

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

554J0424

## HOUSE BILL NO. 1032

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 compensation considered when computing the  
2 final average salary of a member of the South Dakota Retirement System and to repeal  
3 certain rule-making authority.

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

5 Section 1. That subdivision (34) of § 3-12-47 be amended to read as follows:

6 (34) "Final compensation," the highest average annual compensation earned by a member  
7 during any period of twelve consecutive calendar quarters during ~~his~~ the member's  
8 last forty calendar quarters of membership in the system including time during which  
9 ~~he~~ the member was not a member but for which he has received credit under the  
10 system. If the compensation received in the last calendar quarter considered exceeds  
11 ~~one hundred twenty-five percent~~ a set percentage of the amount in the highest  
12 previous calendar quarter, or if the average compensation received in the last four  
13 calendar quarters exceeds ~~one hundred fifteen percent~~ a set percentage of the amount  
14 earned in the highest calendar quarter prior to the last four calendar quarters  
15 considered, only the lesser amount shall be considered and the excess shall be



1 excluded in the computation of final compensation. Those respective set percentages  
2 are as follows:

3 (a) On or before June 30, 2004, one hundred twenty-five percent and one hundred fifteen  
4 percent;

5 (b) Between July 1, 2004, and June 30, 2005, one hundred fifteen and one hundred ten  
6 percent; and

7 (c) On or after July 1, 2005, one hundred five percent and one hundred five percent.

8 For purposes of determining final compensation periods for ~~said~~ service separated by  
9 breaks, ~~said~~ the service may be aggregated to constitute a period of twelve  
10 consecutive calendar quarters. The term calendar quarter means a period of three  
11 calendar months ending March thirty-first, June thirtieth, September thirtieth or  
12 December thirty-first of any year;

13 Section 2. That subdivision (20) of § 3-12-47 be amended to read as follows:

14 (20) "Compensation," gross wages paid to a member by the employer for personal  
15 services rendered during the period considered as credited service:

16 (a) "Compensation" includes amounts reported as wages, tips and other  
17 compensation on the member's federal form W-2 wage and tax statement,  
18 except as otherwise excluded in this subdivision; ~~lump sum payments for sick~~  
19 ~~leave; lump sum payments for annual leave;~~ the amount of member  
20 contributions made by an employer on or after July 1, 1984, pursuant to  
21 § 3-12-71; any amount contributed to a member's individual retirement plan  
22 which meets the requirements of section 401, 403, 408, or 457 of the Internal  
23 Revenue Code of 1986, as amended; and any amount contributed to a plan  
24 described in section 125 of the Internal Revenue Code of 1986, as amended;

1 and any amount contributed to the system pursuant to § 3-12-83.2 in accord  
2 with § 414(h)(2) of the Internal Revenue Code as in effect on January 1, 1996;

3 (b) "Compensation" does not include travel, meals, lodging, moving or any other  
4 expenses incidental to an employer's business which is reimbursed by the  
5 employer; lump sum payments for sick leave; lump sum payments for annual  
6 leave; payments for insurance coverage of any kind or any other employee  
7 benefit by an employer on behalf of an employee or an employee and  
8 dependents; any amount paid in a one time lump sum payment or over a  
9 period of time and based on or attributable to retirement or an agreement to  
10 retire in the future; payments made upon dismissal or severance; worker's  
11 compensation payments; and payments contingent on a member terminating  
12 employment at a specified time in the future paid or payable in a lump sum or  
13 over a period of time;

14 (c) Any compensation in excess of the limits established in § 401(a)(17) of the  
15 Internal Revenue Code as in effect on January 1, 2002, shall be disregarded for  
16 purposes of contributions or for benefit calculations under the system.  
17 However, the limit does not apply to compensation earned by a member if the  
18 member was employed by a participating unit on or before June 30, 1996;

19 ~~The board may adopt, pursuant to chapter 1-26, rules to establish criteria for~~  
20 ~~determining whether a payment or its equivalent by an employer constitutes~~  
21 ~~compensation;~~

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