



2022 South Dakota Legislature

House Bill 1261

Introduced by: **Representative** Kent Peterson

1 **An Act to establish emergency retire-rehire provisions for the South Dakota**
 2 **Retirement System.**

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

4 **Section 1. That § 3-12C-401 be AMENDED:**

5 **3-12C-401.** Any employee included in § 3-12C-301 shall make a contribution to
 6 the system, except as specified in § 3-12C-1405 and section 4 of this Act, and the
 7 employer shall make an equal contribution to the system, except as otherwise specified,
 8 at the following rates:

- 9 (1) Class A members: five percent of compensation through June 30, 2002, and six
 10 percent of compensation after June 30, 2002;
 11 (2) Justices, judges, and magistrate judges: nine percent of compensation;
 12 (3) All other Class B members: eight percent of compensation.

13 The employer shall cause to be deducted on each payroll of the employee for each
 14 payroll period the contribution payable by the employee as provided in this section.

15 Except for those contributions specified in § 3-12C-1405, contributions required of
 16 employees by this section ~~shall~~ must be made by the participating unit pursuant to the
 17 provisions of § 414(h)(2) of the Internal Revenue Code. The contributions ~~shall~~ must be
 18 classified as employee contributions for all purposes under this chapter. An employee may
 19 not receive the amount of the contributions directly rather than as contributions under
 20 this section.

21 **Section 2. That § 3-12C-703 be AMENDED:**

22 **3-12C-703.** The COLA payable ~~shall be~~ is applied annually to all benefits except
 23 those based on the member's accumulated contributions, variable retirement account, or
 24 contribution credit. However, the COLA ~~shall be~~ is eliminated for any period of time that a
 25 retired member reenters covered employment in the system, unless ~~the~~ ;

- 1 (1) The member retired as a Class B member other than a justice, judge, or magistrate
 2 judge and subsequently has reentered covered employment as a Class A member,
 3 ~~or unless the;~~
- 4 (2) The member retired without a benefit suspension pursuant to § 3-12C-1402 and
 5 then reentered active status before July 1, 2004; or
- 6 (3) The member retired and then reentered employment with any participating unit
 7 pursuant to section 4 of this Act.
- 8 ~~Such~~The elimination ~~shall~~ must cease when the member again retires and draws
 9 either a refund or an additional retirement benefit.

10 **Section 3. That § 3-12C-1401 be AMENDED:**

11 **3-12C-1401.** Except as provided in § 3-12C-1401.1 and section 4 of this Act, a
 12 retired member's retirement is invalid if the member is reemployed by a participating unit
 13 unless the member's employment relationship with the initial participating unit has been
 14 terminated, as defined in this chapter and as required pursuant to Revenue Ruling 57-115
 15 by the Internal Revenue Service, and the member has been separated from service for
 16 three consecutive calendar months after the member's effective date of retirement. The
 17 initial participating unit's system representative shall certify to the system that the
 18 termination of the employment relationship took place. In addition, any second
 19 participating unit shall subject the member to all proceedings and requirements associated
 20 with the hiring and employment of any new employee by the second participating unit,
 21 and that unit's system representative shall so certify to the system. If a single participating
 22 unit is both the member's initial participating unit and the member's second participating
 23 unit, the unit shall follow all termination procedures and all hiring procedures relative to
 24 the member as outlined by this section, and its chief executive officer, the officer's agent,
 25 or the chair of the unit's governing commission or board shall so certify.

26 **Section 4. That chapter 3-12C be amended with a NEW SECTION:**

27 A retired member's retirement remains valid if the member comes back to work a
 28 full-time, Class A credited service position for a participating unit at least thirty days after
 29 the termination of the member's employment with the participating unit or another
 30 participating unit, during which time the member had no contract or employment
 31 relationship with a participating unit, if:

- 32 (1) The salary of the position is seventy-five percent or less of the salary the member
 33 received from the participating unit prior to termination;

1 (2) The participating unit hiring the member certifies that it has not been successful in
2 filling the position with a qualified candidate before hiring the member; and

3 (3) The participating unit hiring the member contributes to the system twelve percent
4 of the salary of the position, with no contribution from the member.

5 A retired member reemployed under this section will continue to receive COLA
6 increases and will not be subject to the benefit reduction referenced in § 3-12C-1405.

7 **Section 5. That § 3-12C-1405 be AMENDED:**

8 **3-12C-1405.** Except as provided in § 3-12C-1405.1 and section 4 of this Act, if a
9 retired member reenters covered employment at some time after the three consecutive
10 calendar months that start with the member's effective date of retirement, the member's
11 retirement benefits and continued membership ~~shall~~ must be administered pursuant to
12 this section.

13 The member's monthly retirement benefit ~~shall be~~ is reduced by fifteen percent
14 and the COLA ~~shall be~~ is eliminated throughout the period that the member reenters
15 covered employment. The reduction and elimination ~~shall cease~~ ceases if the member
16 again terminates covered employment. However, the reduction and elimination do not
17 apply if the member retired as a Class B member other than a justice, judge, or magistrate
18 judge and subsequently reenters covered employment as a Class A member.

19 The contributions required of the member ~~shall~~ must be deposited by the member's
20 participating unit with the system for the benefit of the member to be transferred to an
21 account within the deferred compensation program established pursuant to chapter 3-13.
22 The contributions shall be governed by § 457 of the Internal Revenue Code. However, the
23 contributions required of the member's employer unit ~~shall~~ must be deposited into the
24 fund created by this chapter, but with no association or credit to the member. The member
25 may not earn any additional benefits associated with the period that the member reenters
26 covered employment.

27 The provisions of this section do not apply to a Class D member who reenters
28 covered employment.

29 **Section 6.** The provisions of this Act are repealed on June 30, 2025. Upon repeal, the Code
30 Commission, pursuant to § 2-16-9, shall remove section 4 of this act from the Code and revert
31 in word and substance the Code sections amended by this Act to their status immediately
32 prior to the effective date of this Act.