

# **Nebraska Public Employees Retirement Systems**

## **RETIREMENT LAWS AND PLAN DOCUMENTS**

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# NEBRASKA PUBLIC EMPLOYEES RETIREMENT SYSTEMS

## RETIREMENT LAWS AND PLAN DOCUMENTS

2012

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## **CONSTITUTION OF NEBRASKA**

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### **ARTICLE III – LEGISLATIVE POWER**

**Sec. 19. Compensation; increase when; extra compensation to public officers and contractors prohibited; retirement benefits; adjustment.** The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.

The compensation of any public officer, including any officer whose compensation is fixed by the Legislature, shall not be increased or diminished during his or her term of office, except that when there are members elected or appointed to the Legislature or the judiciary, or officers elected or appointed to a board or commission having more than one member, and the terms of such members commence and end at different times, the compensation of all members of the Legislature, of the judiciary, or of such board or commission may be increased or diminished at the beginning of the full term of any member thereof.

Nothing in this section shall prevent local governing bodies from reviewing and adjusting vested pension benefits periodically as prescribed by ordinance.

The surviving spouse of any retired public officer, agent, or servant, who has retired under a pension plan or system, shall be considered as having pensionable status and shall be entitled to the same benefits which may, at any time, be provided for or available to spouses of other public officers, agents, or servants who have retired under such pension plan or system at a later date, and such benefits shall not be prohibited by the restrictions of this section or of Article XIII, section 3 of the Constitution of Nebraska.

**Source:** Neb. Const. art. III, sec. 16 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 10; Amended 1952, Laws 1951, c. 159, sec. 1, p. 634; Amended 1968, Laws 1967, c. 322, sec. 1, p. 856; Amended 1972, Laws 1972, LB 1414, sec. 1; Amended 1978, Laws 1978, LB 739, sec. 1; Amended 2000, Laws 2000, LR 291CA, sec. 1.

### **ARTICLE V – JUDICIAL**

**Sec. 30. Judges; discipline; removal from office; grounds; procedure.** (1) A Justice or Judge of the Supreme Court or judge of any court of this state may be reprimanded, disciplined, censured, suspended without pay for a definite period of time, not to exceed six months, or

removed from office for (a) willful misconduct in office, (b) willful disregard of or failure to perform his or her duties, (c) habitual intemperance, (d) conviction of a crime involving moral turpitude, (e) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or (f) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or he or she may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent. Any citizen of the State of Nebraska may request the Commission on Judicial Qualifications to consider the qualifications of any Justice or Judge of the Supreme Court or other judge, and in such event the commission shall make such investigation as the commission deems necessary and shall, upon a finding of probable cause, reprimand such Justice or Judge of the Supreme Court or other judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or Judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed, or retired as the case may be.

(2) The Supreme Court shall review the record of the proceedings and in its discretion may permit the introduction of additional evidence. The Supreme Court shall make such determination as it finds just and proper, and may order the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge, or may wholly reject the recommendation. Upon an order for retirement, the Justice or Judge of the Supreme Court or other judge shall thereby be retired with the same rights and privileges as if he or she had retired pursuant to statute. Upon an order for removal, the Justice or Judge of the Supreme Court or other judge shall be removed from office, his or her salary shall cease from the date of such order, and he or she shall be ineligible for judicial office. Upon an order for suspension, the Justice or Judge of the Supreme Court or other judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Justice or Judge of the Supreme Court or other judge.

(3) Upon order of the Supreme Court, a Justice or Judge of the Supreme Court or other judge shall be disqualified from acting as a Justice or Judge of the Supreme Court or other judge, without loss of salary, while there is pending (a) an indictment or information charging him or her in the United States with a crime punishable as a felony under Nebraska or federal law or (b) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his or her removal or retirement.

(4) In addition to the procedure set forth in subsections (1) and (2) of this section, on recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court (a) shall remove a Justice or Judge of the Supreme Court or other judge from office when in any court in the United States such justice or judge pleads guilty or no contest to a crime punishable as a felony under Nebraska or federal law, and (b) may suspend a Justice or Judge of the Supreme Court or other judge from office without salary when in any court in the United States such justice or judge is found guilty of a crime punishable as a felony under

Nebraska or federal law or of any other crime that involves moral turpitude. If his or her conviction is reversed, suspension shall terminate and he or she shall be paid his or her salary for the period of suspension. If he or she is suspended and his or her conviction becomes final the Supreme Court shall remove him or her from office.

(5) All papers filed with and proceedings before the commission or masters appointed by the Supreme Court pursuant to this section prior to a reprimand or formal open hearing shall be confidential. The filing of papers with and the testimony given before the commission or masters or the Supreme Court shall be deemed a privileged communication.

When the Commission on Judicial Qualifications determines that disciplinary action is warranted, whether it be a reprimand or otherwise, the Commission on Judicial Qualifications shall issue one or more short announcements confirming that a complaint has been filed; stating the subject and nature of the complaint, the disciplinary action recommended or reprimand issued, or the date of the hearing; clarifying the procedural aspects; and reciting the right of a judge to a fair hearing.

When the Commission on Judicial Qualifications determines that disciplinary action is not warranted, and the existence of any investigation or complaint has become publicly known, the judge against whom a complaint has been filed or investigation commenced may waive the confidentiality of papers and proceedings under this subsection.

The Supreme Court shall by rule provide for procedure under this section before the commission, the masters, and the Supreme Court.

(6) No Justice or Judge of the Supreme Court or other judge shall participate, as a member of the commission, or as a master, or as a member of the Supreme Court, in any proceedings involving his or her own reprimand, discipline, censure, suspension, removal, or retirement.

**Source:** Neb. Const. art. V, sec. 30 (1966); Adopted 1966, Laws 1965, c. 301, sec. 1, p. 848; Amended 1980, Laws 1980, LB 82, sec. 1; Amended 1984, Laws 1984, LR 235, sec. 1.

## **ARTICLE XV – MISCELLANEOUS PROVISIONS**

**Sec. 17. Retirement and pension funds; investment.** Notwithstanding section 3 of Article XIII or any other provision in the Constitution:

(1) The Legislature may provide for the investment of any state funds, including retirement or pension funds of state employees and Nebraska school employees in such manner and in such investments as it may by statute provide; and

(2) The Legislature may authorize the investment of retirement or pension funds of cities, villages, school districts, public power districts, and other governmental or political subdivisions in such manner and in such investments as the governing body of such city, village, school district, public power district and other governmental or political subdivision may determine but subject to such limitations as the Legislature may by statute provide.

**Source:** Neb. Const. art. XV, sec. 17 (1966); Adopted 1966, Laws 1965, c. 302, sec. 2(2), p. 852.

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# **STATUTES OF NEBRASKA**

## **CHAPTER 23 COUNTY GOVERNMENT AND OFFICERS**

### **ARTICLE 23 COUNTY EMPLOYEES RETIREMENT**

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- 23-2305. Public Employees Retirement Board; duties; rules and regulations.
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**23-2301. Terms, defined.** For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on

compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar

quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement board or board means the Public Employees Retirement Board;

(30) Retirement system means the Retirement System for Nebraska Counties;

(31) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations

order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB 509, § 2; Laws 2012, LB 916, § 4.

#### **Cross References**

Spousal Pension Rights Act, see section 42-1101.

**23-2302. Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.** (1) A county employees retirement system shall be established for the purpose of providing a retirement annuity or other benefits for employees as provided by the County Employees Retirement Act. It shall be known as the Retirement System for Nebraska Counties, and by such name shall transact all business and hold all cash and other property as provided in the County Employees Retirement Act.

(2) The retirement system shall not accept as contributions any money from members or participating counties except the following:

(a) Mandatory contributions and fees established by sections 23-2307 and 23-2308;

(b) Payments on behalf of transferred employees made pursuant to section 23-2306.02 or 23-2306.03;

(c) Money that is a repayment of refunded contributions made pursuant to section 23-2320;

- (d) Contributions for military service credit made pursuant to section 23-2323.01;
- (e) Actuarially required contributions pursuant to subdivision (4)(b) of section 23-2317;
- (f) Trustee-to-trustee transfers pursuant to section 23-2323.04; or
- (g) Corrections ordered by the board pursuant to section 23-2305.01.

**Source:** Laws 1965, c. 94, § 2, p. 403; Laws 1985, LB 347, § 2; Laws 1985, LB 432, § 2; Laws 2003, LB 451, § 3; Laws 2011, LB 509, § 3.

**23-2305. Public Employees Retirement Board; duties; rules and regulations.** It shall be the duty of the board to administer the County Employees Retirement Act as provided in section 84-1503. The board shall adopt and promulgate rules and regulations to carry out the act.

**Source:** Laws 1965, c. 94, § 5, p. 404; Laws 1969, c. 172, § 2, p. 752; Laws 1979, LB 416, § 1; Laws 1985, LB 347, § 3; Laws 1991, LB 549, § 2; Laws 1995, LB 369, § 3; Laws 1996, LB 847, § 3.

**23-2305.01. Board; power to adjust contributions and benefits.** (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2.

**23-2306. Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.** (1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement

system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(7) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(8) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

**Source:** Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB 1147, § 1; Laws 2009, LB 188, § 1; Laws 2010, LB 950, § 1; Laws 2011, LB 509, § 4.

**23-2306.01. Retirement system; current employee; participation in another governmental plan; how treated.** For one year after September 9, 1995, any full-time employee employed on or before September 9, 1995, may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee.

**Source:** Laws 1995, LB 501, § 2.

**23-2306.02. Retirement system; transferred employee; payment to system.** Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services may pay to the retirement system an amount equal to the sum of all deductions which were made from the employee's compensation, plus earnings, during such period of employment with the city, village, or township. Payment shall be made within five years after the merger or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll authorization.

**Source:** Laws 1997, LB 250, § 6.

**23-2306.03. Retirement system; municipal county employee; participation in another governmental plan; how treated.** Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall transfer all of his or her funds in the retirement system of the city, village, fire protection district, or township by paying to the Retirement System for Nebraska Counties from funds held by the retirement system of the city, village, fire protection district, or township an amount equal to one of the following: (1) If the retirement system of the city, village, fire protection district, or township maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value as provided in section 13-2401, leaving no funds attributable to the transferred employee within the retirement system of the city, village, fire protection district, or township; or (2) if the retirement system of the city, village, fire protection district, or township maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the city, village, fire protection district, or township. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the city, village, fire protection district, or township. Payment shall be made within five years after employment begins with the receiving entity or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

**Source:** Laws 2001, LB 142, § 34; Laws 2006, LB 366, § 4.

**23-2307. Retirement system; members; contribution; amount; county pay.** Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The county shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee.

Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

**Source:** Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1.

**23-2308. County Employees Retirement Fund; created; investment; system; county clerk; payment; fees.** (1) The County Employees Retirement Fund is created. The fund shall be administered by the board and shall consist of contributions and other such sums as provided in section 23-2302. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The county clerk shall pay to the board or an entity designated by the board an amount equal to two hundred fifty percent of the amounts deducted from the compensation of employees in accordance with the provisions of section 23-2307, which two hundred fifty percent equals the employees' contributions plus the county's contributions of one hundred fifty percent of the employees' contributions.

(3) The board may charge the county an administrative processing fee of twenty-five dollars if the reports of necessary information or payments made pursuant to this section are received later than the date on which the board requires that such information or money should be received. In addition, the board may charge the county a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received or in an amount equal to the amount of any costs incurred by the member due to the late receipt of contributions, whichever is greater. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions.

(4) The Department of Administrative Services may, for accounting purposes, create subfunds of the County Employees Retirement Fund to separately account for defined contribution plan assets and cash balance plan assets.

**Source:** Laws 1965, c. 94, § 8, p. 405; Laws 1981, LB 459, § 2; Laws 1991, LB 549, § 5; Laws 1992, LB 1057, § 2; Laws 1993, LB 417, § 2; Laws 1998, LB 1191, § 25; Laws 2002, LB 407, § 3; Laws 2005, LB 364, § 1; Laws 2011, LB 509, § 5; Laws 2012, LB 916, § 5.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**23-2308.01. Cash balance benefit; election; effect; administrative services agreements; authorized.** (1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through

October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012 does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 23-2319.01, the employee cash balance account within the County Employees Retirement Fund shall, at any time, be equal to the following:

- (i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus
  - (ii) Employee contribution credits deposited in accordance with section 23-2307; plus
  - (iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus
  - (iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;
- and

(b) The employer cash balance account shall, at any time, be equal to the following:

- (i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus
- (ii) Employer contribution credits deposited in accordance with section 23-2308; plus
- (iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus
- (iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

**Source:** Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB 328, § 1; Laws 2009, LB 188, § 2; Laws 2010, LB 950, § 2; Laws 2011, LB 509, § 6; Laws 2012, LB 916, § 6.

**23-2309. Defined contribution benefit; employee account, defined; interest credited to account.** For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 23-2307 shall be known as his or her employee account. Each year, commencing January 1, 1975, and ending December 31, 1985, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1, increased by any regular

interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307.

On and after January 1, 1986, the employee account shall be equal to the sum of the employee's stable return account, equities account, and any assets of additional accounts created pursuant to section 23-2309.01.

**Source:** Laws 1965, c. 94, § 9, p. 405; Laws 1974, LB 905, § 2; Laws 1983, LB 313, § 1; Laws 1985, LB 347, § 5; Laws 1991, LB 549, § 6; Laws 1994, LB 833, § 2; Laws 2002, LB 687, § 7.

**23-2309.01. Defined contribution benefit; employee account; investment options; procedures; administration.** (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for

restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

**Source:** Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1; Laws 2008, LB 1147, § 2; Laws 2010, LB 950, § 3; Laws 2012, LB 916, § 7.

**23-2310. Defined contribution benefit; employer account, defined; state investment officer; duties.** (1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the county contributions shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty percent for the final three months of the year in accordance with section 23-2307. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty percent of the amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 23-2319.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with such section. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 23-2310.05.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be

invested pursuant to section 23-2310.05. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

**Source:** Laws 1965, c. 94, § 10, p. 406; Laws 1981, LB 462, § 1; Laws 1983, LB 313, § 2; Laws 1985, LB 347, § 6; Laws 1986, LB 311, § 3; Laws 1991, LB 549, § 8; Laws 1992, LB 1057, § 3; Laws 1994, LB 833, § 4; Laws 1996, LB 847, § 5; Laws 1997, LB 624, § 3; Laws 1999, LB 687, § 2; Laws 2002, LB 687, § 9.

**23-2310.03. State Treasurer; duties.** The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

**Source:** Laws 1997, LB 623, § 1.

**23-2310.04. County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment.** (1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB 328, § 2; Laws 2010, LB 950, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**23-2310.05. Defined contribution benefit; employer account; investment options; procedures; administration.** (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

**Source:** Laws 1999, LB 687, § 1; Laws 2000, LB 1200, § 3; Laws 2001, LB 408, § 4; Laws 2002, LB 407, § 5; Laws 2002, LB 687, § 10; Laws 2004, LB 1097, § 4; Laws 2005, LB 364, § 4; Laws 2005, LB 503, § 2; Laws 2008, LB 1147, § 3; Laws 2010, LB 950, § 5; Laws 2012, LB 916, § 8.

**23-2312. Retirement system; records; contents; employer education program.** (1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to names, current addresses, ages, contributions, and any other facts as may be necessary in the administration of the County Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various counties and state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1965, c. 94, § 12, p. 406; Laws 1985, LB 347, § 7; Laws 1986, LB 311, § 4; Laws 1991, LB 549, § 9; Laws 1998, LB 1191, § 26; Laws 2000, LB 1192, § 3; Laws 2005, LB 503, § 3.

**23-2313. Retirement system; Auditor of Public Accounts; audit; report.** It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. Each member of the Legislature shall receive a copy of the report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

**Source:** Laws 1965, c. 94, § 13, p. 407; Laws 1973, LB 214, § 2; Laws 1979, LB 322, § 5; Laws 1988, LB 1169, § 1.

**23-2314. Retirement system; powers.** The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

**Source:** Laws 1965, c. 94, § 14, p. 407; Laws 1996, LB 847, § 6.

**23-2315. Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.** (1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

**Source:** Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 60, § 1; Laws 1987, LB 296, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB 188, § 3.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**23-2315.01. Retirement for disability; application; when; medical examination.** (1)

Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

**Source:** Laws 1975, LB 47, § 3; Laws 1997, LB 623, § 5; Laws 2001, LB 408, § 5; Laws 2010, LB 950, § 6.

**23-2316. Retirement system; retirement value for employee.** The retirement value for any employee who retires under the provisions of section 23-2315 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01 as of the date of final account value.

**Source:** Laws 1965, c. 94, § 16, p. 407; Laws 2002, LB 687, § 11; Laws 2003, LB 451, § 7.

**23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.** (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during

which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

**Source:** Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB 328, § 3; Laws 2009, LB 188, § 4; Laws 2012, LB 916, § 9.

**23-2317.01. County Equal Retirement Benefit Fund; created; use.** There is hereby created the County Equal Retirement Benefit Fund to be administered by the board. Each county participating in the retirement system on January 1, 1984, pursuant to the County Employees Retirement Act shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 23-2317 and to provide for direct expenses incurred in administering the fund. The board shall keep a record of the contributions made by each county.

**Source:** Laws 1983, LB 210, § 4; Laws 1991, LB 549, § 10; Laws 1998, LB 1191, § 27.

**23-2319. Termination of employment; termination benefit; vesting.** (1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the

terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

**Source:** Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 32, § 3; Laws 1975, LB 47, § 4; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB 188, § 5.

**23-2319.01. Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; investment.** (1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of this subsection, transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or the County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense

Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB 328, § 4; Laws 2011, LB 509, § 7; Laws 2012, LB 916, § 10.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**23-2319.02. County Employer Retirement Expense Fund; use.** The County Employer Retirement Expense Fund shall be used to meet expenses of the county employees retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

**Source:** Laws 2005, LB 364, § 22; Laws 2007, LB 328, § 5; Laws 2010, LB 950, § 7.

**23-2320. Employee; reemployment; status; how treated; reinstatement; repay amount received.** (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding

irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending. Following reinstatement, the member shall repay the value of the amount received from his or her employee account or member cash balance account under subdivision (2)(b) of section 23-2319.01.

**Source:** Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB 328, § 6; Laws 2008, LB 1147, § 4; Laws 2011, LB 509, § 8.

**23-2321. Retirement system; employee; death before retirement; death benefit.** (1) In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (a) for participants in the defined contribution benefit, the total of the employee account and the employer account and (b) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with a participating county and such employment had terminated on the date of the member's death.

**Source:** Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6; Laws 2009, LB 188, § 6; Laws 2012, LB 916, § 11.

**23-2322. Retirement system; retirement benefits; exemption from legal process; exception.** (1) Except as provided in subsection (2) of this section, annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18; Laws 2012, LB 916, § 12.

**Cross Reference**

Spousal Pension Rights Act, see section 42-1101.

**23-2323.01. Reemployment; military service; contributions; effect.** (1) Any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of section 23-2315, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, an employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would

have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this section, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under section 23-2307.

**Source:** Laws 1996, LB 847, § 7; Laws 1998, LB 1191, § 29; Laws 1999, LB 703, § 4.

**23-2323.02. Direct rollover; terms, defined; distributee; powers; board; duties.** (1) For purposes of this section and section 23-2323.03:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 23-2323.03, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible

rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 8; Laws 2002, LB 407, § 7; Laws 2012, LB 916, § 13.

**23-2323.03. Retirement system; accept payments and rollovers; limitations; board; duties.** (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01 if the contributions do not exceed the amount authorized to be paid by the member pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01, and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 9; Laws 1997, LB 250, § 7; Laws 1997, LB 624, § 7; Laws 2001, LB 142, § 35; Laws 2002, LB 407, § 8.

**23-2323.04. Retirement system; accept transfers; limitations; how treated.** The retirement system may accept as payment for withdrawn amounts made pursuant to the County Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 9.

**23-2324. Retirement system; membership status; not lost while employment continues.** Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

**Source:** Laws 1965, c. 94, § 24, p. 409.

**23-2325. Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.** Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

**Source:** Laws 1965, c. 94, § 25, p. 410; Laws 1977, LB 40, § 98; Laws 1998, LB 1191, § 32.

**23-2326. Retirement benefits; declared additional to benefits under federal Social Security Act.** The retirement allowances and benefits provided for by the County Employees Retirement Act shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

**Source:** Laws 1965, c. 94, § 26, p. 410; Laws 1985, LB 347, § 13.

**23-2328. Retirement system; elected officials and employees having regular term; when act operative.** The provisions of the County Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1965, c. 94, § 28, p. 410; Laws 1985, LB 347, § 15.

