

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0335

SENATE BILL NO. 18

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 retirement provisions regarding retired
2 members of the South Dakota Retirement System who return to covered employment and
3 to declare an emergency.

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

5 Section 1. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 If, on or after the effective date of this Act, a retired member reenters covered employment
8 within the three consecutive calendar months that start with the member's effective date of
9 retirement, the member's retirement is deemed invalid. If the member received one or more
10 retirement annuity payments during the invalid retirement, the member shall either repay the
11 payments as a lump sum immediately or the repayments shall be by contractual payments over
12 a period of up to three years, which payments shall include interest at the assumed rate of return,
13 or the repayments shall be by an actuarial reduction in eventual monthly benefits based on the
14 mortality table and scale used to determine an actuarial equivalent, as defined in subdivision
15 3-12-47(3).



1 Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 If, on or after the effective date of this Act, a retired member reenters covered employment
4 at some time after the three consecutive calendar months that start with the member's effective
5 date of retirement, the member's retirement benefits and continued membership shall be
6 administered pursuant to this section.

7 If the retired member's benefits have not been reduced pursuant to § 3-12-106, the member's
8 monthly retirement annuity shall be reduced by fifteen percent and the annual increase shall be
9 eliminated throughout the period that the member reenters covered employment in accord with
10 § 3-12-88. The reduction and elimination shall cease if the member again terminates covered
11 employment. However, the foregoing provisions notwithstanding, the reduction and elimination
12 do not apply if the member retired as a Class B member other than a justice, judge, or magistrate
13 judge and subsequently reenters covered employment as a Class A member.

14 If the retired member's benefits have been reduced pursuant to § 3-12-106, the member's
15 benefits shall be suspended during the period that the member reenters covered employment and
16 the annual increase shall be eliminated during the period that the member reenters covered
17 employment, both in accord with § 3-12-111.1. The suspension and elimination shall cease if
18 the member again terminates covered employment.

19 Whether the member's retirement benefits are unreduced or have been reduced, contributions
20 required of the member pursuant to § 3-12-71 shall be deposited by the member's participating
21 unit with the system for the benefit of the member to be transferred to an account within the
22 deferred compensation program established pursuant to chapter 3-13. The contributions shall
23 be governed by § 457 of the Internal Revenue Code of 1954, as amended and in effect on
24 January 1, 2010. The foregoing notwithstanding, the contributions required of the member's

1 employer unit pursuant to § 3-12-71 shall be deposited into the member trust fund created by
2 this chapter, but without any association with or credit to the member. The member may not
3 earn any additional benefits associated with the period that the member reenters covered
4 employment.

5 Section 3. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read as
6 follows:

7 "Effective date of retirement," the first day of the month in which retirement benefits are
8 payable pursuant to § 3-12-90;

9 Section 4. That subdivision (70) of § 3-12-47 be amended to read as follows:

10 (70) "Terminated," complete severance of employment from public service of any
11 member by resignation or discharge, not including leave of absence, layoff, vacation
12 leave, sick leave, or jury duty, and involving all termination proceedings routinely
13 followed by the member's participating unit, including payment to the member for
14 unused vacation leave, payment to the member for unused sick leave, payment to the
15 member for severance of an employment contract, severance of employer-provided
16 health insurance coverage, severance of employer-provided life insurance coverage,
17 or severance of any other such employer-provided perquisite of employment granted
18 by the member's participating unit to an active employee;

19 Section 5. That § 3-12-71 be amended to read as follows:

20 3-12-71. The member shall make a contribution to the system, except as specified in section
21 2 of this Act, and the employer shall make an equal contribution to the system, except as
22 otherwise specified, at the following rates:

23 (1) Class A members five percent of compensation through June 30, 2002, and six
24 percent of compensation after June 30, 2002;

1 (2) Justices, judges, and magistrate judges nine percent of compensation;

2 (3) All other Class B members eight percent of compensation.

3 The employer shall cause to be deducted on each payroll of a member for each payroll
4 period the contribution payable by the member as provided in this section.

