generational member;

(20) "Class C credited service," service credited as a Class C member of the system;

(21) "Class C member," any member of the cement plant retirement plan including any retiree or any vested member;

(22) "Class D credited service," service credited as a Class D member of the system;

(23) "Class D member," any member that was a member of the Department of Labor and Regulation employees' retirement plan as of June 30, 2020;

(24) "Classified employee," an employee of a public school district who is not required by law to be a certified school employee, an employee of any college or university under the control of the Board of Regents who is not a faculty member or an administrator and comes within the provisions of chapter 3-6D, an employee of a public corporation, an employee of a chartered governmental unit, and any other participating employee not elsewhere provided for in this chapter;

(25) "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;

(26) "Conservation officers," employees of the Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park who are employed pursuant to § 41-2-11 and whose positions are subject to the requirements as to education and training provided in chapter 23-3;

(27) "Consumer price index," the consumer price index for urban wage earners and clerical workers calculated by the United States Bureau of Labor Statistics;

(28) "Contributory service," service to a participating unit during which contributions were made to a South Dakota retirement system, which may not include years of credited service as granted in § 3-12C-509 or 3-12C-511;

(29) "Correctional security staff," the warden, deputy warden, and any other correctional staff holding a security position as verified by the Department of Corrections and approved by the Bureau of Human Resources and the Bureau of Finance and Management, and determined by the board as Class B members;

(30) "Court services officers," persons appointed pursuant to § 26-7A-8;

(31) "Covered employment," a member's employment as a full-time employee of a participating unit;

(32) "Deputy county sheriff," an employee of a county that is a participating unit, appointed by the board of county commissioners pursuant to §§ 7-12-9 and 7-12-10, whose position is subject to the minimum educational and training standards

established by the law enforcement standards commission pursuant to chapter 23-3. The term does not include jailers or clerks appointed pursuant to §§ 7-12-9 and 7-12-10 unless the participating unit has requested that the jailer be considered as a deputy county sheriff and the board has approved the request;

(33) "Effective date of retirement," the first day of the month in which retirement benefits are payable;

(34) "Eligible retirement plan," the term eligible retirement plan includes those plans described in section 402(c)(8)(B) of the Internal Revenue Code;

(35) "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;

(36) "Employer," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota that elects to become a participating unit;

(37) "Employer contributions," amounts contributed by the employer of a contributing member, excluding member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;

(38) "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;

(39) "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;

(40) "Fair value funded ratio," the fair value of assets divided by the actuarial accrued liability;

(41) "Fiduciary," any person who exercises any discretionary authority or control over the management of the system or the management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so, or has any discretionary authority or responsibility in the administration of the system;

(42) "Foundation member," any member of the system whose contributory service began before July 1, 2017;

(43) "Foundation retiree," any foundation member who has retired with a benefit payable from the system;

(44) "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;

(45) "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;

(46) "Fund," public employees' retirement fund or funds established for the purposes of administration of this chapter;

(47) "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;

(48) "General employee," any full-time municipal employee who is not a firefighter or a police officer;

(49) "Generational member," any member of the system whose contributory service began after June 30, 2017;

(50) "Generational retiree," any generational member who has retired with a benefit payable from the system;

(51) "Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;

(52) "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;

(53) "Law enforcement officer," any agent of the state division of criminal investigation, officer of the South Dakota Highway Patrol, police officer, county sheriff, deputy county sheriff, or firefighter;

(54) "Member," any person who is contributing or has made contributions to the system and is either a foundation member or generational member. A person's

membership ceases when the person withdraws his or her accumulated contributions after termination of employment;

(55) "Member contributions," amounts contributed by members, including member contributions made by an employer after June 30, 1984, pursuant to § 3-12C-401;

(56) "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;

(57) "Municipality," any incorporated municipal government under chapter 9-3 or any chartered governmental unit under the provisions of Article IX of the Constitution of the State of South Dakota;

(58) "Noncontributory service," for foundation members, service delineated in subdivisions 3-12C-502(2), (5), (7), and (8), and for generational members, service pursuant to § 3-12C-514;

(59) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;

(60) "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;

(61) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;

(62) "Other public service," service for the government of the United States, including military service; service for the government of any state or political subdivision thereof; service for any agency or instrumentality of any of the foregoing; or service as an employee of an association of government entities described in this subdivision;

(63) "Park rangers," employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose positions are subject to the requirements as to education and training provided in chapter 23-3 and whose primary duty is law enforcement in the state park system;

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

(65) "Participating unit," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, and any of its political subdivisions or

any public corporation of the State of South Dakota that has employees who are members of the retirement system created in this chapter;

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

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

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

(69) "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;

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

(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) "Required beginning date," the later of April first of the calendar year following the calendar year in which the member attains age seventy and one-half or April first of the calendar year following the calendar year in which the member retires;

(75) "Retiree," any foundation or generational member who retires with a lifetime benefit payable from the system;

(76) "Retirement," the severance of a member from the employ of a participating unit with a retirement benefit payable from the system;

(77) "Retirement benefit," the monthly amount payable upon the retirement of a member;

(78) "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;

(79) "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;

(80) "State employees," employees of the departments, bureaus, commissions, and boards of the State of South Dakota;

(81) "Supplemental pension benefit," any single-premium immediate pension benefit payable pursuant to §§ 3-12C-1504 and 3-12C-1505;

(82) "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;

(83) "Supplemental pension contract record," the record for each supplemental pension participant reflecting relevant participant data; a designation of any beneficiary, if any; the amount of the participant's funds rolled into the fund; the provisions of the participant's supplemental pension contract; and supplemental pension payments made pursuant to the contract;

(84) "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;

(85) "Supplemental pension spouse," any person who was married to a supplemental pension participant at the time the participant entered into the supplemental pension contract;

(86) "System," the South Dakota Retirement System created in this chapter;

(87) "Trustee," a member of the board of trustees;

(88) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets.

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

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

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

3-12C-509. If a current contributing member with at least five years of contributory service in the system has other 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 Class A 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 compensation calculated as if the member retired on the date of the member's election, for each year of other public service for which the member wishes to receive credit as a Class A member.

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

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

3-12C-516. To the extent required by § 414(u)(12) of the Internal Revenue Code, a member receiving differential wage payments, as defined under § 3401(h)(2) of the Internal Revenue Code, from a member's employer shall be treated as employed by that

employer, and the differential wage payment shall be treated as compensation for purposes of calculating final average compensation and applying the limits on annual additions under § 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated members in a reasonably equivalent manner.

Section 5. 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 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, federal military retirement or federal national guard retirement benefits are not other public benefits. For the purposes of this section, any Class A member with a period of employment with any public employer not covered by federal social security shall be presumed to be entitled to the maximum primary social security benefit permitted at the time of retirement. Class A credited service includes all credited service under this or any of the retirement systems consolidated pursuant to § 3-12C-1601.

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

3-12C-1303. The variable retirement account is payable to the generational member when the member commences a retirement benefit or a disability benefit. If a generational member dies before commencing a benefit, the variable retirement account is payable at the death of the member to the member's spouse who meets the requirements for an immediate or deferred surviving spouse benefit under § 3-12C-1214 or 3-12C-1215. For the purpose of paying a distribution, the variable retirement account is the amount in the member's variable retirement account or the total of the variable retirement contributions made on behalf of the member, whichever is greater.

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

The variable retirement account is not payable to any member who withdraws his or her accumulated contributions from the system.

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

I certify that the attached Act originated in the:

House as Bill No. 1009

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1009
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2023 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2023

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 2023
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State