**23-2329. Retirement system; when effective.** The County Employees Retirement Act shall become effective for each county upon its adoption by the county board or on January 1, 1987, whichever is earlier.

**Source:** Laws 1965, c. 94, § 29, p. 410; Laws 1975, LB 45, § 2; Laws 1985, LB 347, § 16; Laws 1985, LB 432, § 3.

**Cross Reference**

County with one hundred fifty thousand inhabitants or more, provisions applicable if retirement system not adopted, see section 23-1118.

**23-2330. Retirement system; adoption; certification; list of eligible employees to retirement board.** Upon the adoption of the retirement system by the county board, the county clerk shall certify such action to the retirement board. Upon the adoption of the retirement system by the county board or by January 1, 1987, whichever is earlier, the county clerk shall submit to the board a list of all employees then eligible for participation in the plan, which list shall state the name and address of the employee and his or her gross monthly wage.

**Source:** Laws 1965, c. 94, § 30, p. 410; Laws 1967, c. 133, § 1, p. 418; Laws 1973, LB 216, § 2; Laws 1975, LB 45, § 3; Laws 1985, LB 347, § 17; Laws 1985, LB 432, § 4.

**23-2330.01. Limitation of actions.** Every claim and demand under the County Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 6.

**23-2330.02. Retirement system contributions, property, and rights; how treated.** All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the County Employees Retirement Act.

**Source:** Laws 1998, LB 1191, § 30.

**23-2330.03. Termination of system or contributions; effect.** Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 31.

**23-2330.04. Municipal county; duties.** The municipal county shall be responsible for making contributions and performing other duties and shall exercise the powers of a county under the County Employees Retirement Act with respect to the employees of the municipal county.

**Source:** Laws 2001, LB 142, § 36.

**23-2331. Act, how cited.** Sections 23-2301 to 23-2332.01 shall be known and may be cited as the County Employees Retirement Act.

**Source:** Laws 1965, c. 94, § 31, p. 411; Laws 1985, LB 347, § 18; Laws 1991, LB 549, § 13; Laws 1994, LB 833, § 8; Laws 1995, LB 501, § 3; Laws 1996, LB 847, § 10; Laws 1996, LB 1076, § 7; Laws 1997, LB 250, § 8; Laws 1997, LB 623, § 6; Laws 1997, LB 624, § 8; Laws 1998, LB 1191, § 33; Laws 1999, LB 687, § 3; Laws 2001, LB 142, § 37; Laws 2001, LB 186, § 2; Laws 2002, LB 407, § 10; Laws 2002, LB 687, § 17.

**23-2332. County in excess of 85,000; commissioned law enforcement personnel; supplemental retirement plan.** Any county with a population in excess of eighty-five thousand inhabitants which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of two percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

**Source:** Laws 1985, LB 432, § 5; Laws 1991, LB 549, § 14.

**23-2332.01. County of 85,000 or less; commissioned law enforcement personnel; supplemental retirement plan.** Any county with a population of eighty-five thousand inhabitants or less which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county who possess a valid law enforcement officer certificate or diploma, as established by the Nebraska Police Standards Advisory Council. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of one percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

**Source:** Laws 2001, LB 186, § 3.

**23-2333. Retirement; prior service annuity; how computed.** For purposes of sections 23-2333 and 23-2334, the definitions found in section 23-2301 shall apply.

As of the date of adoption of the retirement system, a prior service annuity shall be computed for all employees who have been employees continuously for one year prior to the date of the adoption of the retirement system and who are at least twenty-five years of age. Such

prior service annuity shall be equal to the number of years of creditable prior service multiplied by the prior service annuity factor.

The number of years of creditable prior service shall be the number of completed years of prior service less all years during which the employee was participating in or for which he or she received a benefit from a public retirement plan, but not more than twenty-five.

The prior service annuity factor shall be the smaller of (1) one dollar or (2) the employee's compensation for the last completed twelve months of prior service divided by two thousand four hundred.

**Source:** Laws 1965, c. 94, § 11, p. 406; Laws 1969, c. 172, § 3, p. 753; R.S.1943, (1991), § 23-2311; Laws 1994, LB 833, § 9; Laws 1998, LB 1191, § 34.

**23-2334. Retirement; prior service retirement benefit; how determined.** The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with section 23-2333, except that if the monthly payment would be less than ten dollars, payments shall be made annually in advance with each annual payment equal to 11.54 multiplied by the monthly payment that would have been made in the absence of this restriction on small monthly payments, and no prior service retirement benefit shall be paid to any person who terminates his or her employment unless such person has been continuously employed by the county for ten or more years immediately prior to termination. An employee meeting such requirement and who terminates his or her employment shall not receive a prior service benefit determined in accordance with section 23-2333 prior to attaining age sixty-five.

Prior service retirement benefits shall be paid directly by the county to the retired employee.

**Source:** Laws 1965, c. 94, § 18, p. 408; Laws 1973, LB 352, § 1; Laws 1975, LB 32, § 2; R.S.1943, (1991), § 23-2318; Laws 1994, LB 833, § 10; Laws 2003, LB 451, § 13.

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## CHAPTER 24 COURTS

### ARTICLE 7 JUDGES, GENERAL PROVISIONS

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(a) JUDGES RETIREMENT

**24-701. Terms, defined.** For purposes of the Judges Retirement Act, unless the context otherwise requires:

(1) Fund means the Nebraska Retirement Fund for Judges;

(2) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(3) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(4)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(5) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the

municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(7)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(8) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(10) Board means the Public Employees Retirement Board;

(11) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(12) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(13) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average compensation means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service;

(15) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations;

(18) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(19) Initial benefit means the retirement benefit calculated at the time of retirement;

(20) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(21) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(22) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(23) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred

twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

**Source:** Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 77, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB 6, § 1; Laws 2012, LB 916, § 14.

**Cross References**

Spousal Pension Rights Act, see section 42-1101.

**24-701.01. Act, how cited.** Sections 24-701 to 24-714 shall be known and may be cited as the Judges Retirement Act.

**Source:** Laws 1996, LB 847, § 12; Laws 1997, LB 624, § 10; Laws 1998, LB 532, § 1; Laws 1998, LB 1191, § 36; Laws 2001, LB 408, § 7; Laws 2002, LB 407, § 11; Laws 2004, LB 1097, § 10; Laws 2010, LB 950, § 8; Laws 2011, LB 509, § 9.

**24-701.02. Changes to act; operative; when.** Any changes made to the Judges Retirement Act affecting retirement benefits shall be so interpreted as to effectuate their general purpose to provide, in the public interest, adequate retirement benefits for judges and to permit a change in such retirement benefits as soon as the same may become operative under the Constitution of Nebraska.

**Source:** Laws 2004, LB 1097, § 9.

**24-702. Nebraska Retirement Fund for Judges; Nebraska Judges Retirement Act Expense Fund; created; use.** (1) There is hereby created in the state treasury a fund to be known as the Nebraska Retirement Fund for Judges which shall be administered by the board and to which shall be credited all money appropriated or transferred by law thereto. The fund is hereby appropriated and made available to the board for the uses and purposes prescribed by the provisions of the Judges Retirement Act.

(2) The employer contribution to the fund shall consist of the amounts remitted pursuant to subsection (3) of section 24-703.

(3) The Nebraska Judges Retirement Act Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration

of the Judges Retirement Act and necessary in connection with the administration and operation of the retirement system.

**Source:** Laws 1955, c. 83, § 2, p. 245; Laws 1994, LB 833, § 13; Laws 2001, LB 408, § 8; Laws 2002, LB 407, § 12; Laws 2005, LB 364, § 6.

**24-703. Judges; contributions; payment; funding of system; late fees.** (1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, and until July 1, 2014, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a

member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of five dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. Beginning on July 1, 2009, and until July 1, 2014, such fee shall be six dollars. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. Prior to July 1, 2006, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

**Source:** Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB

459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB 414, § 2.

**24-703.01. Participation in retirement system; requirements.** On and after July 1, 2010, no judge shall be authorized to participate in the retirement system provided for in the Judges Retirement Act unless the judge (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

**Source:** Laws 2010, LB 950, § 9.

**24-703.03. Elections authorized.** Any future member who has not previously retired prior to July 1, 2004, may elect to make contributions as provided in subdivision (2)(b) of section 24-703 and receive benefits as described in sections 24-707.01 and 24-708. Such election shall be made by written notice delivered to the board not later than ninety days after July 1, 2004.

**Source:** Laws 2004, LB 1097, § 8.

**24-704. Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.**

(1) The general administration of the retirement system for judges provided for in the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Auditor of Public Accounts shall make an annual audit of the retirement system and file an annual report of its condition with the Clerk of the Legislature. Each member of the Legislature shall receive a copy of the annual report by making a request for such report to the Auditor of Public Accounts. The board shall adopt and promulgate rules and regulations as may be necessary to carry out the Judges Retirement Act.

(2)(a) The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act. The director shall keep a record of all acts and proceedings taken by the board.

(b) The director shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the act. The information in the records shall be provided by the State Court Administrator in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(c) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) Information necessary to determine membership in the retirement system shall be provided by the State Court Administrator.

(4) Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee. The state investment officer shall sell any such securities upon request from the director so as to provide money for the payment of benefits or annuities.

**Source:** Laws 1955, c. 83, § 4, p. 246; Laws 1971, LB 987, § 6; Laws 1979, LB 322, § 6; Laws 1986, LB 311, § 10; Laws 1991, LB 549, § 17; Laws 1994, LB 833, § 15; Laws 1994, LB 1066, § 18; Laws 1995, LB 369, § 4; Laws 1996, LB 847, § 13; Laws 2000, LB 1192, § 5; Laws 2005, LB 503, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**24-704.01. Board; power to adjust contributions and benefits.** (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 10; Laws 2004, LB 1097, § 12.

**24-705. Technical and administrative employees; actuary; report; expenses.** The board shall have the power to secure and employ the services of such technical and administrative employees as are necessary to carry out the provisions of the Judges Retirement Act. Pursuant to subdivision (2)(e) of section 84-1503, the board shall have an annual report prepared by a member of the American Academy of Actuaries showing a complete valuation of the present and prospective assets and liabilities of the fund created by the act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. The report shall further include a prospectus of the amount of the appropriation that will be required from the Legislature for the succeeding year. This report shall be furnished to the Clerk of the Legislature at each regular session. Each

member of the Legislature shall receive a copy of such report by making a request for it to the director. The employees of the board shall be paid at such rates as the board shall approve. All administrative expenses shall be paid from the retirement fund.

**Source:** Laws 1955, c. 83, § 5, p. 247; Laws 1971, LB 987, § 7; Laws 1979, LB 322, § 7; Laws 1981, LB 462, § 3; Laws 1994, LB 833, § 18; Laws 1995, LB 502, § 1; Laws 1998, LB 1191, § 37.

**24-706. Termination of employment; return of contributions, when; rejoining system.** (1) Upon termination of employment, any member whose service is terminated prior to age sixty-five for any cause other than death or disability may, upon request to the board:

(a) Have returned to him or her the total amount of contributions which he or she has made to the fund, plus regular interest, and the return of such contributions to such judge shall preclude such judge from any benefits under the Judges Retirement Act unless and until such judge again serves in such capacity and repays his or her withdrawals pursuant to section 24-706.01. If the member chooses not to repay such withdrawals with interest, the member shall enter the retirement system as a new member with no prior rights; or

(b) Leave his or her contributions in the fund and receive a retirement annuity as provided in sections 24-708 and 24-710.

(2) Any member whose service is terminated at or subsequent to age sixty-five shall be considered as beginning normal retirement and annuity payments shall begin as provided in section 24-710.

**Source:** Laws 1955, c. 83, § 6, p. 247; Laws 1959, c. 95, § 3, p. 412; Laws 1969, c. 178, § 3, p. 765; Laws 1974, LB 905, § 4; Laws 1975, LB 42, § 1; Laws 1986, LB 92, § 3; Laws 1989, LB 506, § 4; Laws 1994, LB 833, § 19; Laws 1996, LB 1076, § 9; Laws 1997, LB 624, § 11; Laws 1999, LB 703, § 5; Laws 2000, LB 1192, § 6; Laws 2001, LB 408, § 10.

**24-706.01. Termination of employment prior to eligibility to retire; rejoining system; effect.** A member who terminates employment prior to becoming eligible to retire and again serves as a judge may elect to repay part or all of the amount he or she had withdrawn as a refund pursuant to section 24-706 plus the interest that would have accrued on such amount. Payment shall commence prior to termination of employment, shall not be extended more than five years after the date the member elects to repay his or her refund, and shall be completed prior to termination of employment. Prior service and rights shall be restored in proportion to the amounts repaid, and the prior service and rights of the member shall be fully restored only if he or she repays all accumulated withdrawals plus interest which would have accrued on that amount.

**Source:** Laws 2001, LB 408, § 11.

**24-707. Death of judge; benefits spouse entitled to receive; contributions paid to beneficiary; when.** (1) In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of creditable service, the surviving spouse of such judge shall at his or her option, exercised within twelve months after the date of death, be immediately entitled to receive an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (a) on the date of death if his or her age at death is sixty-five

years or more or (b) at age sixty-five years if his or her age at death is less than sixty-five years. If such option is not exercised by such surviving spouse within twelve months after the judge's death, if there is no surviving spouse, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such judge plus regular interest.

(2) In the event of the death of a judge subsequent to retirement, if such judge has not filed a statement of intent with the board to elect to receive any other form of annuity which may be provided for by section 24-710 or elected to make contributions and receive benefits as provided in section 24-703.03, the amount of annuities such judge has received under the provisions of the Judges Retirement Act shall be computed and, if such amount shall be less than the contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate.

(3) Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

(4) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(5) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

**Source:** Laws 1955, c. 83, § 7, p. 248; Laws 1973, LB 478, § 1; Laws 1974, LB 905, § 5; Laws 1975, LB 298, § 1; Laws 1977, LB 344, § 4; Laws 1983, LB 223, § 2; Laws 1986, LB 92, 4; Laws 1989, LB 506, § 5; Laws 1994, LB 833, § 20; Laws 1996, LB 1273, § 20; Laws 1997, LB 624, § 12; Laws 2000, LB 1192, § 7; Laws 2003, LB 451, § 15; Laws 2004, LB 1097, § 13; Laws 2007, LB 508, § 1; Laws 2012, LB 916, § 15.

**24-707.01. Surviving spouse; benefits; applicable, when.** (1) This section only applies to a judge who first served as a judge on or after July 1, 2004, and to a future member who elects to make contributions and receive benefits as provided in section 24-703.03.

(2) In the event of the death of a judge subsequent to retirement, his or her surviving spouse, if any, shall be entitled to receive, if the surviving spouse was born not more than five years subsequent to the birth of the deceased judge, a monthly benefit payable for life equal to fifty percent of the monthly benefit the retired judge was entitled to receive under the normal form of payment. Such benefit to the surviving spouse shall be provided without actuarial reduction or other assessment to the retired judge in determining his or her benefits. The entire cost of such a benefit shall be assumed by the fund. This benefit value may be applied on an actuarially equivalent basis to any joint and survivor benefit elected by a retiring judge with the surviving spouse as named beneficiary.

(3) In the event that the spouse of a retiring judge was born more than five years subsequent to the birth of the judge, such benefit to the judge described under subsection (2) of

this section shall be reduced by the actuarial cost of providing a benefit to the surviving spouse equal to fifty percent of the benefit the retired judge was entitled to receive. The reduction to the retired judge's benefit shall be limited to that portion of the actuarial cost that exceeds the actuarial cost if the spouse was born five years subsequent to the judge. In the event of the death of a retired judge as described by this subsection, his or her surviving spouse shall receive a monthly benefit payable for life equal to fifty percent of the monthly benefit received by the deceased judge.

(4) This section shall not prevent a retiring judge from contracting to provide a larger percentage of benefit for a surviving spouse under other applicable statutes.

**Source:** Laws 2004, LB 1097, § 7.

**24-708. Retirement of judge; when; deferment of payment; board; duties.** (1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) Except as provided in section 24-721, a judge may retire upon reaching the age of fifty-five years and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the reduced monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-four years, the monthly payments shall be reduced by three percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-three years, the monthly payments shall be reduced by six percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-two years, the monthly payments shall be reduced by nine percent. When a judge has elected to receive a reduced monthly retirement income to commence prior to the age of sixty-two years, the monthly payments shall be further reduced to an amount that is actuarially equivalent to the amount payable at the age of sixty-two years.

(3) Payment of any benefit provided under the Judges Retirement Act may not be deferred later than April 1 of the year following the year in which the judge has both attained at least age seventy and one-half years and terminated his or her employment as a judge.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

**Source:** Laws 1955, c. 83, § 8, p. 248; Laws 1957, c. 78, § 2, p. 317; Laws 1957, c. 79, § 3, p. 322; Laws 1965, c. 115, § 3, p. 444; Laws 1972, LB 1032, § 123; Laws 1973, LB 353, § 1; Laws 1984, LB 750, § 2; Laws 1986, LB 311, § 11; Laws 1987, LB 296, § 2; Laws 1989, LB 506, § 6; Laws 1994, LB 833, § 21; Laws 1997, LB 624, § 13; Laws 2003, LB 320, § 2; Laws 2003, LB 451, § 16; Laws 2004, LB 1097, § 14; Laws 2008, LB 1147, § 5.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**24-708.01. Retired member; reemployment; how treated.** For a member who retired under section 24-708 and becomes employed full-time or part-time as a judge in the state after his or her retirement date, the retired member shall continue receiving retirement benefits, shall be treated as a new judge for all purposes of the Judges Retirement Act, and shall receive service credit only for service commencing from the date of reemployment. Retired judges who are assigned to temporary duty as provided in sections 24-729 to 24-733 shall not become contributing active members in the retirement system and shall not receive any service credits.

**Source:** Laws 1997, LB 624, § 14.

**24-709. Judge; physically or mentally disabled; retirement; Commission on Judicial Qualifications; application; examination; benefits.** Any judge, except a clerk magistrate, who has become physically or mentally disabled, which disability seriously interferes with the performance of his or her duties and which disability is determined to be permanent or reasonably likely to become permanent, may, upon being found so disabled by the Commission on Judicial Qualifications, retire or be retired, and upon such retirement he or she shall be entitled to receive the retirement annuity as provided in section 24-710. Any judge, or the guardian of any judge, so permanently disabled desiring to so retire, shall file an application for such retirement with the commission, which application shall be in such form and contain such information as such commission shall require. Such commission may require such judge to be examined by a physician appointed by the commission and may require such other evidence and proof of disability as it deems necessary to reach a determination as to whether such judge is so permanently disabled. If the commission determines that any such judge is so permanently disabled, it shall promptly notify the judge and the Public Employees Retirement Board and thereupon such judge shall be placed on retirement by the board and receive the retirement annuity each month as is provided in section 24-710.

**Source:** Laws 1955, c. 83, § 9, p. 248; Laws 1971, LB 987, § 8; Laws 1983, LB 223, § 3; Laws 1986, LB 529, § 19.

**24-709.01. Judicial retirement proceedings before Commission on Judicial Qualifications; confidential.** All documents filed with and proceedings before the Commission on Judicial Qualifications pursuant to sections 24-709 and 24-712 shall be confidential.

**Source:** Laws 1981, LB 475, § 12; Laws 2000, LB 1192, § 8.

**24-709.02. Certain clerk magistrates; disabled; retirement; Public Employees Retirement Board; application; examination; benefits.** (1) Clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates shall have questions of disability decided by the Public Employees Retirement

Board. Any such clerk magistrate may be retired as a result of disability either upon his or her own application or upon the application of an employer or any person acting in his or her behalf. Upon such retirement he or she shall be entitled to receive the retirement annuity as provided in section 24-710. Before any such clerk magistrate may be retired, a medical examination shall be made at the expense of the Nebraska Retirement Fund for Judges, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the board, and the physician shall certify to the board that the clerk magistrate is physically or mentally incapable of further performing his or her duties and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The board may require any such disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

**Source:** Laws 1983, LB 223, § 5; Laws 1986, LB 529, § 20; Laws 1997, LB 623, § 9.

**24-710. Judges; retirement annuity; amount; how computed; cost-of-living adjustment.** (1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board shall (a) adopt and promulgate appropriate rules and regulations establishing joint and survivorship

annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

**Source:** Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB 49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws 1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB 509, § 11.

**24-710.01. Judges; alternative contribution rate and retirement benefit; election; notice.** Any original member, as defined in subdivision (12) of section 24-701, who has not previously retired, may elect to make contributions and receive benefits pursuant to subsection (2) of section 24-703 and subsection (2) of section 24-710, instead of those provided by subsection (1) of section 24-703 and subsection (1) of section 24-710. Such election shall be by written notice delivered to the board not later than November 1, 1981. Such member shall thereafter be considered a future member.