5 ~~Contributions~~ Except for those contributions specified in section 2 of this Act, contributions
6 required of members by this section shall be made by the participating unit pursuant to the
7 provisions of § 414(h)(2) of the Internal Revenue Code of 1954, as amended and in effect on
8 January 1, 1984. Such contributions shall be classified as member contributions for all purposes
9 under this chapter. A member may not receive the amount of such contributions directly rather
10 than as contributions under this section.

11 Section 6. That § 3-12-82 be amended to read as follows:

12 3-12-82. If less than three years of contributory service or noncontributory service as
13 delineated in subsections (b), (e), (g) and (h) of § subdivision 3-12-47(24) is acquired after a
14 retired member's reentry into covered employment, the member upon subsequent retirement
15 shall receive a refund of the member's contributions and seventy-five percent of the employer's
16 contributions, plus interest on both at the effective rate, made during the period after reentry.

17 If three years or more of contributory service or noncontributory service as delineated in
18 subsections (b), (e), (g) and (h) of § subdivision 3-12-47(24) are acquired after a retired
19 member's reentry into covered employment, the member upon subsequent retirement shall
20 receive an additional allowance based upon the member's credited service and final
21 compensation earned during such reentry. Only the member's credited service from the
22 subsequent employment shall be taken into account in calculating a reduction pursuant to § 3-
23 12-106, if any, in the member's additional allowance. In addition, the annual increase applied
24 to the original allowance pursuant to § 3-12-88 shall be eliminated for such period of

1 reemployment, unless the member retired as a Class B member other than a justice, judge, or
2 magistrate judge and subsequently has reentered covered employment as a Class A member.

3 The provisions of this section apply to any member who retired without any reduction in
4 benefits pursuant to § 3-12-106 and who reenters covered employment on or after July 1, 2004,
5 but prior to the effective date of this Act.

6 Section 7. That § 3-12-111.1 be amended to read as follows:

7 3-12-111.1. If a retired member whose benefits have been reduced pursuant to § 3-12-106
8 becomes employed as a permanent full-time employee by a participating unit on or after July
9 1, 2004, but prior to the effective date of this Act, the payment of the member's retirement
10 allowance shall be suspended during the period of reemployment. If the member remains in
11 reemployment for at least three years pursuant to the provisions of § 3-12-82, the member upon
12 subsequent retirement shall receive an additional allowance based upon the member's credited
13 service and final compensation earned during the reentry. Only the member's credited service
14 from the subsequent employment shall be taken into account in calculating a reduction pursuant
15 to § 3-12-106, if any, in the member's additional allowance. In addition, the annual increase
16 applied to the original allowance pursuant to § 3-12-88 shall be eliminated for the period of
17 reemployment.

18 Section 8. That § 3-12-81.1 be amended to read as follows:

19 3-12-81.1. If a retired member becomes reemployed as a permanent full-time employee by
20 a participating unit, the member first shall have terminated the member's employment
21 relationship with the initial participating unit, as outlined in subdivision 3-12-47(70) and as
22 required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial
23 participating unit's system representative shall certify to the system that the termination of the
24 employment relationship took place. In addition, the member shall have been subject to all

1 proceedings and requirements associated with the hiring and employment of any new employee
2 by the second participating unit, and that unit's system representative shall so certify to the
3 system. If a single participating unit is both the member's initial participating unit and the
4 member's second participating unit, it shall follow all termination procedures and all hiring
5 procedures relative to the member as outlined by this section, and its ~~system representative~~ chief
6 executive officer, the officer's agent, or the chair of its governing commission or board shall so
7 certify.

8 Section 9. That § 3-12-197 be amended to read as follows:

9 3-12-197. Supplemental pension benefits are not subject to the duplicate benefit provisions
10 of § 3-12-109, to the participant reemployment restrictions of § 3-12-82, 3-12-88, 3-12-111 ~~or,~~
11 3-12-111.1, section 1 of this Act or section 2 of this Act, nor to the benefit adjustment
12 provisions of § 3-12-106 or 3-12-107. Supplemental pension benefits are optional benefits
13 granted the protections of the provisions of § 3-12-115.

14 Section 10. Whereas, this Act is necessary for the support of the state government and its
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be
16 effective April 1, 2010.