

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

400Z0445

## SENATE BILL NO. 36

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 certain provisions regarding the South Dakota  
2 Retirement System.

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

4 Section 1. That subdivision (2) of § 3-12-47 be amended to read:

5 (2) ~~"Actuarial requirement," the normal cost and the interest on and amortization of the~~  
6 ~~unfunded actuarial accrued liability accumulated to date over a thirty year period, all~~  
7 ~~expressed in terms of a percentage of covered payroll;~~

8 Section 2. That subdivision (5) of § 3-12-47 be amended to read:

9 (5) "Actuarial value of assets," ~~the total assets of the system, taking market appreciation~~  
10 ~~into account on a rational and systematic basis~~ equal to the fair value of assets;

11 Section 3. That § 3-12-47 be amended by adding a NEW SUBDIVISION to read:

12 (5A) "Actuarially determined contribution rate," the fixed, statutory contribution rate, no  
13 less than the normal cost rate with expenses assuming the minimum COLA, and no  
14 greater than the normal cost rate with expenses assuming the maximum COLA;

15 Section 4. That subdivision (21) of § 3-12-47 be amended to read:



1 (21) "Classified employees," employees of public school districts who are not required by  
2 law to be certified as teachers, employees of the colleges and universities under the  
3 control of the board of regents who are not faculty or administrators and come within  
4 the provisions of chapter ~~3-6A~~ 3-6D, employees of public corporations, employees  
5 of chartered governmental units, and all other participating employees not elsewhere  
6 provided for in this chapter;

7 Section 5. That subdivision (50) of § 3-12-47 be amended to read:

8 (50) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of  
9 January 1, ~~2017~~ 2018;

10 Section 6. That subdivision (85) of § 3-12-47 be amended to read:

11 (85) "Supplemental pension participant," any member who is a retiree receiving a benefit  
12 from the system, or, if the member is deceased, the member's surviving spouse who  
13 is receiving a benefit from the system, and who chooses to purchase a supplemental  
14 pension benefit pursuant to the provisions of this chapter;

15 Section 7. That § 3-12-48 be amended to read:

16 3-12-48. There is created a governing authority of the system to consist of a board known  
17 as the Board of Trustees. Voting representation on the board shall be the following:

- 18 (1) Two state employee members;
- 19 (2) Two teacher members;
- 20 (3) A participating municipality member;
- 21 (4) A participating county member;
- 22 (5) A participating classified employee member;
- 23 (6) A current contributing Class B member other than a justice, judge, or magistrate  
24 judge;

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

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

14 Section 8. That § 3-12-57.1 be amended to read:

15 3-12-57.1. Any person aggrieved by a final determination made by the system's staff may  
16 request review of the final determination and a decision by the executive director if the request  
17 is made in writing within thirty days after receiving the final determination. The person, if then  
18 aggrieved by the executive director's decision, may appeal the decision, if the person files a  
19 written notice of appeal with the executive director within thirty days of the date of the decision.  
20 The notice shall identify the person appealing and the decision appealed. The appeal shall be  
21 conducted by a hearing examiner in accordance with chapter 1-26. The hearing examiner, after  
22 hearing the evidence in the matter, shall make proposed findings of fact and conclusions of law,  
23 and a proposed decision. The executive director shall accept, reject, or modify ~~those~~ the  
24 findings, conclusions, and decision of the hearing examiner and such action constitutes the final

1 agency decision. Alternatively, the executive director may appoint the hearing examiner to make  
2 the final agency decision. The executive director may arrange for the assistance of private  
3 counsel throughout the executive director's review of the proposal. The executive director's  
4 action constitutes the final agency decision. The final agency decision may be appealed to circuit  
5 court pursuant to chapter 1-26. The executive director may arrange for the assistance of private  
6 counsel throughout the appeal process.

7 Section 9. That § 3-12-76 be amended to read:

8 3-12-76. A member ~~terminating~~ who terminates public service ~~is entitled to~~ may withdraw  
9 the sum of the member's accumulated contributions upon application to the system ~~in lieu of~~  
10 retaining. A member who withdraws the member's accumulated contributions pursuant to this  
11 section forfeits all credited service and benefits provided in this chapter.

12 The right to withdraw accumulated contributions ceases ~~within ninety days of a return if the~~  
13 member returns to employment with a participating unit.

14 Section 10. That § 3-12-76.1 be repealed.

15 ~~3-12-76.1. Notwithstanding the provisions of § 3-12-76, a member who ceases to be a~~  
16 ~~permanent full-time employee but who does not terminate public service may withdraw his~~  
17 ~~accumulated contributions from the system, if, at the time of withdrawal, the member has made~~  
18 ~~no contributions to the system for a period of at least one year. A member who withdraws his~~  
19 ~~accumulated contributions under this section forfeits all credited service and benefits under this~~  
20 ~~chapter.~~

21 Section 11. That chapter 3-12 be amended by adding a NEW SECTION to read:

22 For purposes of § 3-12-115, the system shall determine if a domestic relations order is a  
23 qualified domestic relations order. Upon receipt of a domestic relations order, the system shall  
24 promptly issue a written notice of receipt to the member and any alternate payee. Within a

1 reasonable period of time, the system shall issue a determination indicating if the domestic  
2 relations order qualifies as a plan-approved domestic relations order in accordance with § 414(p)  
3 of the Internal Revenue Code.

4 No order may require the payment of benefits to an alternate payee before the retirement of  
5 a member or the withdrawal of a member's accumulated contributions for a distribution to an  
6 alternate payee. In addition, no order may require the payment of monthly benefits to an  
7 alternate payee after the death of the member.