**Source:** Laws 1977, LB 344, § 1; Laws 1981, LB 459, § 5; Laws 1986, LB 92, § 6.

**24-710.02. Retirement benefits; exemption from legal process; exception.** (1) Except as provided in subsection (2) of this section, all annuities or benefits which any person shall be entitled to receive under the Judges Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section shall

apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1986, LB 311, § 12; Laws 1989, LB 506, § 8; Laws 1994, LB 833, § 23; Laws 1995, LB 574, § 37; Laws 1996, LB 1273, § 22; Laws 2004, LB 1097, § 16; Laws 2012, LB 916, § 16.

**Cross Reference**

Spousal Pension Rights Act, see section 42-1101.

**24-710.03. Judges; purchase of service credit; application of section.** Any future member who has served as a judge for eighteen years but less than twenty years prior to July 15, 1992, and who has, prior to such date, contributed and earned the maximum benefit pursuant to subsection (2) of section 24-710 may purchase up to two years of service credit in order to qualify for the maximum benefit in effect after July 15, 1992. Service credit may only be purchased for actual time served as a judge. The amount to be paid shall not exceed the amount the member would have paid into the system based on the compensation and two years of service immediately following the year in which the member reached the maximum benefit in effect prior to July 15, 1992, plus the interest on that amount which would have accrued under the retirement system provided by the Judges Retirement Act. Any payment made pursuant to this section by a member to qualify for the maximum benefit in effect after July 15, 1992, shall be received by the retirement system office by December 31, 1993. Any such payment shall be made in a single lump sum.

This section shall not apply to any member who retires prior to July 15, 1992.

**Source:** Laws 1992, LB 682, § 4; Laws 1993, LB 363, § 1; Laws 1994, LB 833, § 24; Laws 1996, LB 847, § 17.

**24-710.04. Reemployment; military service; credit; effect.** Under such rules and regulations as the retirement board adopts and promulgates, any judge who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, shall be treated as not having incurred a break in service by reason of his or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan. The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

**Source:** Laws 1996, LB 847, § 14.

**24-710.05. Direct rollover; terms, defined; distributee; powers; board; duties.** (1) For purposes of this section and section 24-710.06:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code,

(v) except for purposes of section 24-710.06, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 15; Laws 2002, LB 407, § 14; Laws 2012, LB 916, § 17.

**24-710.06. Retirement system; accept payments and rollovers; limitations; board; duties.** (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 24-706 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 16; Laws 2002, LB 407, § 15.

**24-710.12. Retirement system; accept transfers; limitations; how treated.** The retirement system may accept as payment for withdrawn amounts made pursuant to the Judges Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 16.

**24-710.13. Annual benefit adjustment; cost-of-living adjustment calculation method.** (1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the

year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or 24-707.01 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Judges Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The minimum accrual rate under this subsection is forty-five dollars and thirty cents until adjusted pursuant to this subsection. Beginning July 1, 2011, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until

the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) The state shall contribute to the Nebraska Retirement Fund for Judges an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 1.04778 percent of six million eight hundred ninety-five thousand dollars.

**Source:** Laws 2011, LB 509, § 10.

**24-711. Retired judge; statement of facts; contents; false or fraudulent actions; prohibited acts; penalty; denial of benefits.** (1) Any judge who retires under the provisions of section 24-708 or 24-709, or his or her guardian, shall give to the board a statement of facts which shall include an accurate record of all service claimed by such judge, his or her compensation when he or she last served as a judge, the amount of contributions he or she has made to the fund, the amount of benefits he or she is receiving or shall be entitled to receive under the Nebraska and federal old-age and survivors insurance acts, designation of beneficiary, and any other information the board may request. The board shall determine the accuracy of all pertinent facts claimed and may call a hearing to determine any or all matters necessary in order to determine the amount of the annuity to which such judge is entitled. After obtaining all facts it deems necessary, the board shall render its decision as to the amount of the annuity, if any, to which such judge shall be entitled.

(2) Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

**Source:** Laws 1955, c. 83, § 11, p. 249; Laws 1991, LB 549, § 19; Laws 1998, LB 1191, § 38.

**24-712. Annuity payments; continuation; physical examinations, when; cost.** Annuity payments to a judge, who has retired under the provisions of section 24-708, shall continue until the end of the month in which such judge shall die. The last annuity payment and any other payments to which such judge shall be entitled and which have not been paid at the

time of his or her death shall be paid to his or her beneficiary. A judge who is receiving annuity payments, under the provisions of section 24-709, shall continue to receive such annuities as long as he or she is permanently disabled, and if such judge shall die while so disabled, payment of annuities shall be terminated in the same manner as provided for a judge who dies subsequent to his or her retirement. Any judge, who is receiving annuities under the provisions of section 24-709, may be required by the commission to submit to a reexamination at any time. Any such judge shall have the right to a reexamination, upon an application to the commission, but not more often than once every six months. A physician appointed by the commission shall make such examinations and report his or her findings to the commission which shall make a determination. If the commission shall find that the permanent disability no longer exists, it shall so notify the judge and the board shall discontinue annuity payments to such judge unless the judge has in the meantime qualified for retirement by reason of his or her age. If any judge refuses to submit to such reexamination, the commission shall immediately terminate all annuity payments to such judge. Costs incurred by the commission for the services of a physician, as authorized by the provisions of section 24-709 and this section, shall be paid by the commission out of money from the fund.

**Source:** Laws 1955, c. 83, § 12, p. 250; Laws 1971, LB 987, § 9; Laws 1994, LB 833, § 25.

**Cross Reference**

Confidentiality of proceedings, see section 24-709.01.

**24-713. State Treasurer; duties; warrants.** The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The Director of Administrative Services is directed to draw warrants on the State Treasurer against the fund for authorized expenditures upon duly itemized vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

**Source:** Laws 1955, c. 83, § 13, p. 250; Laws 1969, c. 178, § 5, p. 767; Laws 1997, LB 623, § 10.

**24-713.01. Limitation of actions.** Every claim and demand under the Judges Retirement Act and against the retirement system or the board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 11; Laws 2004, LB 1097, § 19.

**24-713.02. Retirement system contributions, property, and rights; how treated.** All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the Judges Retirement Act.

**Source:** Laws 1998, LB 1191, § 39.

**24-713.03. Termination of system or contributions; effect.** Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 40.

**24-714. Retirement of judge; effect; filling of vacancy.** When the Chief Justice or a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, or a judge of the Nebraska Workers' Compensation Court becomes retired under the Judges Retirement Act, he or she shall be relieved of further active duties on the court. The Governor may fill the vacancy caused by such retirement the same as when a vacancy exists on that court for any other reason. When a judge of the county court or judge of a separate juvenile court becomes retired under the provisions of such sections, he or she shall also be relieved of further active duties and a vacancy shall be deemed to exist, which vacancy shall be filled as provided by law.

**Source:** Laws 1955, c. 83, § 14, p. 251; Laws 1957, c. 78, § 3, p. 317; Laws 1957, c. 79, § 5, p. 323; Laws 1959, c. 189, § 15, p. 691; Laws 1965, c. 115, § 4, p. 444; Laws 1984, LB 13, § 34; Laws 1991, LB 732, § 38; Laws 1994, LB 833, § 26; Laws 2004, LB 1097, § 20.

#### (b) JUDICIAL DISCIPLINE

**24-721. Commission; complaint or request filed by citizen; investigation; proceedings; rights of judge or justice; special master; commission; recommendations; rules.** Any citizen of the State of Nebraska shall have the right at all times to complain to the Commission on Judicial Qualifications with reference to the acts, activities, or qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska or to request that the commission consider the qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska. Upon receipt of any such complaint or request, the commission shall make such investigation as it determines to be necessary. The commission shall have the right to subpoena witnesses; to hold hearings; to require the Justice or judge to submit to physical or mental examination by medical experts; to appoint special masters to conduct hearings; to make independent investigations, either by members of the commission or by special investigators employed by the commission; to hold confidential prehearing proceedings with the person or persons filing the complaint or request, or with his or her or their agents or attorneys; and to hold confidential prehearing proceedings with the judge or Justice involved in the complaint or request. If the commission finds probable cause for the existence of any of the grounds for disciplinary action or retirement specified in section 24-722, it shall reprimand the Justice or judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or judge. Any reprimand shall be public and shall be announced in a fashion similar to that of a published opinion of the Supreme Court. A judge who receives official notice of a complaint or request pursuant to this section shall not be allowed to retire pursuant to the Judges Retirement Act until the matter is resolved by the commission or the Supreme Court, if the commission recommends action by the court. If a hearing is ordered, the commission shall advise the judge or

Justice involved, in writing, of the specific charges which have been made and supported, substantiated, or revealed by the independent investigation of the commission. The judge or Justice shall be given reasonable time in which to formally answer such charges in writing and the matter shall then be set for formal open hearing, at which time the commission shall cause the testimony and the documentary evidence relating to the charges to be produced and recorded in such manner as the commission shall determine to be advisable, giving the judge or Justice involved and his or her attorney a full opportunity to question and cross-examine the witnesses and evidence so produced. The judge or Justice shall have an opportunity to produce at such hearing, testimony, evidence, and documents relating to the charges involved; thereafter any rebuttal evidence may be produced. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. Whenever any person shall refuse to testify or to produce books, papers, or other evidence when required to do so in any hearing held before the Commission on Judicial Qualifications or before a special master or masters appointed under the provisions of this section for the reason that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a forfeiture or penalty, he or she may nevertheless be compelled to testify or produce such evidence by order of the Commission on Judicial Qualifications or special master or masters on motion of counsel to the commission. No person who testifies or produces evidence in obedience to the command of the commission or special master or masters in such case shall be liable to any forfeiture or penalty for or on account of any transaction, matter, or thing concerning or arising from that as to which he or she may so testify or produce evidence, nor shall such testimony or evidence be used directly or indirectly in any proceedings against him or her, except that no person shall be exempt from prosecution and punishment for perjury or contempt committed in so testifying. The requirement to testify or produce evidence shall not apply when such person proves the real and substantial danger of a prosecution against him or her in another jurisdiction based on the admissions to be made by him or her in this state. The commission or special master or masters shall have power to punish for contempt for any action specified in section 25-2121. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed, or retired as the case may be. All hearings before the commission and all proceedings before masters and before the Supreme Court shall be conducted in accordance with rules promulgated or to be promulgated by the Supreme Court.

**Source:** Laws 1967, c. 141, § 7, p. 432; Laws 1976, LB 640, § 1; Laws 1981, LB 475, § 6; Laws 2003, LB 320, § 3; Laws 2005, LB 754, § 2.

**Cross Reference**

Judges Retirement Act, see section 24-701.01.

(c) RETIRED JUDGES

**24-729. Judges; retired; assignment; when; retired judge, defined.** The Supreme Court of Nebraska is empowered, with the consent of the retired judge, (1) to assign judges of the Supreme Court, Court of Appeals, and district court who are now retired or who may be retired hereafter to (a) sit in any court in the state to relieve congested dockets or to prevent the docket of such court from becoming congested or (b) sit for the judge of any court who may be incapacitated or absent for any reason whatsoever and (2) to assign any judge of the separate juvenile court, county court, or Nebraska Workers' Compensation Court who is now retired or who may be retired hereafter to (a) sit in any court having the same jurisdiction as one in which any such judge may have previously served to relieve congested dockets or to prevent the docket of any such court from becoming congested or (b) sit for the judge of any such court who may be incapacitated or absent for any reason. Any judge who has retired on account of disability may not be so assigned.

For purposes of sections 24-729 to 24-733, retired judge shall include a judge who, before, on, or after March 31, 1993, has retired upon the attainment of age fifty-five and has elected to defer the commencement of his or her retirement annuity to a later date.

**Source:** Laws 1974, LB 832, § 1; Laws 1976, LB 296, § 1; Laws 1979, LB 240, § 1; Laws 1991, LB 732, § 39; Laws 1993, LB 363, § 2.

**24-730. Retired judge; temporary duty; compensation.** A retired judge holding court pursuant to sections 24-729 to 24-733 shall receive, in addition to his or her retirement benefits, for each day of temporary duty an amount established by the Supreme Court. In addition, a retired judge who consents to serve a minimum number of temporary duty days annually, as established by the Supreme Court, and is appointed by the Supreme Court for such extended service, may also receive a stipend or an adjusted stipend calculated from the number of days of temporary duty performed by the judge in such annual period in relation to an annual base amount established by the Supreme Court.

**Source:** Laws 1974, LB 832, § 2; Laws 1983, LB 268, § 1; Laws 2008, LB 1014, § 5; Laws 2010, LB 727, § 1.

**24-731. Retired judge; temporary duty; expenses.** A retired judge on temporary duty shall be reimbursed for his or her expenses at the same rate as provided in sections 81-1174 to 81-1177 for state employees but shall submit a request for payment or reimbursement in the manner provided in section 24-733.

**Source:** Laws 1974, LB 832, § 3; Laws 1981, LB 204, § 37; Laws 1988, LB 864, § 3.

**24-732. Retired judge; temporary duty; not contribute to retirement fund; retirement benefits not affected.** A retired judge on temporary duty shall not be required to contribute to the Nebraska Retirement Fund for Judges, and the retirement benefits of such a retired judge shall neither be increased nor decreased on account of his temporary duty.

**Source:** Laws 1974, LB 832, § 4.

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## CHAPTER 42 HUSBAND AND WIFE

### ARTICLE 11 SPOUSAL PENSION RIGHTS ACT

42-1101.	Act, how cited.
42-1102.	Terms, defined.
42-1103.	Qualified domestic relations order; requirements.
42-1104.	Order; payment of benefits; alternate payee.
42-1105.	Order; form of benefit payment.
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42-1111.	Director; separate accounting required; when; investment authority.
42-1112.	Order filed prior to July 19, 1996; applicability.
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**42-1101. Act, how cited.** Sections 42-1101 to 42-1113 shall be known and may be cited as the Spousal Pension Rights Act.

**Source:** Laws 1996, LB 1273, § 1.

**42-1102. Terms, defined.** For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 42-1103;

(6) Segregated amounts means the amounts which would have been payable to the alternate payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the Nebraska Judges Retirement System as provided in the Judges Retirement Act, the School Employees Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

**Source:** Laws 1996, LB 1273, § 2; Laws 2004, LB 1097, § 21; Laws 2011, LB 509, § 12.

**Cross References**

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement System, see section 81-2015.

Retirement System for Nebraska Counties, see section 23-2302.

School Employees Retirement System of the State of Nebraska, see section 79-903.

State Employees Retirement System of the State of Nebraska, see section 84-1302.

**42-1103. Qualified domestic relations order; requirements.** A domestic relations order is a qualified domestic relations order only if such order or accompanying document:

(1) Clearly specifies the following:

(a) The name, social security number, and last-known mailing address, if any, of the member;

(b) The name, social security number, and last-known mailing address, if any, of the alternate payee covered by the order;

(c) The statewide public retirement system or systems to which the order applies;

(d) The number of payments or period to which such order applies; and

(e) The amount or percentage of the member's benefits to be paid by each statewide public retirement system to each alternate payee or the manner in which such amount or percentage is determined;

(2) Does not require a statewide public retirement system to provide any type or form of benefit, or any option, not otherwise provided under the plan;

(3) Does not require a statewide public retirement system to provide increased benefits determined on the basis of actuarial value;

(4) Does not require a statewide public retirement system to pay to an alternate payee benefits which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(5) Does not require the payment of benefits to an alternate payee before the earliest retirement date of a member.

**Source:** Laws 1996, LB 1273, § 3; Laws 2006, LB 1113, § 37.

**42-1104. Order; payment of benefits; alternate payee.** (1) A qualified domestic relations order may provide for the payment of benefits to an alternate payee beginning on or after the member's earliest retirement date but before the member terminates employment. Payment of the benefit to the alternate payee pursuant to a qualified domestic relations order shall commence either on the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies the statewide public

retirement system of the election to begin payment, but not prior to the member's earliest retirement date.

(2) If payment begins after the member's earliest retirement date but prior to the member's retirement date, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the member's benefit payable on the member's earliest retirement date or the alternate payee's election date, whichever is later.

**Source:** Laws 1996, LB 1273, § 4.

**42-1105. Order; form of benefit payment.** An alternate payee under a qualified domestic relations order shall receive the form of benefit payment specified in the order or, if not specified, selected by the alternate payee, if such form is a form available to the member and is not a joint and survivor annuity with the alternate payee's subsequent spouse.

**Source:** Laws 1996, LB 1273, § 5.

**42-1106. Death of alternate payee; effect.** If the alternate payee dies prior to receiving any payment of his or her interest in the member's benefit under a qualified domestic relations order, such interest reverts to the member. If the alternate payee dies after commencement of payments of his or her interest, then the alternate payee's beneficiary is entitled to the balance of the payee's interest under the payment option provided by the order or selected by the payee, except a joint and survivor annuity option with the alternate payee and alternate payee's spouse.

**Source:** Laws 1996, LB 1273, § 6.

**42-1107. Order; surviving spouse; payment option.** A qualified domestic relations order may provide that a spouse under a judgment for separate maintenance or a former spouse is considered the surviving spouse under the plan. If the order requires the member to select a payment option with survivorship rights, the Public Employees Retirement Board shall require consent by such spouse for the selection of the annuity option by the member or for any change in the selection of the annuity option by the member. The order may specifically require that the annuity option be a joint and survivor annuity.

**Source:** Laws 1996, LB 1273, § 7.

**42-1108. Order; alternate payee; file with board; notice.** The alternate payee shall file a copy of the domestic relations order involving benefits under a statewide public retirement system with the Public Employees Retirement Board within ninety days after the date that the order was entered. Upon good cause shown, the board may accept an order after ninety days following its entry. Within ten days, the board shall notify in writing the member and alternate payee that the board has received the domestic relations order. Such notice shall include a description of the procedure to determine if the domestic relations order is a qualified domestic relations order under the Spousal Pension Rights Act. The Public Employees Retirement Board shall be held harmless by the alternate payee and the member for any amounts paid in violation of an order prior to the date on which the order is filed with the board.

**Source:** Laws 1996, LB 1273, § 8; Laws 1998, LB 1191, § 41.

**42-1109. Rules and regulations.** The Public Employees Retirement Board shall adopt and promulgate rules and regulations to establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders. Such procedures shall allow an alternate payee to designate a representative for receipt of copies of notices.

**Source:** Laws 1996, LB 1273, § 9.

**42-1110. Qualified domestic relations order; how determined; procedure.** (1) The Public Employees Retirement Board, or the board's designee, shall determine, within a reasonable period of time after receiving a domestic relations order, if the order is a qualified domestic relations order under the Spousal Pension Rights Act. The board may determine that an order is not qualified for the following reasons:

- (a) The order fails to fulfill all the requirements under section 42-1103;
  - (b) The order requires the board to act contrary to the statutory provisions of the statewide public retirement system; or
  - (c) The order requires payment to the alternate payee in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.
- (2) Failure to file an order within ninety days after its entry shall not be the basis for determining that an order is not a qualified domestic relations order.
- (3) Within seven days after making the determination, the board or its designee shall notify the alternate payee and the member whether the domestic relations order is a qualified domestic relation order under the act. If the order is not a qualified domestic relations order, the notice shall specify the basis for such determination.
- (4) A determination by the board or its designee that a domestic relations order is not a qualified domestic relations order does not prohibit a member or an alternate payee from filing an amended order with the board.

**Source:** Laws 1996, LB 1273, § 10.

**42-1111. Director; separate accounting required; when; investment authority.** (1) During the period of time that a determination, by the board, its designee, or a court of competent jurisdiction, is being made as to whether a domestic relations order is a qualified domestic relations order, the director of the statewide public retirement systems shall separately account for the segregated amounts.

(2) If a member of the statewide public retirement systems participates in a defined contribution account, the member shall maintain investment authority over the entire account until the order is determined to be a qualified domestic relations order, but upon such determination, the alternate payee shall receive investment authority over the alternate payee's share of the account.

(3) If within the eighteen-month period the order is determined to be a qualified domestic relations order, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the alternate payee or payees entitled thereto.

(4) If within the eighteen-month period the order is determined not to be a qualified domestic relations order or the qualified status of the order is not resolved, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the member or other beneficiaries entitled thereto.

(5) If the determination that the order is a qualified domestic relations order is made after the eighteen-month period, the order will be applied prospectively only.

(6) For purposes of this section, the eighteen-month period begins on the date that the first payment would be required under the domestic relations order.

**Source:** Laws 1996, LB 1273, § 11; Laws 2003, LB 451, § 17.

**42-1112. Order filed prior to July 19, 1996; applicability.** A domestic relations order filed with the Public Employees Retirement Board prior to July 19, 1996, shall be deemed a qualified domestic relations order under the Spousal Pension Rights Act if the statewide public retirement system is making payments under the order on July 19, 1996, and such order conforms to section 414(p)(11) of the Internal Revenue Code.

**Source:** Laws 1996, LB 1273, § 12.

**42-1113. Liability.** The member and alternate payee shall hold the statewide public retirement system and its fiduciaries harmless from any liabilities which arise from (1) treating a domestic relations order as being, or not being, a qualified domestic relations order, or (2) taking action pursuant to section 42-1111. The system's obligation to the member and each alternate payee shall be discharged to the extent of any payment made pursuant to the Spousal Pension Rights Act.

**Source:** Laws 1996, LB 1273, § 13.

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## CHAPTER 50 LEGISLATURE

### ARTICLE 4 LEGISLATIVE COUNCIL

- 50-416.01. Nebraska Retirement Systems Committee; members.
- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.01. Retirement systems; long-term management strategy; intent.
- 50-438. Legislative Council Retirement Study Fund; created; use; transfers; investment.

**50-416.01. Nebraska Retirement Systems Committee; members.** The Legislature shall select five of its members who shall serve, together with the chairperson of the Appropriations Committee, as the Nebraska Retirement Systems Committee. The Nebraska Retirement Systems Committee shall be a standing committee of the Legislature. The chairperson and members shall be chosen in the same manner as chairpersons and members of the other standing committees of the Legislature.

**Source:** Laws 1989, LB 189, § 1.

**50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.** The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the Nebraska Retirement Systems Committee regarding passage of any bill or amendment. To assist the committee in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement plans established for them and such other proposed legislation as is pertinent to existing retirement systems.

**Source:** Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2; Laws 2011, LB 10, § 1.

**50-438. Legislative Council Retirement Study Fund; created; use; transfers; investment.** There is hereby created the Legislative Council Retirement Study Fund. The fund shall consist of money appropriated to it by the Legislature and transfers made pursuant to subdivision (2)(f) of section 84-1503. Money in the fund shall only be used for a comprehensive study of the retirement systems listed in subdivision (1)(a) of section 84-1503. Any money remaining in the fund eighteen months after the date of transfer shall be transferred by the State Treasurer back to the retirement systems for credit to the various retirement funds. Any money in the Legislative Council Retirement Study Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Attachment H  
4171Z1

*Retirement Laws and Plan Documents*

*Retirement Systems Committee - Legislature*

**Source:** Laws 1992, LB 672, § 34; Laws 1994, LB 1066, § 41; Laws 1998, LB 1191, § 42.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

## CHAPTER 71 PUBLIC HEALTH AND WELFARE

### ARTICLE 16 LOCAL HEALTH SERVICES

#### (b) LOCAL PUBLIC HEALTH DEPARTMENTS

- 71-1631. Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.
- 71-1631.01. Local boards of health; rules and regulations; violations; penalty.
- 71-1631.02. Local boards of health; retirement plan; reports.

#### (b) LOCAL PUBLIC HEALTH DEPARTMENTS

**71-1631. Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.** Except as provided in subsection (4) of section 71-1630, the board of health of each county, district, or city-county health department organized under sections 71-1626 to 71-1636 shall, immediately after appointment, meet and organize by the election of one of its own members as president, one as vice president, and another as secretary and, either from its own members or otherwise, a treasurer and shall have the power set forth in this section. The board may elect such other officers as it may deem necessary and may adopt and promulgate such rules and regulations for its own guidance and for the government of such health department as may be necessary, not inconsistent with sections 71-1626 to 71-1636. The board of health shall, with the approval of the county board and the municipality, whenever a city is a party in such a city- county health department:

(1) Select the health director of such department who shall be (a) well-trained in public health work though he or she need not be a graduate of an accredited medical school, but if he or she is not such a graduate, he or she shall be assisted at least part time by at least one medical consultant who shall be a licensed physician, (b) qualified in accordance with the state personnel system, and (c) approved by the Department of Health and Human Services;

(2) Hold an annual meeting each year, at which meeting officers shall be elected for the ensuing year;

(3) Hold meetings quarterly each year;

(4) Hold special meetings upon a written request signed by two of its members and filed with the secretary;

(5) Provide suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties, with mileage to be computed at the rate provided in section 81-1176;

(6) Publish, on or soon after the second Tuesday in July of each year, in pamphlet form for free distribution, an annual report showing (a) the condition of its trust for each year, (b) the sums of money received from all sources, giving the name of any donor, (c) how all money has been expended and for what purpose, and (d) such other statistics and information with regard to the work of such health department as may be of general interest;

(7) Enact rules and regulations, subsequent to public hearing held after due public notice of such hearing by publication at least once in a newspaper having general circulation in the county or district at least ten days prior to such hearing, and enforce the same for the protection

of public health and the prevention of communicable diseases within its jurisdiction, subject to the review and approval of such rules and regulations by the Department of Health and Human Services;

(8) Make all necessary sanitary and health investigations and inspections;

(9) In counties having a population of more than three hundred thousand inhabitants, enact rules and regulations for the protection of public health and the prevention of communicable diseases within the district, except that such rules and regulations shall have no application within the jurisdictional limits of any city of the metropolitan class and shall not be in effect until (a) thirty days after the completion of a three-week publication in a legal newspaper, (b) approved by the county attorney with his or her written approval attached thereto, and (c) filed in the office of the county clerk of such county;

(10) Investigate the existence of any contagious or infectious disease and adopt measures, with the approval of the Department of Health and Human Services, to arrest the progress of the same;

(11) Distribute free as the local needs may require all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or purchased for public health purposes by the county board;

(12) Upon request, give professional advice and information to all city, village, and school authorities on all matters pertaining to sanitation and public health;

(13) Fix the salaries of all employees, including the health director. Such city-county health department may also establish an independent pension plan, retirement plan, or health insurance plan or, by agreement with any participating city or county, provide for the coverage of officers and employees of such city-county health department under such city or county pension plan, retirement plan, or health insurance plan. Officers and employees of a county health department shall be eligible to participate in the county pension plan, retirement plan, or health insurance plan of such county. Officers and employees of a district health department formed by two or more counties shall be eligible to participate in the county retirement plan unless the district health department establishes an independent pension plan or retirement plan for its officers or employees;

(14) Establish fees for the costs of all services, including those services for which third-party payment is available; and

(15) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, implement and enforce an air pollution control program under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

**Source:** Laws 1943, c. 152, § 6, p. 558; R.S.1943, § 71-1631; Laws 1953, c. 249, § 1, p. 852; Laws 1955, c. 275, § 1, p. 871; Laws 1963, c. 401, § 1, p. 1286; Laws 1967, c. 449, § 3, p. 1394; Laws 1969, c. 151, § 5, p. 713; Laws 1972, LB 1497, § 6; Laws 1973, LB 285, § 1; Laws 1979, LB 198, § 2; Laws 1981, LB 204, § 120; Laws 1992, LB 860, § 3; Laws 1992, LB 1257, § 74; Laws 1993, LB 623, § 2; Laws 1996, LB 1011, § 28; Laws 1996, LB 1044, § 571; Laws 1997, LB 185, § 4; Laws 2006, LB 1019, § 6; Laws 2007, LB 296, § 481.

**71-1631.01. Local boards of health; rules and regulations; violations; penalty.** Any person violating any rule or regulation, authorized by the provisions of either subdivision (7) or (9) of section 71-1631, shall be guilty of a Class III misdemeanor, and each day's violation shall be considered a separate offense.

**Source:** Laws 1955, c. 275, § 2, p. 872; Laws 1969, c. 151, § 7, p. 717; Laws 1977, LB 39, § 161.

**71-1631.02. Local boards of health; retirement plan; reports.** (1) Beginning December 31, 1998, and each year thereafter, the health director of a board of health with an independent retirement plan established pursuant to section 71-1631 and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;
- (g) For each independent defined contribution plan, a full description of investment policies and options available to plan participants; and
- (h) For each independent defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If an independent plan contains no current active participants, the health director may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, a board of health with an independent retirement plan established pursuant to section 71-1631 shall cause to be prepared a quadrennial report and the health director shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such independent retirement plan established pursuant to section 71-1631. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

**Source:** Laws 1998, LB 1191, § 43; Laws 1999, LB 795, § 12; Laws 2011, LB 474, § 12.

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## CHAPTER 72 PUBLIC LANDS, BUILDINGS, AND FUNDS

### ARTICLE 12 INVESTMENT OF STATE FUNDS

#### (a) NEBRASKA STATE FUNDS INVESTMENT ACT

- 72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.  
72-1238. Nebraska Investment Council; members; qualifications.  
72-1239. Nebraska Investment Council; purpose; members; meetings; compensation.  
72-1239.01. Nebraska Investment Council; duties and responsibilities.  
72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.

#### (a) NEBRASKA STATE FUNDS INVESTMENT ACT

**72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.** The Nebraska Investment Council is created. For purposes of the Nebraska State Funds Investment Act, council means the Nebraska Investment Council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature, and the State Treasurer and the director of the Nebraska Public Employees Retirement Systems as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

Prior to September 1, 2006, each of the appointed members of the council shall serve for a term of five years and may be removed by the Governor for cause after notice and an opportunity to be heard. The term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. Beginning September 1, 2006, each of the appointed members of the council shall serve for a term of five years that begins on January 1 and may be removed by the Governor for cause after notice and an opportunity to be heard. Such term shall be extended until the date on which his or her successor's appointment is effective. For members serving on September 1, 2006, and whose terms would otherwise end on September 18, such terms shall be extended until the following December 31, or until the date on which his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to his or her duties as a member of the council.

**Source:** Laws 1969, c. 584, § 1, p. 2350; Laws 1991, LB 368, § 1; Laws 1991, LB 549, § 20; Laws 1996, LB 847, § 18; Laws 2002, LB 407, § 17; Laws 2006, LB 1019, § 7.

**72-1238. Nebraska Investment Council; members; qualifications.** (1) Prior to July 1, 2005, the appointed members of the council shall have at least ten years of experience in the financial affairs of a public or private organization or have at least five years of experience in the field of investment management or analysis. For members appointed on or after July 1, 2005,

the appointed members of the council shall have at least seven years of experience in the field of investment management or analysis or have at least twelve years of experience in the financial management of a public or private organization. There is a preference for members who are appointed to have experience in investment management or analysis.

(2) The members serving on July 1, 2005, shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective.

**Source:** Laws 1969, c. 584, § 2, p. 2350; Laws 1996, LB 847, § 19; Laws 2005, LB 503, § 5.

**72-1239. Nebraska Investment Council; purpose; members; meetings; compensation.** The purpose of the council is to formulate and establish such policies as it may deem necessary and proper which shall govern the methods, practices, and procedures followed by the state investment officer for the investment or reinvestment of state funds and funds described in section 83-133 and the purchase, sale, or exchange of securities as provided by the Nebraska State Funds Investment Act. The council shall meet from time to time as directed by the Governor or the chairperson or as requested by the state investment officer. The members of the council, except the State Treasurer and the director of the Nebraska Public Employees Retirement Systems, shall be paid seventy-five dollars per diem. The members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1969, c. 584, § 3, p. 2350; Laws 1981, LB 204, § 145; Laws 1985, LB 335, § 1; Laws 1991, LB 368, § 2; Laws 1996, LB 847, § 20; Laws 1997, LB 4, § 1; Laws 2005, LB 503, § 6.

**72-1239.01. Nebraska Investment Council; duties and responsibilities.** (1)(a) The appointed members of the Nebraska Investment Council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503 and the assets of the Nebraska educational savings plan trust created pursuant to sections 85-1801 to 85-1814. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems and of the Nebraska educational savings plan trust and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the retirement systems and of the Nebraska educational savings plan trust solely in the interests of the members and beneficiaries of the retirement systems or the interests of the participants and beneficiaries of the Nebraska educational savings plan trust, as the case may be, for the exclusive purposes of providing benefits to members, members' beneficiaries, participants, and participants' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law.

(2)(a) The appointed members of the Nebraska Investment Council shall have the responsibility for the investment management of the assets of state funds. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of state funds and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law.

(3) The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems, the Nebraska educational savings plan trust, and state funds so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems or the Nebraska educational savings plan trust shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

**Source:** Laws 1996, LB 847, § 21; Laws 2002, LB 407, § 18; Laws 2003, LB 574, § 25.

**72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.** (1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503. By March 31 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee of the Legislature. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By March 31 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

**Source:** Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7; Laws 2011, LB 509, § 14.

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## CHAPTER 79 SCHOOLS

### ARTICLE 9 SCHOOL EMPLOYEES RETIREMENT SYSTEMS

#### (a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

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- 79-904.01. Board; power to adjust contributions and benefits.
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- 79-933.04. Contributing member; credit for leave of absence; limitation; procedure; payment.
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- 79-968. Retirement system; assets; funds; account; investment.
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(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

**79-901. Act, how cited.** Sections 79-901 to 79-977.03 shall be known and may be cited as the School Employees Retirement Act.

**Source:** Laws 1991, LB 549, § 23; Laws 1993, LB 292, § 1; Laws 1994, LB 833, § 29; Laws 1995, LB 501, § 4; Laws 1996, LB 700, § 6; Laws 1996, LB 847, § 28; R.S.Supp., 1995, § 79-1501.01; Laws 1996, LB 900, § 536; Laws 1996, LB 1076, § 14; Laws 1997, LB 724, § 2; Laws 1998, LB 532, § 5; Laws 1998, LB 1191, § 44; Laws 2002, LB 407, § 21; Laws 2011, LB 509, § 16.

**79-902. Terms, defined.** For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon, compounded monthly, quarterly, semiannually, or annually;

(2) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(3) Member means any person who has an account in the School Retirement Fund;

(4) County school official means (a) until July 1, 2000, the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate and (b) on or after July 1, 2000, the county superintendent, county school administrator, or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(5) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid. Creditable service also does not include service rendered by a member for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act or service which the board determines was rendered with the intent to defraud the retirement system;

(6) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(7) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(8) Fiscal year means any year beginning July 1 and ending June 30 next following;

(9) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(10) School employee means a contributing member who earns service credit pursuant to section 79-927. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular employees; (b) regular employees having retired pursuant to the School Employees Retirement Act who subsequently provide compensated service on a regular basis in any capacity; and (c) regular employees hired by a public school on an ongoing basis to assume the duties of other regular employees who are temporarily absent. Substitute employees, temporary employees, and employees who have not attained the age of eighteen years shall not be considered school employees;

(11) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(12) Public school means any and all schools offering instruction in elementary or high school grades, as defined in section 79-101, which schools are supported by public funds and are wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except Class V school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(13) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

(14) Retirement board or board means the Public Employees Retirement Board;

(15) Retirement system means the School Employees Retirement System of the State of Nebraska;

(16) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(17) School year means one fiscal year which includes not less than one thousand instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;

(18) Service means employment as a school employee and shall not be deemed interrupted by (a) termination at the end of the school year of the contract of employment of an employee in a public school if the employee enters into a contract of employment in any public school, except a school in a Class V school district, for the following school year, (b) temporary or seasonal suspension of service that does not terminate the employee's employment, (c) leave of absence authorized by the employer for a period not exceeding twelve months, (d) leave of absence because of disability, or (e) military service when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under sections 79-951 to 79-953;

(19) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-935. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies or in accordance with the payment option chosen by the member;

(20) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(21) State deposit means the deposit by the state in the retirement system on behalf of any member;

(22) State school official means the Commissioner of Education and his or her professional staff who are required by law or by the State Department of Education to hold a certificate as such term is defined in section 79-807;

(23) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(24) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b)

who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(25) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the prior June 30, rounded to the next lower quarter percent;

(26) Retirement date means (a) if the member has terminated employment, the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system or (b) if the member has filed an application but has not yet terminated employment, the first day of the month following the date on which the member terminates employment. An application may be filed no more than ninety days prior to the effective date of the member's initial benefit;

(27) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a retirement application provided by the retirement system if the member has terminated employment in the school system and has complied with sections 79-951 to 79-954 as such sections refer to disability retirement;

(28) Retirement application means the form approved by the retirement system for acceptance of a member's request for either regular or disability retirement;

(29) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(30)(a) Final average compensation means the sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six.

(b) If a member has such compensation for less than thirty-six months, his or her final average compensation shall be determined by dividing his or her total compensation in all months by the total number of months of his or her creditable service therefor.

(c) Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(31) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(32) Current benefit means the initial benefit increased by all adjustments made pursuant to the School Employees Retirement Act;

(33) Initial benefit means the retirement benefit calculated at the time of retirement;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year and includes (i) overtime pay, (ii) member retirement contributions, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation does not include (i) fraudulently obtained amounts as determined by the retirement board, (ii) amounts for unused sick leave or unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems, (vii) bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, or (viii) beginning on September 4, 2005, employer contributions made for the purposes of separation payments made at retirement and early retirement inducements as provided for in section 79-514.

(c) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993.

(d)(i) For purposes of section 79-934, in the determination of compensation for members on or after July 1, 2005, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than seven percent of the compensation base during the sixty months preceding the member's retirement shall be excluded unless (A) the member experienced a substantial change in employment position, (B) as verified by the school board, the excess compensation above seven percent occurred as the result of a collective-bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee, and the percentage increase in compensation above seven percent shall not be excluded for employees outside of a collective-bargaining unit or within the same category of school employee, or (C) the excess compensation occurred as the result of a districtwide permanent benefit change made by the employer for a category of school employee in accordance with subdivision (35)(a)(iv) of this section.

(ii) For purposes of subdivision (35)(d) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both;

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2005, or (II) for members newly hired or hired by a separate employer on or after July 1, 2005, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of seven percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year; and

(C) Recognized collective-bargaining unit means a group of employees similarly situated with a similar community of interest appropriate for bargaining recognized as such by a school board.

(e)(i) In the determination of compensation for members on or after July 1, 2012, until July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than nine percent of the compensation base during the sixty months preceding the member's retirement shall be excluded.

(ii) For purposes of subdivision (35)(e) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both; and

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2012, or (II) for members newly hired or hired by a separate employer on or after July 1, 2012, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of nine percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year.

(f)(i) In the determination of compensation for members on or after July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than eight percent of the compensation base during the sixty months preceding the member's retirement shall be excluded.

(ii) For purposes of subdivision (35)(f) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both; and

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2013, or (II) for members newly hired or hired by a separate employer on or after July 1, 2013, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of eight percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year;

(36) Termination of employment occurs on the date on which the member experiences a bona fide separation from service of employment with the member's employer, the date of which separation is determined by the employer. The employer shall notify the board of the date on which such a termination has occurred. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide

the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 79-933, the board shall require the member who has received such benefit to repay the benefit to the retirement system. A member shall not be deemed to have terminated employment if the member subsequently provides service to any employer participating in the retirement system provided for in the School Employees Retirement Act within one hundred eighty calendar days after ceasing employment unless such service:

(a) Is bona fide unpaid voluntary service or substitute service, provided on an intermittent basis; or

(b) Is as provided in subsection (2) of section 79-920.

A member shall not be deemed to have terminated employment if the board determines that a purported termination was not a bona fide separation from service with the employer;

(37) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(38) Substitute employee means a person hired by a public school as a temporary employee to assume the duties of regular employees due to the temporary absence of the regular employees. Substitute employee does not mean a person hired as a regular employee on an ongoing basis to assume the duties of other regular employees who are temporarily absent;

(39) Participation means qualifying for and making required deposits to the retirement system during the course of a plan year;

(40) Regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for fifteen or more hours per week. An employee hired as described in this subdivision to provide service for less than fifteen hours per week but who provides service for an average of fifteen hours or more per week in each calendar month of any three calendar months of a plan year shall immediately commence contributions and shall be deemed a regular employee; and

(41) Temporary employee means an employee hired by a public school who is not a regular employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration.