8 No order approved after July 1, 2018, may require the payment of benefits to the alternate  
9 payee's estate after the death of the alternate payee. The amount paid in monthly benefits to the  
10 alternate payee shall be paid to the member after the death of the alternate payee.

11 Section 12. That § 3-12-120 be amended to read:

12 3-12-120. To determine and verify the adequacy of the ~~members~~ member and employer  
13 contributions to the system, an actuarial valuation of the system shall be made annually by an  
14 approved actuary ~~annually~~.

15 The actuarial valuation shall include:

- 16 (1) A demonstration of the relationship of the current member and employer  
17 contributions, expressed as a percentage of payroll, to the minimum actuarial  
18 requirement to support benefits; and
- 19 (2) The current year's funded ratio as well as the ratios from the prior actuarial valuations  
20 performed after July 1, 1974.

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

22 For the purposes of this chapter, the phrase, minimum actuarial requirement to support  
23 benefits, means the normal cost and the interest on and amortization of the unfunded actuarial  
24 accrued liability over a period not to exceed twenty years, all expressed in terms of a percentage

1 of covered payroll and based on the baseline COLA or the restricted COLA, as applicable. If  
2 the actuarial value of assets exceeds the actuarial accrued liability, the minimum actuarial  
3 requirement to support benefits includes a thirty year amortization of the amount by which the  
4 actuarial value of assets exceeds the actuarial accrued liability.

5 Section 14. That § 3-12-122 be amended to read:

6 3-12-122. The board shall review the funding of the system and shall make a report to the  
7 Governor and the Retirement Laws Committee if the funding of the system does not meet both  
8 of the following conditions:

- 9 (1) The fair value funded ratio is greater than or equal to one hundred percent; and
- 10 (2) The contribution rate meets or exceeds the ~~actuarially determined contribution rate~~  
11 ~~including an amortization of the difference, positive or negative, between the~~  
12 ~~actuarial accrued liability and the fair value of assets according to the board's funding~~  
13 policy minimum actuarial requirement to support benefits.

14 The report shall include recommendations for the circumstances and timing for any ~~benefit~~  
15 ~~changes, contribution changes, or any other~~ corrective action, ~~or any combination of actions~~  
16 including benefit changes, to improve the conditions in subdivisions (1) and (2). Based on this  
17 report and the recommendations of the board, the Legislature may adopt ~~benefit changes,~~  
18 ~~contribution changes, or any other~~ corrective action, ~~or any combination of actions~~, to improve  
19 the conditions in subdivisions (1) and (2).

20 Eligibility for benefits, the amount of any benefit, and the rate of member contributions  
21 established in this chapter are not the contractual rights of any member and are subject to change  
22 by the Legislature for purposes of corrective action to improve the conditions in subdivisions  
23 (1) and (2).

24 Section 15. That § 3-12-191 be amended to read:

1        3-12-191. A member who is a retiree receiving a benefit from the system, or, if the member  
2 is deceased, the member's surviving spouse who is receiving a benefit from the system and is  
3 a beneficiary of the funds subject to this section, may become a supplemental pension  
4 participant by direct rollover of funds held by the member in a variable retirement account or  
5 in either or both of the plans created in chapters 3-13 and 3-13A into the fund. Any rollover  
6 shall be in compliance with the provisions of § 401(a)(31) of the Internal Revenue Code and  
7 shall be recorded in the participant's supplemental pension contract record. All of a participant's  
8 funds rolled into the fund shall be expended in full as the single premium for a supplemental  
9 pension contract. No single premium may be less than ten thousand dollars. ~~No participant may~~  
10 ~~have more than one supplemental pension contract funded by either or both of the plans created~~  
11 ~~in chapters 3-13 and 3-13A and no more than one supplemental pension contract funded by the~~  
12 ~~participant's variable retirement account.~~ A supplemental pension contract goes into effect when  
13 a participant signs the supplemental pension contract. The initial monthly supplemental pension  
14 benefit is payable the first day of the first month after the contract goes into effect. Payment of  
15 any prior and current supplemental pension benefits shall be made within two months after the  
16 contract is in effect.

17        Section 16. That § 3-12-192 be amended to read:

18        3-12-192. A supplemental pension participant who is a retiree receiving a benefit from the  
19 system shall receive one of three types of supplemental pension benefits:

- 20        (1) A supplemental pension benefit payable monthly for the lifetime of the participant;
- 21        (2) A supplemental pension benefit payable monthly for the lifetime of the participant  
22                and, upon the death of the participant, a supplemental pension benefit payable  
23                monthly to the participant's supplemental pension spouse equal to sixty percent of the  
24                monthly benefit amount that the participant was receiving at the time of death; or

1       (3)    A supplemental pension benefit payable monthly for the lifetime of the participant  
2            and, upon the death of the participant, a supplemental pension benefit payable  
3            monthly to the participant's supplemental pension spouse equal to one hundred  
4            percent of the monthly benefit amount that the participant was receiving at the time  
5            of death.

6    A participant who is a retiree receiving a benefit from the system may contract for any of the  
7    three types of supplemental pension benefits provided in this section. A participant who is the  
8    member's surviving spouse may contract only for a supplemental pension benefit payable  
9    monthly for the lifetime of the surviving spouse. The contract shall be signed by both the  
10   supplemental pension participant and the supplemental pension spouse ~~of the participant~~, if  
11   applicable, and each signature shall be witnessed by a representative of the system or notarized.