**Source:** Laws 1945, c. 219, § 1, p. 638; R.S.Supp., 1947, § 79-2901; Laws 1949, c. 256, § 435, p. 840; Laws 1953, c. 315, § 1, p. 1042; Laws 1961, c. 410, § 1, p. 1229; Laws 1963, c. 469, § 7, p. 1506; Laws 1963, c. 495, § 1, p. 1580; Laws 1965, c. 530, § 1, p. 1663; Laws 1965, c. 531, § 1, p. 1671; Laws 1967, c. 546, § 2, p. 1798; Laws 1969, c. 584, § 84, p. 2396; Laws 1969, c. 735, § 1, p. 2773; Laws 1971, LB 987, § 16; Laws 1975, LB 50, § 1; Laws 1984, LB 971, § 1; Laws 1985, LB 350, § 1; Laws 1986, LB 325, § 1; Laws 1986, LB 311, § 14; Laws 1987, LB 549, § 1; Laws 1988, LB 551, § 10; Laws 1988, LB 1170, § 1; Laws 1989, LB 506, § 9; Laws 1991, LB 549, § 24; Laws 1992, LB 1001, § 32; Laws 1994, LB 833, § 28; Laws 1996, LB 700, § 5; Laws 1996, LB 847, § 27; R.S. 1943, (1994), § 79-1501; Laws 1996, LB 900, § 537; Laws 1996, LB 1076, § 13; Laws 1996, LB 1273, § 23; Laws 1997, LB 347, § 26; Laws 1997, LB 623, § 12; Laws 1997, LB 624, § 16; Laws 1997, LB 724, § 3; Laws 1998, LB 1191, § 45; Laws 1999, LB 272, § 91; Laws 1999, LB 538, § 1; Laws 1999, LB 674, § 3; Laws 2000, LB 1192, § 9; Laws 2001, LB 408, § 13; Laws 2002, LB 407, § 22; Laws 2003, LB 451, § 18; Laws 2005, LB 329, § 2;

Laws 2005, LB 364, § 8; Laws 2005, LB 503, § 8; Laws 2006, LB 1019, § 8; Laws 2010, LB 950, § 11; Laws 2011, LB 509, § 17; Laws 2012, LB 916, § 19.

**Cross References**

Public Employees Retirement Board, see sections 84-1501 to 84-1513.  
Spousal Pension Rights Act, see section 42-1101.  
Wage and Hour Act, see section 48-1209.

**79-903. Retirement system; established; purpose.** A school retirement system is hereby established for the purpose of providing retirement allowances or other benefits for the school employees of the State of Nebraska as provided in the School Employees Retirement Act. It shall have the powers and privileges of a corporation, insofar as may be necessary to carry out the act, shall be known as the School Employees Retirement System of the State of Nebraska, and by such name shall transact all business as provided in the act.

**Source:** Laws 1945, c. 219, § 2, p. 640; R.S.Supp.,1947, § 79-2902; Laws 1949, c. 256, § 436, p. 842; Laws 1967, c. 486, § 41, p. 1530; Laws 1969, c. 584, § 85, p. 2400; Laws 1969, c. 735, § 2, p. 2777; Laws 1971, LB 987, § 17; Laws 1991, LB 549, § 25; R.S.1943, (1994), § 79-1502; Laws 1996, LB 900, § 538; Laws 2011, LB 509, § 18.

**Cross References**

For retirement system for employees of Class V school districts, see the Class V School Employees Retirement Act, section 79-978.01.

**79-904. School retirement system; administration; retirement board; powers and duties; rules and regulations.** The general administration of the retirement system, except the investment of funds, is hereby vested in the retirement board. The board shall, by a majority vote of its members, adopt bylaws and adopt and promulgate rules and regulations, from time to time, to carry out the School Employees Retirement Act. The board shall perform such other duties as may be required to execute the act.

**Source:** Laws 1945, c. 219, § 3, p. 640; R.S.Supp.,1947, § 79-2903; Laws 1949, c. 256, § 437, p. 842; Laws 1967, c. 486, § 42, p. 1530; Laws 1969, c. 584, § 86, p. 2400; Laws 1971, LB 987, § 18; Laws 1991, LB 549, § 26; Laws 1995, LB 369, § 5; Laws 1996, LB 847, § 29; R.S.Supp.,1995, § 79-1503; Laws 1996, LB 900, § 539; Laws 2011, LB 509, § 19.

**79-904.01. Board; power to adjust contributions and benefits.** (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the School Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c)

notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

(3) The board shall not refund contributions made on compensation in excess of the limitations imposed by subdivision (35) of section 79-902.

**Source:** Laws 1996, LB 1076, § 30; Laws 2011, LB 509, § 20.

**79-905. Retirement board; duties.** The retirement board shall:

(1) Determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of dispute between an individual and a department;

(2) Adopt rules and regulations for the management of the board;

(3) Prescribe the form in which employers report contributions, hours worked by school employees, payroll information, and other information necessary to carry out the board's duties;

(4) Keep a complete record of all proceedings taken at any meeting of the board;

(5) Employ a director and other assistance as may be necessary in the performance of its duties; and

(6) Obtain actuarial services pursuant to subdivision (2)(e) of section 84-1503.

**Source:** Laws 1967, c. 546, § 3, p. 1801; Laws 1969, c. 584, § 87, p. 2401; Laws 1991, LB 549, § 27; Laws 1995, LB 502, § 2; R.S.Supp., 1995, § 79-1503.01; Laws 1996, LB 900, § 540; Laws 1998, LB 1191, § 46; Laws 2000, LB 1192, § 10.

**79-906. Director; records; contents; employer education program.** (1) The director in charge of the retirement system shall keep a complete record of all members with respect to name, current address, age, contributions, and any other facts as may be necessary in the administration of the School Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various employers and state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1991, LB 549, § 28; R.S.1943, (1994), § 79-1503.02; Laws 1996, LB 900, § 541; Laws 2000, LB 1192, § 11; Laws 2005, LB 364, § 9; Laws 2005, LB 503, § 9; Laws 2012, LB 916, § 20.

**79-907. Statement of information; board; powers and duties.** (1)(a) On or before October 1, 2001, and at least every two years thereafter, the retirement board shall send to each contributing member of the retirement system by first-class mail, a statement of creditable service, reported salary, and other such information as is determined by the director of the Nebraska Public Employees Retirement Systems to be necessary in calculating the member's retirement benefit.

(b) If the member requests a modification or correction of his or her statement of information, the member shall provide documentation to the board supporting such modification or correction and provide clear and convincing evidence that the statement is in error. The board shall, within sixty days after receipt of the documentation supporting the modification or correction, determine whether the member has proven by clear and convincing evidence that the statement shall be modified or corrected. If the board determines that the member has provided clear and convincing evidence, the board shall modify or correct the statement. If the board determines that the member has not provided clear and convincing evidence, the board shall deny the modification or correction. In either case, the board shall notify the member. The member may appeal the decision of the board pursuant to section 79-950.

(c) The board has an ongoing fiduciary duty to modify or correct a member's statement if the board discovers an error in the information it has on record. A modification or correction shall be made within sixty days after the error is brought to the attention of the board.

(2) The board shall adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1998, LB 1191, § 47; Laws 2000, LB 1192, § 12; Laws 2004, LB 961, § 1; Laws 2005, LB 144, § 1.

**79-908. State Treasurer; duties.** The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

**Source:** Laws 1945, c. 219, § 6, p. 641; R.S.Supp.,1947, § 79-2906; Laws 1949, c. 256, § 440, p. 843; R.S.1943, (1994), § 79-1506; Laws 1996, LB 900, § 543; Laws 1997, LB 623, § 13.

**79-910. Retirement system; membership; separate employment; effect.** (1) The membership of the retirement system shall be composed of (a) all persons who have an account in the School Retirement Fund, (b) all school employees who on or after July 1, 2002, must participate in the retirement system pursuant to section 79-910.01 and who have begun participation in the retirement system, and (c) emeritus members. The membership of the retirement system does not include persons described in sections 79-915 and 79-919 who are specifically excluded from membership in the retirement system.

(2) The membership of the retirement system also includes any person who prior to July 1, 2002, qualified for membership as follows: (a) All persons who become school employees after September 1, 1945, except those specifically excluded under sections 79-916 and 79-919, shall become members as soon as they become senior school employees, as senior school employee was defined in section 79-902 prior to July 1, 2002; (b) senior school employees on July 1, 1945, except those specifically excluded in sections 79-916 and 79-919, shall be members of the retirement system as of July 1, 1945, unless prior to October 1, 1945, any such employee shall have filed with the retirement board and with his or her employer a notice of his or her election not to be included in the membership of the system and a duly executed waiver of all the present and prospective benefits which would otherwise inure to him or her on account of his or her membership in the retirement system; and (c) emeritus members.

(3) Any school employee who qualifies for membership in the retirement system pursuant to subsection (1) or (2) of this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

**Source:** Laws 1945, c. 219, § 9, p. 642; R.S.Supp.,1947, § 79-2909; Laws 1949, c. 256, § 443, p. 844; Laws 1951, c. 291, § 1, p. 964; Laws 1953, c. 315, § 2, p. 1045; Laws 1976, LB 30, § 1; Laws 1976, LB 673, § 2; Laws 1977, LB 349, § 1; Laws 1979, LB 391, § 5; Laws 1987, LB 549, § 2; R.S.1943, (1994), § 79-1509; Laws 1996, LB 900, § 545; Laws 1997, LB 624, § 17; Laws 2002, LB 407, § 23.

**79-910.01. Retirement system; participation.** (1) Each person employed by a public school who is a school employee and who is qualified to participate in the retirement system shall participate in the retirement system.

(2) Public schools shall ensure that all school employees who qualify for participation pursuant to this section shall begin annual participation on July 1 of each plan year or upon such person's date of hire, if later than July 1, and that all required deposits are made on behalf of such employees.

**Source:** Laws 2002, LB 407, § 26; Laws 2010, LB 950, § 12.

**79-911. Retirement system; emeritus member; retirement, when.** Any emeritus member may retire upon his or her application to the retirement board, to be effective upon the termination of his or her employment in any public school or in any position covered by the retirement system.

**Source:** Laws 1953, c. 315, § 3, p. 1046; R.S.1943, (1994), § 79-1509.01; Laws 1996, LB 900, § 546; Laws 2000, LB 1192, § 13.

**79-912. Retirement system; employees previously electing nonmembership; election to hold membership; effect.** All school employees not required to hold a certificate, diploma, or credentials to practice in a professional capacity who had previously elected not to be included in the retirement system pursuant to section 79-910 may, after January 1, 1978, and prior to July 1, 1978, file with the retirement board an election to be included in the membership of the retirement system, but such employees shall be treated as new employees and no service credit shall be granted for the years the employees elected out of the retirement system.

**Source:** Laws 1977, LB 349, § 2; Laws 1991, LB 549, § 29; R.S.1943, (1994), § 79-1509.02; Laws 1996, LB 900, § 547.

**79-913. Retirement system; membership; election of nonmembership; when.** All school employees not required to hold a certificate, diploma, or credentials to practice in a professional capacity who are employed after January 1, 1978, and prior to July 1, 1978, shall have until June 30, 1978, to file with the retirement board an election not to be included in the membership of the retirement system established pursuant to the School Employees Retirement

Act. The election shall be in writing on forms prescribed by the retirement board, and any person so electing waives all rights within the system except to a refund of his or her accumulated contributions. All such employees employed on or after July 1, 1978, shall become members of such retirement system as soon as they are employed and shall not have a right to elect out of such retirement system.

**Source:** Laws 1977, LB 349, § 3; R.S.1943, (1994), § 79-1509.03; Laws 1996, LB 900, § 548.

**79-915. Retirement system; membership; requirements.** (1) Persons residing outside of the United States and engaged temporarily as school employees in the State of Nebraska shall not become members of the retirement system.

(2) On and after July 1, 2010, no school employee shall be authorized to participate in the retirement system provided for in the School Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

**Source:** Laws 1945, c. 219, § 11, p. 642; R.S.Supp.,1947, § 79-2911; Laws 1949, c. 256, § 445, p. 845; R.S.1943, (1994), § 79-1511; Laws 1996, LB 900, § 550; Laws 2010, LB 950, § 13.

**79-916. Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.** (1)(a) On July 1, 2004, the board shall transfer from the School Retirement Fund to the Service Annuity Fund an amount equal to the funded ratio of the retirement system which is equal to the market value of the retirement system assets divided by the actuarial accrued liability of the retirement system, times the actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Such actuarial accrued liability shall be determined for each employee on a level dollar basis. On or before July 1 of each fiscal year thereafter, the state shall deposit into the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, as of the end of the previous fiscal year of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Based on the fiscal year of the retirement system established pursuant to the Class V School Employees Retirement Act, the administrator of such system shall provide all membership information needed for the actuary engaged by the retirement board to determine the normal cost and the amortization payment of the unfunded actuarial accrued liability, as determined pursuant to section 79-966.01, to be paid by the state to the Service Annuity Fund each fiscal year as required by this subdivision.

(b) At the time of retirement of any employee who is a member of the retirement system established pursuant to the Class V School Employees Retirement Act, the retirement board shall, upon receipt of a certification of the administrator of such retirement system of the name, identification number, date of birth, retirement date, last date of employment, type of retirement, and number of years of service credited to such eligible employee at the date of retirement, transfer to such retirement system from the Service Annuity Fund the actuarial accrued liability of the service annuity to be paid by the state to the eligible employee for the years of service thus certified as provided for members of the School Employees Retirement System of the State of

Nebraska under sections 79-933 and 79-952. Such transfer of the actuarial accrued liability to the retirement system established pursuant to the Class V School Employees Retirement Act shall be in lieu of the payment of the service annuity to which the employee would be entitled.

(c) The Service Annuity Fund is created. The fund shall consist of the amounts paid by the state and transferred from the School Retirement Fund pursuant to this section to pay the service annuity to be paid by the state to employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Any money in the Service Annuity Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) In addition to the transfer of the actuarial accrued liability of the service annuity to be paid by the state, the state shall also transfer to the funds of the Class V school district's retirement system an amount determined by multiplying the compensation of all members of such retirement system by the percent specified in subsection (2) of section 79-966 for determining the amount of the state's payment to the School Retirement Fund. The transfer shall be made annually on or before July 1 of each fiscal year.

**Source:** Laws 1945, c. 219, § 12, p. 642; R.S.Supp.,1947, § 79-2912; Laws 1949, c. 256, § 446, p. 845; Laws 1951, c. 292, § 1, p. 970; Laws 1965, c. 530, § 2, p. 1667; Laws 1967, c. 547, § 2, p. 1810; Laws 1967, c. 546, § 5, p. 1802; Laws 1969, c. 735, § 3, p. 2777; Laws 1971, LB 987, § 21; Laws 1984, LB 457, § 1; Laws 1987, LB 549, § 3; Laws 1988, LB 1170, § 2; Laws 1991, LB 549, § 30; R.S.1943, (1994), § 79-1512; Laws 1996, LB 900, § 551; Laws 1997, LB 623, § 14; Laws 1998, LB 1191, § 48; Laws 2002, LB 407, § 24; Laws 2004, LB 1097, § 23; Laws 2011, LB 509, § 21.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.  
Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**79-917. New employee; participation in another governmental plan; how treated.** Within the first thirty days of employment, a school employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time or a part-time employee as defined in the Nebraska governmental plan in which the credit was earned. Such credit shall not be included as years of service in the benefit calculation. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

**Source:** Laws 1995, LB 501, § 5; R.S.Supp.,1995, § 79-1514.10; Laws 1996, LB 900, § 552; Laws 2000, LB 1192, § 14; Laws 2002, LB 407, § 25.

**79-918. Current employee; participation in another governmental plan; how treated.** For one year after September 9, 1995, any school employee employed on or before September 9, 1995, may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time or a part-time employee as described in section 79-902. Such credit shall not be included as years of service in the benefit calculation.

**Source:** Laws 1995, LB 501, § 6; R.S.Supp.,1995, § 79-1514.11; Laws 1996, LB 900, § 553.

**79-919. Retirement system; membership; employees of postsecondary schools excluded.** Any person who is employed by the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors shall not come under the provisions of the School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 13, p. 643; R.S.Supp.,1947, § 79-2913; Laws 1949, c. 256, § 447, p. 845; Laws 1971, LB 987, § 22; Laws 1991, LB 549, § 31; R.S.1943, (1994), § 79-1513; Laws 1996, LB 900, § 554; Laws 1996, LB 1076, § 15.

**79-920. State school official; department employee; retirement system options.** (1) An individual who was, prior to July 19, 1980, a state school official and did not become a member of the State Employees Retirement System of the State of Nebraska pursuant to the State Employees Retirement Act may, within sixty days after September 1, 1986, elect to become a member of such system. An individual so electing shall pay the contributions required by such system when the service and minimum age requirements have been met.

(2)(a) An individual (i) who is or was previously a school employee or who was employed in an out-of-state or a Class V school district, (ii) who becomes employed by the State Department of Education after July 1, 1989, and (iii) who is a state school official may file with the retirement board within thirty days after employment an election to become or remain a member of the School Employees Retirement System of the State of Nebraska. Employees electing not to participate in the School Employees Retirement System shall participate in the State Employees Retirement System of the State of Nebraska.

(b) An individual shall be required to participate in the State Employees Retirement System if (i) the individual terminated employment from a public school participating in the School Employees Retirement System and retired pursuant to the School Employees Retirement Act and (ii) the employment by the State Department of Education began or will begin within one hundred eighty days after terminating employment from the school.

(3) An employee electing not to be covered by the School Employees Retirement System of the State of Nebraska under this section shall not be subject to section 79-957 but shall be allowed to retain his or her accumulated contribution in the system and continue to become vested in the state's accumulated contribution as well as the State Employees Retirement System of the State of Nebraska according to the following:

(a) The years of participation in the School Employees Retirement System of the State of Nebraska before an election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with the service requirements provided under section 79-931; and

(b) The years of participation in the School Employees Retirement System of the State of Nebraska before the election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with section 84-1321.

**Source:** Laws 1980, LB 818, § 2; Laws 1986, LB 325, § 13; Laws 1986, LB 311, § 22; Laws 1989, LB 506, § 12; R.S.1943, (1994), § 79-1565; Laws 1996, LB 900, § 555; Laws 1997, LB 623, § 15; Laws 2010, LB 950, § 14; Laws 2011, LB 509, § 22.

**Cross References**

State Employees Retirement Act, see section 84-1331.

**79-921. Retirement system; membership; termination; reinstatement; repayment of accumulated contributions; exception.** (1) The membership of any person in the retirement system shall cease only if he or she (a) withdraws his or her accumulated contributions under section 79-955, (b) retires on a school or formula or disability retirement allowance, or (c) dies.

(2) The retirement board shall reinstate to membership, with the same status as when such membership ceased, a school employee who has withdrawn his or her accumulated contributions under the following conditions:

(a) If he or she again becomes an employee and if such employee chooses within three years after rejoining the system to repay, within five years after the date on which he or she rejoins the retirement system or prior to termination of employment, whichever is first, to the retirement board part or all of the amount he or she has withdrawn plus interest which would have accrued on that amount under the retirement system; or

(b) If, more than three years after again becoming an employee and rejoining the system but prior to termination of employment, he or she chooses to repay part or all of the amount he or she has withdrawn, plus an amount equal to the actuarial assumed rate of return for the period repaid. Payment must be completed within five years after electing to repay or prior to termination, whichever is earlier.

(3) Prior creditable service shall be restored in proportion to the amounts repaid. A member's prior creditable service shall be fully restored only if the member has repaid all accumulated withdrawals in accordance with either subdivision (2)(a) or (2)(b) of this section, as applicable. Repayment may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization. If the school employee chooses not to repay such withdrawals with interest, the school employee shall enter the system as a new member with no prior rights.

**Source:** Laws 1945, c. 219, § 14, p. 643; R.S.Supp., 1947, § 79-2914; Laws 1949, c. 256, § 448, p. 845; Laws 1969, c. 735, § 4, p. 2778; Laws 1986, LB 311, § 16; Laws 1986, LB 325, § 2; R.S. 1943, (1994), § 79-1514; Laws 1996, LB 900, § 556; Laws 1996, LB 1076, § 16; Laws 1997, LB 623, § 16; Laws 1997, LB 624, § 18; Laws 1999, LB 703, § 9; Laws 2001, LB 408, § 14; Laws 2004, LB 1097, § 24.

**79-922. Retiree; return to employment; effect; waiver of payments.** (1) Commencing on September 13, 1997, a beneficiary retired under the School Employees Retirement Act who returns to employment as a school employee, except for members retired under sections 79-951 to 79-954, shall continue receiving retirement benefits and shall be treated for all purposes of the act as a new school employee. A new member account shall be created for such school employee, and the member shall make contributions to such new account and shall receive service credit only for future service commencing from the date of reemployment.

(2) A person receiving a retirement benefit may accept employment in a postsecondary school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, a community college board of governors for any community college area established by section 85-1504, or any other state agency without having to waive retirement payments, without having to notify the retirement board, and without being subject to any withholding of future retirement payments relating to any retirement system which is provided for a public school.

**Source:** Laws 1985, LB 350, § 3; Laws 1991, LB 549, § 32; R.S.1943, (1994), § 79-1514.01; Laws 1996, LB 900, § 557; Laws 1996, LB 1076, § 17; Laws 1997, LB 624, § 19; Laws 1998, LB 1191, § 49.

**79-923. Reretirement; benefits; how computed.** Until July 1, 1985, if a member of the retirement system retires, again becomes a school employee and a member of the retirement system, and then reretires, the member's benefit upon reretirement shall consist of his or her original retirement benefit and the additional benefit earned as a result of employment following prior retirement. The original benefit shall be reinstated and shall continue in the same amount and in the same form or option as was previously elected. The additional benefit earned shall be computed as follows:

(1) A benefit shall be calculated based on the member's total service and compensation record and the statutes in effect at the time of reretirement. This benefit shall not be reduced for early retirement and shall be calculated under the life-only option;

(2) The member's original retirement benefit shall be calculated under the life-only option without any adjustments for early retirement, deferred retirement, or election of optional forms; and

(3) The additional benefit earned shall be the excess, if any, of the benefit calculated in subdivision (1) of this section over the benefit calculated in subdivision (2) of this section, adjusted if necessary to reflect early retirement or the election of an optional form other than the life-only option.

**Source:** Laws 1985, LB 350, § 2; R.S.1943, (1994), § 79-1514.02; Laws 1996, LB 900, § 558.

**79-924. Credit for prior years of service; payment; rules and regulations; election; provisions applicable.** The retirement board shall adopt and promulgate rules and regulations to allow for lump-sum or installment payments for school employees who elect to buy credit for prior years of service under sections 79-921, 79-933.03 to 79-933.06, and 79-933.08. Any person who elects to buy credit for prior years of service on an installment basis may be charged reasonable service costs, shall be credited with those prior years of service only as the money is actually received by the retirement system, and shall have paid to the retirement system all installments prior to the commencement of a retirement annuity.

**Source:** Laws 1986, LB 325, § 6; Laws 1990, LB 819, § 1; R.S.1943, (1994), § 79-1514.05; Laws 1996, LB 900, § 559; Laws 1996, LB 1076, § 18; Laws 1997, LB 724, § 4.

**79-925. Retirement system; prior member; repayment authorized; limitation.** Any person who is now a school employee or becomes a school employee and who had elected out of the retirement system between July 1, 1945, and October 1, 1945, and subsequently elected into the retirement system may elect to repay the retirement system for any number of years of service for which he or she would have contributed had he or she not elected out of the retirement system. The amount to be repaid shall not exceed the amount of the contributions which would have been paid into the retirement system based on the compensation and years of service as a school employee as verified by school officials plus the interest which would have accrued on the amount under the retirement system. This section shall not apply to school employees who retire prior to January 1, 1987.

**Source:** Laws 1987, LB 549, § 4; Laws 1991, LB 549, § 33; R.S.1943, (1994), § 79-1514.06; Laws 1996, LB 900, § 560.

**79-926. Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.** (1) Under such rules and regulations as the retirement board adopts and promulgates, each person who was a school employee at any time prior to the establishment of the retirement system and who becomes a member of the retirement system shall, within two years after becoming a member, file a detailed statement of all service as a school employee rendered by him or her prior to the date of establishment of the retirement system. In order to qualify for prior service credit toward a service annuity, a school employee, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, must have completed four years of service on a part-time or full-time basis during the five calendar years immediately preceding July 1, 1945, or have completed eighteen years out of the last twenty-five years prior to July 1, 1945, full time or part time, and two years out of the five years immediately preceding July 1, 1945, full time or part time, or such school employee must complete, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, four years of service within the five calendar years immediately following July 1, 1945. In order to qualify for prior service credit toward a service annuity, a school employee who becomes a member of the retirement system on or before September 30, 1951, or from July 1, 1945, to the date of becoming a member shall have been continuously employed in a public school in Nebraska operating under any other regularly established retirement or pension system.

(2) Any person who, after having served or signing a contract to serve as a school employee, entered into and served or enters into and serves in the armed forces of the United States during a declared emergency or was drafted under a federal mandatory draft law into the armed forces of the United States during a time of peace, as described and prescribed under such rules and regulations as the retirement board adopts and promulgates, and who, within three calendar years after honorable discharge or honorable separation from active duty or within one year from the date of completion of training provided in the federal Servicemen's Readjustment Act of 1944 or the federal Veterans' Readjustment Assistance Act of 1952, became or becomes a school employee shall be credited, in determining benefits due such member from the retirement system, for a maximum of five years of the time actually served in the armed forces as if such person had been a school employee throughout such time.

(3) Under such rules and regulations as the retirement board adopts and promulgates, any school employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of his or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan. The employer shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

**Source:** Laws 1945, c. 219, § 15, p. 643; R.S.Supp.,1947, § 79-2915; Laws 1949, c. 256, § 449, p. 845; Laws 1951, c. 291, § 2, p. 965; Laws 1953, c. 316, § 1, p. 1048; Laws 1975, LB 236, § 1; Laws 1992, LB 1001, § 33; Laws 1996, LB 847, § 30; R.S.1943, (1994), § 79-1515; Laws 1996, LB 900, § 561; Laws 1998, LB 1191, § 50; Laws 2011, LB 509, § 23.

**79-927. Service credit; computation.** (1) The board shall grant service credit pursuant to this section on an annual basis to members who participate during each fiscal year.

(2) For a member who is subject to the wage and hour provisions of the federal Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as such sections existed on January 1, 2002, service credit shall be calculated as follows:

(a) For each year during which a member provides compensated service to one or more school districts for one thousand or more hours, the member shall be credited one year of service credit; and

(b) For each year during which a member provides less than one thousand hours of compensated service to one or more school districts, the member shall be credited one one-thousandth of a year's service credit for each hour worked.

(3) For a member who is exempt from the wage and hour provisions of the federal Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as such sections existed on January 1, 2002, service credit shall be calculated as follows:

(a) Full-time service rendered for the regular school year in one or more public schools shall be equivalent to one year's service;

(b) Part-time service in one or more public schools shall be credited as individual years of fractional employment in proportion to the ratio the part-time service bears to the amount of time considered to be full-time service for the plan year; and

(c) If a member is employed for less than the full plan year, the member shall be granted a fractional year of service credit calculated pursuant to subdivision (a) or (b) of this subsection for only that portion of the plan year the member was employed.

(4) The board may adopt and promulgate rules and regulations for the granting of service credit in accordance with this section, but in no case shall more than one year of service be granted for all service in one plan year.

**Source:** Laws 1945, c. 219, § 16, p. 644; R.S.Supp.,1947, § 79-2916; Laws 1949, c. 256, § 450, p. 846; Laws 1971, LB 987, § 23; Laws 1986, LB 546, § 1; Laws 1991, LB 549, § 34; R.S.1943, (1994), § 79-1516; Laws 1996, LB 900, § 562; Laws 2002, LB 407, § 27.

**79-928. Board; verify service record.** Subject to the restrictions in the School Employees Retirement Act and to such rules and regulations as the retirement board may adopt, the retirement board shall verify, as soon as practicable after the filing of statements of service, the service claimed in the statements.

**Source:** Laws 1945, c. 219, § 17, p. 644; R.S.Supp.,1947, § 79-2917; Laws 1949, c. 256, § 451, p. 846; R.S.1943, (1994), § 79-1517; Laws 1996, LB 900, § 563.

**79-929. Board; issue prior service certificate; modification.** Upon verification of the statements of service, the retirement board shall issue prior service certificates stating, for each member with a valid claim, the length of service in this state, rendered prior to the day of the establishment of the retirement system, with which the member is credited on the basis of his or her proof of service. Any member may, within one year from the date of issuance or modification of such certificate, request the retirement board to modify or correct his or her prior service certificate.

**Source:** Laws 1945, c. 219, § 18, p. 644; R.S.Supp.,1947, § 79-2918; Laws 1949, c. 256, § 452, p. 847; Laws 1951, c. 293, § 1, p. 972; R.S.1943, (1994), § 79-1518; Laws 1996, LB 900, § 564.

**79-931. Retirement; when; application.** (1) Upon filing a retirement application with the retirement system, a member who has completed thirty-five years of creditable service may retire at any age, a member who has completed at least five years of (a) creditable service plus (b) eligibility and vesting credit and is at least sixty years of age may retire, or a member who is at least sixty-five years of age upon termination may retire.

(2) Upon filing a retirement application with the retirement system, a member may retire upon termination if the member is at least fifty-five years of age, has acquired the equivalent of one-half year of service as a public school employee under the retirement system following July 1, 1997, and was a school employee on or after March 4, 1998, and the sum of the member's attained age and creditable service totals eighty-five.

**Source:** Laws 1945, c. 219, § 21, p. 645; R.S.Supp.,1947, § 79-2921; Laws 1949, c. 256, § 454, p. 847; Laws 1987, LB 549, § 5; Laws 1989, LB 506, § 10; R.S.1943, (1994), § 79-1520; Laws 1996, LB 900, § 566; Laws 1996, LB 1076, § 19; Laws 1998, LB 822, § 1.

**79-932. Retirement; deferment of payment; board; duties.** (1) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the member has both attained at least age seventy and one-half years and terminated his or her employment with the school system.

(2) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 22, p. 645; R.S.Supp.,1947, § 79-2922; Laws 1949, c. 256, § 455, p. 847; Laws 1951, c. 291, § 3, p. 966; Laws 1969, c. 735, § 5, p. 2779; Laws 1975, LB 44, § 1; Laws 1979, LB 391, § 6; Laws 1981, LB 463, § 1; Laws 1982, LB 287, § 4; Laws 1986, LB 311, § 17; Laws 1987, LB 296, § 3; Laws 1987, LB 549, § 6; R.S.1943, (1994), § 79-1521; Laws 1996, LB 900, § 567; Laws 2003, LB 451, § 19.

**Cross Reference**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**79-933. Retirement; member; amount of allowance.** (1) Upon retirement under section 79-931, a member or emeritus member shall receive a school retirement allowance which shall consist of the sum of: (a) A savings annuity which shall be the actuarial equivalent, as determined by the retirement board, of the member's accumulated contributions at the time of his or her retirement or, in the case of an emeritus member, the savings annuity fixed by the retirement board at the time of his or her original retirement; and (b) a service annuity to be paid by the State of Nebraska.

(2) The amount of any individual service annuity for (a) a full-time school employee hired on or before April 1, 1988, who retires with thirty-five or more years of service or who retires under the provisions of disability retirement, (b) a full-time school employee who provided compensated service after April 1, 1988, but prior to July 19, 1996, if the service annuity commences on or after the member's sixty-fifth birthday, who retires with thirty-five or more years of service or who retires under the provisions of disability retirement, or (c) an

emeritus member shall be three dollars and fifty cents per month for each year of creditable service commencing with his or her retirement on or after May 19, 1981. For employees not enumerated in subdivision (a) or (b) of this subsection or for employees hired on or after July 19, 1996, if the service annuity commences prior to the member's sixty-fifth birthday, it shall be on an actuarially reduced basis. Each school employee or emeritus member who retired before July 1, 1973, and who is receiving a service annuity as of that date shall have such service annuity adjusted by the increase in the cost of living as determined by the difference between the Consumer Price Index for Urban Wage Earners and Clerical Workers from the date the service annuity commenced and July 1, 1973, except that such annuity shall not exceed three dollars and fifty cents monthly per year of service based on the same number of years of service that is currently being used to determine his or her service annuity. Such increased service annuity shall commence on July 1, 1973.

**Source:** Laws 1945, c. 219, § 23, p. 645; R.S.Supp., 1947, § 79-2923; Laws 1949, c. 256, § 456, p. 847; Laws 1951, c. 291, § 4, p. 966; Laws 1953, c. 315, § 4, p. 1046; Laws 1959, c. 382, § 6, p. 1326; Laws 1959, c. 414, § 1, p. 1387; Laws 1963, c. 495, § 2, p. 1383; Laws 1965, c. 531, § 2, p. 1674; Laws 1967, c. 546, § 6, p. 1803; Laws 1969, c. 735, § 6, p. 2779; Laws 1973, LB 445, § 1; Laws 1981, LB 248, § 1; Laws 1981, LB 369, § 2; Laws 1986, LB 325, § 5; Laws 1986, LB 311, § 18; Laws 1987, LB 549, § 7; Laws 1991, LB 549, § 35; R.S. 1943, (1994), § 79-1522; Laws 1996, LB 900, § 568; Laws 1996, LB 1076, § 20; Laws 2008, LB 1147, § 8.

**79-933.01. Direct rollover; terms, defined; distributee; powers; board; duties. (1)**

For purposes of this section and section 79-933.02:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 79-933.02, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of

a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 31; Laws 2002, LB 407, § 28; Laws 2012, LB 916, § 21.

**79-933.02. Retirement system; accept payments and rollovers; limitations; board; duties.** (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such sections and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 32; Laws 1997, LB 623, § 17; Laws 1997, LB 724, § 5; Laws 2002, LB 407, § 29.

**79-933.03. Contributing member; credit for service in other schools; limitation; procedure; payment.** (1) Under such rules and regulations as the board shall adopt and promulgate, a contributing member under contract or employed on July 19, 1996, may receive credit for not to exceed ten years of creditable teaching service rendered in public schools in another state or schools in this state covered by a school retirement system established pursuant to section 79-979, if such member files an application for service credit within three years of membership or reinstatement in the School Employees Retirement System of the State of Nebraska and makes payment into the retirement system of an amount equal to the required deposits he or she would have paid had he or she been employed in this state by a school covered by the retirement system, plus the interest which would have accrued on such amount. Payment must be completed within five years of membership or reinstatement in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to subsection (1) of this section to the extent that the member does not receive credit for such service.

(3) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

**Source:** Laws 1996, LB 1076, § 22; Laws 1997, LB 623, § 18; Laws 1998, LB 1191, § 51; Laws 1999, LB 703, § 10; Laws 2011, LB 509, § 24.

**79-933.04. Contributing member; credit for leave of absence; limitation; procedure; payment.** (1) For contributing members under contract or employed on July 19, 1996, and under such rules and regulations as the board shall adopt and promulgate, any member who was away from his or her position while on a leave of absence from such position authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for such time as he or she was on such leave of absence. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on compensation at the level received immediately prior to the leave of absence. Such credit shall be allowed if such member has paid into the retirement system an amount equal to the sum of the deductions from his or her compensation and any contribution which the school district would have been required to make had he or she continued to receive compensation at the level received immediately prior to the leave of absence with such deposits plus interest which would have

accrued on such deposits to be paid as the retirement board may direct within five years of his or her return to membership in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence and must apply for such credit within three years of the return to membership in the retirement system.

**Source:** Laws 1996, LB 1076, § 23; Laws 1997, LB 623, § 19; Laws 1999, LB 703, § 11.

**79-933.05. Contributing member; credit for service in other schools; limitation; procedure; payment.** (1) A contributing member may purchase service credit for not to exceed ten years of creditable service rendered in public schools in another state or schools in this state covered by the school retirement system established pursuant to section 79-979. The amount to be paid by the member for such service credit shall equal the actuarial cost to the School Employees Retirement System of the State of Nebraska for allowing such additional service credit to the employee. Payment shall be completed within five years after making the election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to this section to the extent that the member does not receive credit for such service.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

**Source:** Laws 1996, LB 1076, § 24; Laws 1997, LB 623, § 20; Laws 1998, LB 1191, § 52; Laws 1999, LB 703, § 12; Laws 2001, LB 408, § 15; Laws 2011, LB 509, § 25.

**79-933.06. Contributing member; credit for leave of absence; limitation; procedure; payment.** (1) Any contributing member may purchase service credit for time he or she was on a leave of absence authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district. Such credit shall increase the benefits provided

by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination of employment, and retirement benefits. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system for allowing such additional service credit to the employee. Payment shall be completed within five years after such member's election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. Such leave shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

**Source:** Laws 1996, LB 1076, § 25; Laws 1997, LB 623, § 21; Laws 1999, LB 703, § 13; Laws 2001, LB 408, § 16; Laws 2002, LB 407, § 30; Laws 2011, LB 509, § 26.

**79-933.07. Purchase of service credit; rules and regulations.** The board shall adopt and promulgate rules and regulations for the purchase of service credit, which shall include, but not be limited to, the method for determining actuarial cost and interest requirements for payments other than one lump-sum payment.

**Source:** Laws 1996, LB 1076, § 26.

**79-933.08. Purchase of service credit within twelve months of retirement; agreement authorized.** (1) An employer and a school employee who has completed at least five years of creditable service plus eligibility and vesting credit may by agreement made in contemplation of retirement, to be effective within twelve months of the agreement, purchase service credit for such employee for not to exceed five years of creditable service. Such an agreement may be executed up to twelve months prior to the employee's retirement date. The agreement shall specify whether the school employee shall pay for the service credits, whether the employer shall pay for the service credits, or whether both the employee and employer shall share the cost of the service credits. Such service credits shall be purchased for an amount equal to the actuarial cost to the retirement system for allowing such additional service credit to the employee.

(2) Payment for such service credits shall be completed prior to the employee's termination of employment date and may be made through direct payment, installment payments, or an irrevocable deduction authorization. If payments are made on an installment basis, interest shall be charged at the rate of regular interest.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) The retirement board shall credit funds collected pursuant to this section to the Contingent Account pending the employee's retirement. If the employee does not retire within twelve months after the signing of the agreement made pursuant to this section, such funds shall

be refunded, excluding interest earned, and the employee shall not be given credit for the service credit attempted to be purchased.

**Source:** Laws 1997, LB 724, § 1; Laws 1999, LB 703, § 14.

**79-933.09. Retirement system; accept transfers; limitations; how treated.** The retirement system may accept as payment for purchases of service credit or withdrawn amounts made pursuant to the School Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such credit or amounts. The amount transferred shall not exceed the amount of payment required for the service credit being purchased and the purchase of such service credit shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 31.

**79-934. Formula annuity retirement allowance; eligibility; formula; payment.** (1) In lieu of the school retirement allowance provided by section 79-933, any member who is not an employee of a Class V school district and who becomes eligible to make application for and receive a school retirement allowance under section 79-931 may receive a formula annuity retirement allowance if it is greater than the school retirement allowance provided by section 79-933.

(2) Subject to the other provisions of this section, the monthly formula annuity in the normal form shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the service annuity provided by section 79-933 by (a) one and one-quarter percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following August 24, 1975, (b) one and one-half percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 17, 1982, (c) one and sixty-five hundredths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1984, (d) one and seventy-three hundredths percent of his or her final average compensation for a member actively employed as a public school employee under the retirement system or under contract with an employer on or after June 5, 1993, (e) one and eight-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1995, and was employed as a public school employee under the retirement system or under contract with an employer on or after April 10, 1996, (f) one and nine-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1998, and was employed as a public school employee under the retirement system or under contract with an employer on or after April 29, 1999, or (g) two percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 2000, who was employed as a public school

employee under the retirement system or under contract with an employer on or after May 2, 2001, and who has not retired prior to May 2, 2001. Subdivision (2)(f) of this section shall not apply to a member who is retired prior to April 29, 1999. Subdivision (2)(g) of this section shall not apply to a member who is retired prior to May 2, 2001.

(3) If the annuity begins on or after the sixty-fifth birthday of a member, the annuity shall not be reduced. If the annuity begins prior to the sixty-fifth birthday of the member and the member has completed thirty or more years of creditable service and is at least sixty years of age, the annuity shall not be reduced. If the annuity begins prior to the sixtieth birthday of the member and the member has completed thirty-five or more years of creditable service, the annuity shall be actuarially reduced on the basis of age sixty-five. If the annuity begins on or after the sixtieth birthday of the member and the member has completed at least a total of five years of (a) creditable service plus (b) eligibility and vesting credit but less than thirty years of creditable service, the annuity shall be reduced by three percent for each year by which the member's age is less than the age at which the member's age plus years of creditable service would have totaled ninety or three percent for each year after the member's sixtieth birthday and prior to his or her sixty-fifth birthday, whichever provides the greater annuity.

(4) For retirements on or after March 4, 1998, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least fifty-five years of age, the annuity shall not be reduced. This subsection shall only apply to a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1997, and who was a school employee on or after March 4, 1998. This subsection shall not apply to a member who is retired prior to March 4, 1998.

(5) Except as provided in section 42-1107, the normal form of the formula annuity shall be an annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before sixty monthly payments have been made the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made. Except as provided in section 42-1107, a member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any optional form provided by section 79-938.

(6) All formula annuities shall be paid from the School Retirement Fund.

**Source:** Laws 1967, c. 546, § 7, p. 1804; Laws 1969, c. 736, § 1, p. 2785; Laws 1975, LB 50, § 2; Laws 1981, LB 248, § 2; Laws 1982, LB 609, § 1; Laws 1984, LB 457, § 2; Laws 1986, LB 546, § 2; Laws 1986, LB 325, § 7; Laws 1987, LB 549, § 8; Laws 1988, LB 160, § 1; Laws 1988, LB 1170, § 3; Laws 1991, LB 549, § 36; Laws 1993, LB 292, § 2; Laws 1996, LB 700, § 9; R.S.1943, (1994), § 79-1522.01; Laws 1996, LB 900, § 569; Laws 1996, LB 1050, § 7; Laws 1996, LB 1076, § 21; Laws 1996, LB 1273, § 24; Laws 1998, LB 822, § 2; Laws 1999, LB 674, § 4; Laws 2001, LB 711, § 2; Laws 2002, LB 407, § 32.

**79-935. Retirement; increase in benefits; when applicable.** No provision of section 79-916, 79-934, 79-958, 79-960, or 79-966 which would result in an increase in benefits that would have been payable prior to July 1, 1984, shall apply to any person until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1984.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to July 1, 1986, shall apply to any person

until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1986.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to April 1, 1988, shall apply to any person unless he or she is employed on such date and has acquired five hundred sixteen or more hours as a school employee under the retirement system during or after fiscal year 1987-88.

**Source:** Laws 1984, LB 457, § 7; Laws 1986, LB 325, § 8; Laws 1988, LB 160, § 2; R.S.1943, (1994), § 79-1522.02; Laws 1996, LB 900, § 570.

**79-938. Retirement allowance; method of payment; election.** At any time before the retirement date a member may elect to receive his or her school retirement allowance or disability retirement allowance under any optional form specified in the group annuity contract, if one exists, or under any optional form permitted by the retirement board, if no group annuity contract exists. Such optional annuity shall be the actuarial equivalent of the normal form of the annuity.

**Source:** Laws 1945, c. 219, § 31, p. 648; R.S.Supp.,1947, § 79-2931; Laws 1949, c. 256, § 464, p. 850; Laws 1951, c. 291, § 5, p. 967; Laws 1967, c. 546, § 8, p. 1806; Laws 1969, c. 735, § 9, p. 2781; R.S.1943, (1994), § 79-1530; Laws 1996, LB 900, § 573.

**79-939. Retirement system; benefits; paid by retirement board.** All benefits under the retirement system shall be paid as directed by the retirement board. Except as provided in section 79-916, no member shall receive a retirement benefit from the retirement system covering years for which he or she is being paid a benefit under the Class V School Employees Retirement Act.

**Source:** Laws 1967, c. 546, § 18, p. 1809; Laws 1969, c. 584, § 90, p. 2401; R.S.1943, (1994), § 79-1557; Laws 1996, LB 900, § 574; Laws 1997, LB 623, § 24; Laws 1998, LB 497, § 1.

**Cross Reference**

Class V School Employees Retirement Act, see section 79-978.01.

**79-941. Total monthly benefit, defined; how computed.** For purposes of sections 79-941 to 79-946, unless the context otherwise requires, total monthly benefit means the benefit that would have been received under a monthly life annuity with no refund or death benefit option even though a different option, as provided in section 79-938, has been selected. The total monthly benefit shall be computed as if the person had retired at age sixty-five or at the actual age of retirement, whichever is later.

**Source:** Laws 1980, LB 228, § 2; R.S.1943, (1994), § 79-1559; Laws 1996, LB 900, § 576; Laws 2011, LB 509, § 27.

**79-942. Supplemental retirement benefit; how computed.** For each person who qualifies under sections 79-941 to 79-946, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V districts as provided by the Class V School Employees Retirement Act. From one hundred fifty-five dollars, the retirement board

shall subtract the total monthly benefit. Such difference, if positive, shall be the supplemental benefit and shall be paid to the retired person each month from the School Retirement Fund, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person.

**Source:** Laws 1980, LB 228, § 3; Laws 1981, LB 141, § 2; R.S.1943, (1994), § 79-1560; Laws 1996, LB 900, § 577; Laws 1998, LB 497, § 3; Laws 2004, LB 1097, § 25; Laws 2011, LB 509, § 28.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**79-943. Supplemental retirement benefit; not applicable; when.** Section 79-942 shall not apply to any retired person who receives a service annuity less than the amount provided in sections 79-933 and 79-938.

**Source:** Laws 1980, LB 228, § 4; Laws 1981, LB 141, § 3; R.S.1943, (1994), § 79-1561; Laws 1996, LB 900, § 578.

**79-944. Supplemental retirement benefit; receipt by beneficiary.** If a beneficiary is receiving the annuity provided through the School Employees Retirement System of the State of Nebraska or through the retirement system for Class V districts as provided by the Class V School Employees Retirement Act, the supplemental benefit shall be the benefit that would be computed under section 79-942 had the deceased retired person still been alive. The beneficiary will continue to receive the supplemental benefit until the expiration of the annuity option selected by the member.

**Source:** Laws 1980, LB 228, § 5; Laws 1981, LB 141, § 4; R.S.1943, (1994), § 79-1562; Laws 1996, LB 900, § 579; Laws 1998, LB 497, § 4; Laws 2011, LB 509, § 29.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**79-945. Supplemental retirement benefit; receipt by beneficiary; duration.** If a retiree eligible for the supplemental benefit under section 79-942 dies subsequent to July 19, 1980, the beneficiary shall be entitled to the supplemental benefit until the expiration of the annuity option selected by the retired member.

**Source:** Laws 1980, LB 228, § 6; R.S.1943, (1994), § 79-1563; Laws 1996, LB 900, § 580.

**79-946. Retired Teachers Supplementary Benefits Fund; created; termination.** (1) The Retired Teachers Supplementary Benefits Fund is created. The fund shall be administered by the retirement board. This fund shall be considered an express obligation of the state. The appropriation for such fund shall be determined by the retirement board as of January 1 of each odd-numbered year and included in the biennial budget to be adopted by the regular session of the Legislature held in each odd-numbered year.

(2) On June 30, 2004, the Retired Teachers Supplementary Benefits Fund shall terminate and all assets of the fund shall be transferred to the School Retirement Fund. All obligations of the Retired Teachers Supplementary Benefits Fund shall be paid thereafter from the School Retirement Fund. The appropriation to provide supplementary benefits to retired teachers shall be determined as provided in subsection (1) of this section and shall be made to the School

Retirement Fund in the same manner and amounts as had been made to the Retired Teachers Supplementary Retirement Fund.

**Source:** Laws 1980, LB 228, § 7; Laws 1986, LB 258, § 22; R.S.1943, (1994), § 79-1564; Laws 1996, LB 900, § 581; Laws 2004, LB 1097, § 26.

**79-947. Adjusted supplemental retirement benefit; determination; computation; payment; funding.** (1) Commencing October 1, 1988, the retirement board shall determine an adjusted supplemental retirement benefit to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement for each person who is retired from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act with twenty-five or more years of creditable service as of October 1, 1988.

(2) For each person who qualifies under subsection (1) of this section, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act and the supplemental benefit provided by section 79-942 if applicable. From two hundred fifty dollars, the board shall subtract the total monthly benefit. Such difference, if positive, shall be the adjusted supplemental retirement benefit and shall be paid to the retired person each month, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person. The adjusted supplemental retirement benefit shall be paid to a retired person during his or her life.

(3) The retirement board may buy a paid-up annuity for a retired person which guarantees the adjusted supplemental retirement benefit provided under this section.

(4) The adjusted supplemental retirement benefit provided under this section shall be funded from the Contingent Account but only from such income that is attributable to employer and employee contributions.

**Source:** Laws 1988, LB 1170, § 21; R.S.1943, (1994), § 79-1566; Laws 1996, LB 900, § 582; Laws 1998, LB 497, § 5; Laws 2002, LB 407, § 33; Laws 2011, LB 509, § 30.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**79-947.06. Annual benefit adjustment; cost-of-living adjustment calculation method.**

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit

in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 79-952, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 79-956 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the School Employees Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The minimum accrual rate under this subsection is twenty-three dollars and thirty-two cents until adjusted pursuant to this subsection. Beginning July 1, 2011, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total

monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) The state shall contribute to the Annuity Reserve Fund an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 81.7873 percent of six million eight hundred ninety-five thousand dollars.

**Source:** Laws 2011, LB 509, § 32.

**79-948. Retirement benefits; exemption from taxation and legal process; exception.**

(1) Except as provided in subsection (2) of this section, the right of a person to an annuity, an allowance, or any optional benefit under the School Employees Retirement Act, any other right accrued or accruing to any person or persons under such act, the various funds and account created thereby, and all the money, investments, and income thereof shall be exempt from any state, county, municipal, or other local tax, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall not be assignable except to the extent that such annuity, allowance, or benefit is subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1945, c. 219, § 53, p. 655; R.S.Supp.,1947, § 79-2953; Laws 1949, c. 256, § 486, p. 857; Laws 1969, c. 735, § 15, p. 2783; Laws 1971, LB 987, § 30; Laws 1986, LB 311, § 20; Laws 1988, LB 1170, § 19; Laws 1989, LB 506, § 11; Laws 1991, LB 549, § 44; R.S.1943, (1994), § 79-1552; Laws 1996, LB 900, § 583; Laws 1996, LB 1273, § 26; Laws 2002, LB 407, § 34; Laws 2012, LB 916, § 22.

**Cross Reference**

Spousal Pension Rights Act, see section 42-1101.

**79-949. False or fraudulent actions; prohibited acts; refusal to furnish information; violations; penalties; denial of benefits.** (1) Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

(2) Any school employee, member of a school board or board of education, or agent of any employer, who willfully fails or refuses to furnish to the retirement board upon its request and in the manner prescribed by it such information, data, or records, as may be necessary for carrying into effect the School Employees Retirement Act, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1945, c. 219, § 54, p. 656; R.S.Supp.,1947, § 79-2954; Laws 1949, c. 256, § 487, p. 858; Laws 1971, LB 987, § 31; Laws 1977, LB 39, § 260; Laws 1991, LB 549, § 45; R.S.1943, (1994), § 79-1553; Laws 1996, LB 900, § 584; Laws 1998, LB 1191, § 54.

**79-950. Appeal; procedure.** All acts and decisions of the retirement board shall be subject to review, reversal, modification, or approval by the retirement board, on its own motion or on the complaint of a member, under such rules as the retirement board may prescribe. Any teacher or other person, who deems himself or herself aggrieved by any action of the retirement board, may appeal to and have the same reviewed by the retirement board under such rules as the retirement board shall prescribe. Any final order made by the retirement board after review may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1945, c. 219, § 45, p. 653; R.S.Supp.,1947, § 79-2945; Laws 1949, c. 256, § 478, p. 855; Laws 1988, LB 352, § 163; R.S.1943, (1994), § 79-1544; Laws 1996, LB 900, § 585.

**Cross Reference**

Administrative Procedure Act, see section 84-920.

**79-951. Retirement; disability; conditions; application.** (1) A member shall be retired on account of disability, either upon his or her own application or the application of his or her employer or a person acting in his or her behalf, if a medical examination, made at the expense of the retirement system and conducted by a competent disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, selected by the retirement board, shows and the physician certifies to the retirement board that the member is unable to engage in a substantially gainful activity by reason of any medically determinable

physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or be of a long and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury.

(2) The member shall have five years from the date he or she terminates employment in a public school located in Nebraska in which to make application for disability retirement benefits if the disability is related to employment in a public school located in Nebraska. If the disability is not related to a public school located in Nebraska, the member shall have one year from the date he or she terminates employment in which to make application for disability retirement benefits. Any application for retirement on account of disability shall be made on a retirement application provided by the retirement system. Upon approval by the board, benefits shall begin on the disability retirement date.

**Source:** Laws 1945, c. 219, § 24, p. 646; R.S.Supp.,1947, § 79-2924; Laws 1949, c. 256, § 457, p. 848; Laws 1963, c. 495, § 3, p. 1584; Laws 1975, LB 50, § 3; Laws 1987, LB 549, § 9; Laws 1991, LB 549, § 37; R.S.1943, (1994), § 79-1523; Laws 1996, LB 900, § 586; Laws 1996, LB 1076, § 27; Laws 1997, LB 623, § 25; Laws 1998, LB 1191, § 55; Laws 1999, LB 538, § 2; Laws 2000, LB 1192, § 15; Laws 2004, LB 1097, § 28; Laws 2010, LB 950, § 16.

**79-952. Retirement; disability; allowance; formula.** Upon retirement for disability, a member shall receive a disability retirement allowance which shall consist of a savings annuity and a service annuity computed in the manner specified in section 79-933 or, in lieu thereof, the formula annuity computed in the manner specified in section 79-934 without the reduction to the actuarial equivalent of the formula annuity deferred to the sixty-fifth birthday of the member.

**Source:** Laws 1945, c. 219, § 25, p. 646; R.S.Supp.,1947, § 79-2925; Laws 1949, c. 256, § 458, p. 848; Laws 1975, LB 50, § 4; R.S.1943, (1994), § 79-1524; Laws 1996, LB 900, § 587.

**79-953. Retirement; disability; annual medical examination; refusal; effect.** The retirement board may require any disability beneficiary who has not yet attained the age of sixty-five years to undergo a medical examination once each year. Such an examination shall be made (1) at the place of residence of the beneficiary or other place mutually agreed upon, (2) at the expense of the retirement system, and (3) by a physician, legally authorized to practice medicine under the laws of the state in which he or she practices, designated by the retirement board. If any disability beneficiary who has not yet attained the age of sixty-five years willfully refuses to submit to at least one such medical examination in any fiscal year, his or her allowance may be discontinued until his or her withdrawal of such refusal. If such refusal continues for one year, his or her rights in and to his or her disability retirement allowance may be revoked by the retirement board.

**Source:** Laws 1945, c. 219, § 26, p. 647; R.S.Supp.,1947, § 79-2926; Laws 1949, c. 256, § 459, p. 849; R.S.1943, (1994), § 79-1525; Laws 1996, LB 900, § 588; Laws 1997, LB 623, § 26.

**79-954. Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.** (1) Except as provided in subsection (2) of this section, if a disability beneficiary under the age of sixty-five years is restored to active service as a school

employee or if the examining physician certifies that the person is no longer disabled for service as a school employee, the school or disability retirement allowance shall cease. If the beneficiary again becomes a school employee, he or she shall become a member of the retirement system. Any prior service certificate, on the basis of which his or her creditable service was computed at the time of his or her retirement for disability, shall be restored to full force and effect upon his or her again becoming a member of such retirement system.

(2) If a disability beneficiary under the age of sixty-five years obtains employment as a school employee and the examining physician certifies that the beneficiary has a permanent disability, the beneficiary shall retain his or her disability retirement allowance if the beneficiary works fewer than fifteen hours per week.

**Source:** Laws 1945, c. 219, § 27, p. 647; R.S.Supp.,1947, § 79-2927; Laws 1949, c. 256, § 460, p. 849; R.S.1943, (1994), § 79-1526; Laws 1996, LB 900, § 589; Laws 2009, LB 449, § 1.

**79-955. Termination of membership; accumulated contributions; return.** Upon termination of employment for any cause other than death or retirement, the retirement board shall, upon the member's demand, terminate his or her membership in the retirement system and cause to be paid to such member the accumulated contributions standing to the credit of his or her individual account in the School Retirement Fund. Any member who attains or has attained membership in another Nebraska state or school retirement system authorized by the Legislature and who elects not to be or remain a member of the School Employees Retirement System of the State of Nebraska shall have his or her accumulated contributions returned to him or her forthwith.

**Source:** Laws 1945, c. 219, § 28, p. 647; R.S.Supp.,1947, § 79-2928; Laws 1949, c. 256, § 461, p. 849; Laws 1965, c. 532, § 1, p. 1676; Laws 1967, c. 555, § 1, p. 1825; Laws 1969, c. 735, § 7, p. 2780; Laws 1976, LB 30, § 3; Laws 1988, LB 1170, § 4; R.S.1943, (1994), § 79-1527; Laws 1996, LB 900, § 590; Laws 1997, LB 624, § 20; Laws 1998, LB 1191, § 56; Laws 2011, LB 509, § 31.

**79-956. Death of member before retirement; contributions; how treated.** (1) If a member dies before retirement, his or her accumulated contributions shall be paid to his or her estate, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the person he or she has nominated by designation duly executed and filed with the retirement board. Except for payment to an alternative payee pursuant to a qualified domestic relations order, if no legal representative or beneficiary applies for such accumulated contributions within five years following the date of the deceased member's death, the contributions shall be distributed in accordance with the Uniform Disposition of Unclaimed Property Act.

(2) When the deceased member has twenty years or more of creditable service regardless of age or dies on or after his or her sixty-fifth birthday and leaves a surviving spouse who has been designated as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance, including interest, plus an additional one hundred one percent of the member's contribution account balance, including interest, or (b) an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's

spouse should survive and had the member retired (i) on the date of death if his or her age at death is sixty-five years or more or (ii) at age sixty-five years if his or her age at death is less than sixty-five years.

(3) When the deceased member who was a school employee on or after May 1, 2001, has not less than five years of creditable service and less than twenty years of creditable service and dies before his or her sixty-fifth birthday and leaves a surviving spouse who has been designated in writing as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance with interest plus an additional one hundred one percent of the member's contribution account balance with interest or (b) an annuity payable monthly for the surviving spouse's lifetime which shall be equal to the benefit amount that had accrued to the member at the date of the member's death, commencing when the member would have reached age sixty, or the member's age at death if greater, reduced by three percent for each year payments commence before the member would have reached age sixty-five, and adjusted for payment in the form of a one-hundred-percent joint and survivor annuity.

(4) If the requirements of subsection (2) or (3) of this section are not met, then the beneficiary or the estate, if the member has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such member plus regular interest, except that commencing on January 1, 2006, an application for benefits under subsection (2) or (3) of this section shall be deemed to have been timely filed if the application is received by the retirement system within twelve months after the date of the death of the member.

(5) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to this section shall commence immediately upon the death of such member.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

**Source:** Laws 1945, c. 219, § 29, p. 648; R.S.Supp.,1947, § 79-2929; Laws 1949, c. 256, § 462, p. 850; Laws 1951, c. 293, § 3, p. 972; Laws 1969, c. 735, § 8, p. 2781; Laws 1975, LB 50, § 5; Laws 1976, LB 645, § 1; Laws 1981, LB 128, § 1; Laws 1986, LB 325, § 9; Laws 1987, LB 549, § 10; Laws 1988, LB 1170, § 5; Laws 1990, LB 903, § 1; Laws 1994, LB 833, § 32; R.S.1943, (1994), § 79-1528; Laws 1996, LB 900, § 591; Laws 1996, LB 1273, § 25; Laws 2000, LB 1192, § 16; Laws 2001, LB 711, § 4; Laws 2003, LB 451, § 20; Laws 2007, LB 508, § 2; Laws 2012, LB 916, § 23.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**79-957. Termination of employment before retirement date; certified service record; statement of accumulated contributions; termination benefits, when.** Upon termination of employment for any reason other than death, before qualifying for retirement under section 79-931, the retirement board shall, upon request, issue the member a certified service record and statement of accumulated contributions and retain such member's accumulated contributions. In such event, no further contributions shall be required, regular interest on accumulated contributions shall continue to be credited to his or her account, and none of the member's retirement rights shall be canceled. At age sixty-five or after thirty-five years of creditable service, such member shall become eligible to receive the retirement allowance provided in sections 79-933 and 79-934. Any deferred formula annuity provided shall be based on the member's compensation preceding the date of termination as if the member had retired on his or her date of termination. At the option of the terminating member, and if such member has completed at least five but less than thirty-five years of creditable service, such annuity may commence at any time after such member attains the age of sixty years and before his or her sixty-fifth birthday and shall be reduced by the percentages prescribed in section 79-934. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments.

**Source:** Laws 1945, c. 219, § 30, p. 648; R.S.Supp.,1947, § 79-2930; Laws 1949, c. 256, § 463, p. 850; Laws 1975, LB 56, § 2; Laws 1976, LB 33, § 1; Laws 1986, LB 325, § 10; Laws 1987, LB 549, § 11; Laws 1988, LB 160, § 3; Laws 1991, LB 549, § 38; R.S.1943, (1994), § 79-1529; Laws 1996, LB 900, § 592; Laws 1996, LB 1076, § 28; Laws 1997, LB 624, § 21.

**79-958. Employee; employer; required deposits and contributions.** (1) Beginning on September 1, 2009, and ending August 31, 2011, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund eight and twenty-eight hundredths percent of compensation. Beginning on September 1, 2011, and ending August 31, 2012, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund eight and eighty-eight hundredths percent of compensation. Beginning on September 1, 2012, and ending August 31, 2017, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund nine and seventy-eight hundredths percent of compensation. Beginning on September 1, 2017, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and twenty-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not

be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

**Source:** Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB 408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB 596, § 2; Laws 2009, LB 187, § 1; Laws 2011, LB 382, § 1.

**79-959. Account of member; credit with regular interest.** The account of each member in the School Retirement Fund shall be credited with regular interest earned monthly, quarterly, semiannually, or annually as the retirement board may direct.

**Source:** Laws 1945, c. 219, § 33, p. 649; R.S.Supp.,1947, § 79-2933; Laws 1949, c. 256, § 466, p. 851; Laws 1967, c. 546, § 10, p. 1807; Laws 1969, c. 735, § 10, p. 2781; Laws 1974, LB 905, § 7; Laws 1986, LB 311, § 19; Laws 1988, LB 1170, § 7; R.S.1943, (1994), § 79-1532; Laws 1996, LB 900, § 594.

**79-960. Employer; deduction; remittances; fees; interest charge.** Every employer shall deduct and withhold an amount pursuant to section 79-958 from the compensation as a school employee of each member on each payroll period after such school employee becomes a member of the retirement system. The employer shall transmit periodically, as directed by the retirement board and in such form as is approved by the retirement board, such amounts and any other information required by the board. The board shall immediately transmit to the State Treasurer all payments received. The board may charge the employer a late administrative processing fee not to exceed twenty-five dollars if the information and money required by section 79-958 are delinquent or are not timely received by the board. In addition, the board may charge the employer a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions. The board shall charge the employer an amount equal to the interest which would have accrued if the delinquent report causes the employee to lose interest on his or her account. The proceeds of the interest charge shall be used to reimburse the account of each school employee deprived of interest by the delay.

**Source:** Laws 1945, c. 219, § 34, p. 649; R.S.Supp.,1947, § 79-2934; Laws 1949, c. 256, § 467, p. 851; Laws 1951, c. 291, § 7, p. 969; Laws 1967, c. 546, § 11, p. 1807; Laws 1984, LB 457, § 4; Laws

1986, LB 325, § 12; Laws 1988, LB 160, § 5; Laws 1988, LB 1170, § 8; Laws 1991, LB 549, § 40; Laws 1994, LB 1306, § 3; R.S.1943, (1994), § 79-1533; Laws 1996, LB 900, § 595; Laws 1996, LB 1076, § 29; Laws 1999, LB 272, § 92; Laws 2000, LB 1192, § 17; Laws 2002, LB 407, § 36.

**79-962. Contracts of employment; specify subject to provisions of act.** Every contract of employment with a school employee shall specify that it is subject to the provisions of the School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 36, p. 650; R.S.Supp.,1947, § 79-2936; Laws 1949, c. 256, § 469, p. 852; R.S.1943, (1994), § 79-1535; Laws 1996, LB 900, § 597; Laws 1997, LB 347, § 27.

**79-963. Director; employer and employee; furnish information.** Every employer and school employee shall send to the director of the Nebraska Public Employees Retirement Systems, as specified in section 79-906, upon request and in the manner required by the director, such information as he or she may require (1) for the identification of school employees and (2) for the determination of the membership of the retirement system and the obligations of the employer and school employee to the retirement system.

**Source:** Laws 1945, c. 219, § 37, p. 650; R.S.Supp.,1947, § 79-2937; Laws 1949, c. 256, § 470, p. 852; Laws 1951, c. 293, § 4, p. 972; Laws 1969, c. 735, § 11, p. 2782; Laws 1988, LB 1170, § 9; Laws 1991, LB 549, § 41; R.S.1943, (1994), § 79-1536; Laws 1996, LB 900, § 598; Laws 2000, LB 1192, § 18; Laws 2002, LB 407, § 37.

**79-964. Employer; pay to board; withholding of excess deduction.** Every employer shall pay to the retirement board the required deposits made by every member in the service of such employer. No employer shall, without the consent of the member, withhold or deduct from any member's compensation on any payroll any amount in excess of the required deduction for the period covered by such payroll.

**Source:** Laws 1956, c. 219, § 38, p. 650; R.S.Supp.,1947, § 79-2938; Laws 1949, c. 256, § 471, p. 852; Laws 1976, LB 30, § 4; R.S.1943, (1994), § 79-1537; Laws 1996, LB 900, § 599.

**79-965. Payment of compensation less required deductions; discharge of claims for service.** Notwithstanding any other law, rule, or regulation affecting the salary, pay, compensation, or tenure of any member, payment of such salary, pay, or compensation to such member, less the required deductions provided for in the School Employees Retirement Act, shall be a full and complete discharge and acquittance of all claims for service rendered by such member during the period covered by such payment.

**Source:** Laws 1945, c. 219, § 39, p. 651; R.S.Supp.,1947, § 79-2939; Laws 1949, c. 256, § 472, p. 853; R.S.1943, (1994), § 79-1538; Laws 1996, LB 900, § 600.

**79-966. School Retirement Fund; state deposits; amount; determination.** (1) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall annually, on or before July 1, determine the state deposit to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01. The retirement board shall

thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(2) In addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system for each fiscal year on or after July 1, 1984, until July 1, 2009. For each fiscal year beginning July 1, 2009, until July 1, 2017, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to one percent of the compensation of all members of the retirement system. For each fiscal year beginning July 1, 2017, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system.

(3) In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 41, p. 651; R.S.Supp.,1947, § 79-2941; Laws 1949, c. 256, § 474, p. 853; Laws 1965, c. 530, § 4, p. 1668; Laws 1969, c. 735, § 12, p. 2782; Laws 1971, LB 987, § 25; Laws 1981, LB 248, § 3; Laws 1984, LB 457, § 5; Laws 1988, LB 1170, § 10; R.S.1943, (1994), § 79-1540; Laws 1996, LB 900, § 601; Laws 2002, LB 407, § 39; Laws 2004, LB 1097, § 29; Laws 2009, LB 187, § 2; Laws 2011, LB 382, § 2.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**79-966.01. School Retirement Fund; annual actuarial valuations.** Beginning July 1, 2002, and each year thereafter, this section shall govern annual actuarial valuations of the School Retirement Fund. In order to determine the additional required deposits by the State of Nebraska, as required by section 79-966, the board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform the annual valuation using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. Prior to July 1, 2006, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in

benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the School Employees Retirement Act, the actuary shall determine the added contributions required to be paid by the State of Nebraska that constitute the difference between the actuarially required contribution rate and the rate of all other required contributions.

**Source:** Laws 2002, LB 407, § 38; Laws 2006, LB 1019, § 9.

**79-967. Board; determine rates of benefits; adjustments; distribution of gains and savings.** As often as may be necessary, the retirement board shall cause to be made a thorough investigation of the several funds or account of the retirement system for the purpose of determining the rates at which the benefits will be granted. It shall make adjustments in such rates as, upon recommendation of the actuary, may appear to be proper for maintaining solvency of the several funds or account. No revision of rates shall affect adversely the rights of any beneficiary under an application made prior to such revision. The retirement board shall, from time to time, order and make such distribution of gains and savings to the several funds or account as it may deem equitable.

**Source:** Laws 1945, c. 219, § 43, p. 652; R.S.Supp.,1947, § 79-2943; Laws 1949, c. 256, § 476, p. 854; Laws 1969, c. 736, § 2, p. 2787; Laws 1988, LB 1170, § 11; R.S.1943, (1994), § 79-1542; Laws 1996, LB 900, § 602; Laws 1998, LB 1191, § 58; Laws 2002, LB 407, § 40.

**79-968. Retirement system; assets; funds; account; investment.** All assets of the retirement system shall be credited, according to the purpose for which they are held, to the Expense Fund, to the School Retirement Fund, or to the Contingent Account. Any money in the account or funds available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1945, c. 219, § 46, p. 653; R.S.Supp.,1947, § 79-2946; Laws 1949, c. 256, § 479, p. 855; Laws 1965, c. 530, § 5, p. 1668; Laws 1967, c. 546, § 12, p. 1808; Laws 1969, c. 584, § 88, p. 2401; Laws 1988, LB 1170, § 12; Laws 1993, LB 292, § 4; Laws 1994, LB 1066, § 90; R.S.1943, (1994), § 79-1545; Laws 1996, LB 900, § 603; Laws 2002, LB 407, § 41.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**79-971. Accumulated contributions; use.** The Nebraska Public Employees Retirement Systems shall keep an accounting of the required deposits from the compensation of members collected to provide savings annuities. The accumulated contributions, plus statutorily required accumulated interest, of a member may be returned to him or her upon his or her termination, paid to his or her estate or designated beneficiary in the event of his or her death as provided in section 79-956, or used in the event of his or her retirement to assist in funding his or her school

retirement allowance, disability retirement allowance, or formula annuity allowance. Any accumulated contributions forfeited shall be transferred from the School Retirement Fund to the Contingent Account.

**Source:** Laws 1945, c. 219, § 47, p. 653; R.S.Supp.,1947, § 79-2947; Laws 1949, c. 256, § 480, p. 855; Laws 1969, c. 735, § 14, p. 2783; Laws 1971, LB 987, § 26; Laws 1987, LB 549, § 12; Laws 1988, LB 1170, § 15; R.S.1943, (1994), § 79-1546; Laws 1996, LB 900, § 606; Laws 2002, LB 407, § 43.

**79-972.01. School Retirement Fund; created; use.** The School Retirement Fund is created. The required deposits of the employer, the state, and the employees shall be credited to the fund and all savings annuities, service annuities, and formula annuities shall be paid from the fund as provided in the School Employees Retirement Act. Any unexpended balance existing on June 30, 2002, in the School Employers Deposit Account, the Service Annuity Account, the School Employees Savings Account, the Annuity Reserve Account, and the School Employees Retirement System Reserve Fund shall be transferred to the School Retirement Fund.

**Source:** Laws 2002, LB 407, § 42.

**79-973. Contingent Account; created; use.** A Contingent Account is created (1) to facilitate the crediting of regular interest on the amounts in the School Retirement Fund, (2) to fund the adjusted supplemental retirement benefit provided by section 79-947, and (3) to provide an account to cover any special requirements of the School Retirement Fund or the Expense Fund. All income, interest, and dividends derived from the deposits and investments authorized by the School Employees Retirement Act shall be paid into the Contingent Account. The retirement board may accept gifts, devises, and bequests. Any funds which may come into the possession of the retirement system in this manner or which may be transferred from the School Retirement Fund by reason of the lack of a claimant or because of a surplus in any fund or account described in section 79-968, or any other money the disposition of which is not otherwise provided for in the act, shall be credited to the Contingent Account. Any deficit occurring in the School Retirement Fund or in the Expense Fund shall be met by payments to the fund from the Contingent Account. Annually the retirement board shall estimate the amount of money deemed necessary to pay the obligation levied against the Contingent Account, including regular interest. If such amount exceeds the revenue estimated to accrue to the fund for that year, such excess shall be certified to the State Treasurer and shall, on warrant of the Director of Administrative Services, be transferred from funds appropriated by the state for such purpose to the Contingent Account.

**Source:** Laws 1945, c. 219, § 50, p. 654; R.S.Supp.,1947, § 79-2950; Laws 1949, c. 256, § 483, p. 856; Laws 1965, c. 530, § 8, p. 1669; Laws 1971, LB 987, § 28; Laws 1988, LB 1170, § 17; Laws 1991, LB 549, § 43; Laws 1993, LB 292, § 5; R.S.1943, (1994), § 79-1549; Laws 1996, LB 900, § 608; Laws 2002, LB 407, § 44.

**79-974. Expense Fund; created; use.** The Expense Fund is created and is the fund to which shall be credited the proportionate share of administration expense transferred from the Contingent Account at the direction of the retirement board. The Expense Fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the

School Employees Retirement Act and necessary in connection with the administration and operation of the retirement system. Annually, as soon after July 1 as is practicable, the retirement board shall estimate the amount of money which is deemed necessary to be paid into the Expense Fund for that fiscal year.

**Source:** Laws 1945, c. 219, § 51, p. 655; R.S.Supp.,1947, § 79-2951; Laws 1949, c. 256, § 484, p. 857; Laws 1971, LB 987, § 29; Laws 1988, LB 1170, § 18; R.S.1943, (1994), § 79-1550; Laws 1996, LB 900, § 609; Laws 2001, LB 408, § 18; Laws 2005, LB 364, § 10.

**79-976. Investment services; charges; report; state investment officer; duty.** Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the retirement board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the retirement board, and the Nebraska Retirement Systems Committee of the Legislature. All money received by the State Treasurer and the retirement board for the retirement system shall be invested by the state investment officer within thirty-one days after receipt.

**Source:** Laws 1967, c. 546, § 17, p. 1809; Laws 1969, c. 584, § 89, p. 2401; Laws 1986, LB 311, § 21; Laws 1988, LB 1170, § 20; Laws 1991, LB 549, § 46; Laws 1994, LB 1066, § 91; R.S.1943, (1994), § 79-1556; Laws 1996, LB 900, § 611; Laws 2002, LB 407, § 45.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**79-977. School district expenditures; not exempt from limitations on spending.** Any expenditure made by a school district pursuant to sections 79-934, 79-968, and 79-973 as changed by Laws 1993, LB 292, shall be considered a general fund expenditure of the district and shall not be exempt from the growth limitations placed on district spending by the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1993, LB 292, § 6; R.S.1943, (1994), § 79-1567; Laws 1996, LB 900, § 612; Laws 2002, LB 407, § 46.

**Cross Reference**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-977.01. Limitation of actions.** Every claim and demand under the School Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 31.

**79-977.02. Retirement system contributions, income, property, and rights; how treated.** All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the School Employees Retirement Act.

**Source:** Laws 1998, LB 1191, § 59.

**79-977.03. Termination of system or contributions; effect.** Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 60.

**CHAPTER 81**  
**STATE ADMINISTRATIVE DEPARTMENTS**

**ARTICLE 20**  
**NEBRASKA STATE PATROL**

(b) RETIREMENT SYSTEM

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- 81-2040. Termination of system or contributions; effect.
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(b) RETIREMENT SYSTEM

**81-2014. Terms, defined.** For purposes of the Nebraska State Patrol Retirement Act: (1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

(2) Board means the Public Employees Retirement Board;

(3)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) DROP means the deferred retirement option plan as provided in section 81-2041;

(7) DROP period means the amount of time the member elects to participate in DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election;

(8) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(9) Initial benefit means the retirement benefit calculated at the time of retirement;

(10) Officer means an officer provided for in sections 81-2001 to 81-2009;

(11) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(12) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(13) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(14) Service means employment as a member of the Nebraska State Patrol and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(15) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(16) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased and the date when the employer-employee relationship commenced with the Nebraska State Patrol or another state agency. Termination of employment does not occur upon an officer's participation in DROP pursuant to section 81-2041. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 81-2026, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

**Source:** Laws 1947, c. 211, § 1, p. 687; Laws 1969, c. 511, § 1, p. 2092; R.S.1943, (1978), § 60-441; Laws 1989, LB 506, § 13; Laws 1991, LB 549, § 47; Laws 1994, LB 833, § 34; Laws 1995, LB 501, § 7; Laws 1996, LB 700, § 13; Laws 1996, LB 847, § 34; Laws 1996, LB 1076, § 32; Laws 1996, LB 1273, § 27; Laws 1997, LB 624, § 27; Laws 1999, LB 674, § 7; Laws 2000, LB 1192, § 19; Laws 2001, LB 408, § 19; Laws 2002, LB 470, § 7; Laws 2003, LB 451, § 21; Laws 2007, LB 324, § 1; Laws 2012; LB 916, § 28.

**Cross References**

Spousal Pension Rights Act, see section 42-1101.

**81-2014.01. Act, how cited.** Sections 81-2014 to 81-2041 shall be known and may be cited as the Nebraska State Patrol Retirement Act.

**Source:** Laws 1996, LB 847, § 33; Laws 1997, LB 624, § 28; Laws 1998, LB 532, § 9; Laws 1998, LB 1191, § 64; Laws 2001, LB 408, § 20; Laws 2002, LB 407, § 48; Laws 2007, LB 324, § 2; Laws 2011, LB 509, § 40.

**81-2015. Nebraska State Patrol Retirement System; creation.** A retirement system is hereby created and established to be known as the Nebraska State Patrol Retirement System. It is the legislative intent and purpose of sections 81-2014 to 81-2036 to provide certain retirement and other benefits for officers of the Nebraska State Patrol in the amounts and under the terms and conditions set forth in such sections. It is further the legislative intent and purpose of such sections that when and if the Social Security Act, or any amendment thereto, or any similar or related federal act shall be enacted or amended so as to permit the inclusion of such officers of the Nebraska State Patrol, the State of Nebraska may at its election through appropriate legislative action adjust the benefits provided in such sections and the contributions called for so that the fund provided for by such sections or any amendments thereto may become merged with or integrated with the federal social security system.

**Source:** Laws 1947, c. 211, § 2, p. 687; Laws 1967, c. 391, § 2, p. 1215; Laws 1969, c. 511, § 2, p. 2093; R.S.1943, (1978), § 60-442; Laws 1991, LB 549, § 48; Laws 1994, LB 833, § 35.

**81-2016. Retirement system; membership; requirements; new employee; participation in another governmental plan; how treated; separate employment; effect.** (1) Every member of the Nebraska State Patrol who was employed by the State of Nebraska as such, on September 7, 1947, and every person employed as a member of such patrol thereafter, shall be a member of the system, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska. On and after July 1, 2010, no employee shall be authorized to participate in the retirement system provided for in the Nebraska State Patrol Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(2) Within the first thirty days of employment, a member may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned.

(3) Any officer who qualifies for membership pursuant to subsection (1) of this section may not be disqualified from membership in the retirement system solely because such officer also maintains separate employment which qualifies the officer for membership in another public retirement system, nor may membership in this retirement system disqualify such an officer from membership in another public retirement system solely by reason of separate employment which qualifies such officer for membership in this retirement system.

(4) Information necessary to determine membership shall be provided by the Nebraska State Patrol.

(5) The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

**Source:** Laws 1947, c. 211, § 3, p. 687; R.S.1943, (1978), § 60-443; Laws 1995, LB 501, § 8; Laws 1996, LB 1076, § 33; Laws 1997, LB 624, § 29; Laws 1998, LB 1191, § 65; Laws 2000, LB 1192, § 20; Laws 2002, LB 407, § 49; Laws 2002, LB 470, § 8; Laws 2010, LB 950, § 19.

**81-2017. Retirement system; contributions; payment; funding of system.** (1) Commencing July 1, 2010, and until July 1, 2011, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Commencing July 1, 2011, and until July 1, 2013, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to nineteen percent of his or her monthly compensation. Commencing July 1, 2013, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2010, and until July 1, 2011, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2011, and until July 1, 2013, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of nineteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2013, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions

required pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

**Source:** Laws 1947, c. 211, § 4, p. 688; Laws 1959, c. 286, § 6, p. 1085; Laws 1965, c. 387, § 1, p. 1243; Laws 1971, LB 987, § 10; Laws 1975, LB 235, § 1; R.S.1943, (1978), § 60-444; Laws 1981, LB 462, § 5; Laws 1984, LB 218, § 4; Laws 1989, LB 506, § 14; Laws 1991, LB 549, § 49; Laws 1994, LB 833, § 36; Laws 1994, LB 1287, § 1; Laws 1995, LB 369, § 6; Laws 1995, LB 574, § 81; Laws 2001, LB 408, § 21; Laws 2002, LB 407, § 50; Laws 2004, LB 514, § 1; Laws 2005, LB 503, § 12; Laws 2006, LB 1019, § 12; Laws 2007, LB 324, § 4; Laws 2009, LB 188, § 7; Laws 2011, LB 382, § 7.

**81-2018. State Patrol Retirement Fund; State Patrol Retirement Act Expense Fund; created; use.** (1) Except as provided in subsection (2) of this section, all money received by the Nebraska State Patrol Retirement System shall be remitted to the State Treasurer for credit to the State Patrol Retirement Fund which is hereby created. Out of the fund shall be paid the benefits and annuities as provided in the Nebraska State Patrol Retirement Act.

(2) The State Patrol Retirement Act Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the Nebraska State Patrol Retirement Act and necessary in connection with the administration and operation of the retirement system.

**Source:** Laws 1947, c. 211, § 5, p. 688; Laws 1959, c. 286, § 7, p. 1086; Laws 1967, c. 391, § 3, p. 1216; Laws 1969, c. 511, § 4, p. 2094; R.S.1943, (1978), § 60-445; Laws 1991, LB 549, § 50; Laws 1994, LB 833, § 37; Laws 2001, LB 408, § 22; Laws 2005, LB 364, § 16.

**81-2019. Retirement system; administration; Public Employees Retirement Board; duties; rules and regulations.** The general administration of the Nebraska State Patrol Retirement System, except the investment of funds, is hereby vested in the board. The board shall adopt and promulgate rules and regulations as may be necessary to carry out the Nebraska State Patrol Retirement Act. The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act.

**Source:** Laws 1947, c. 211, § 6, p. 688; Laws 1967, c. 391, § 4, p. 1216; Laws 1967, c. 486, § 39, p. 1529; Laws 1971, LB 987, § 11; R.S.1943, (1978), § 60-446; Laws 1991, LB 549, § 51; Laws 1994, LB 833, § 38; Laws 1995, LB 369, § 7; Laws 1996, LB 847, § 35.

**81-2019.01. Board; power to adjust contributions and benefits.** (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of sections 81-2014 to 81-2036, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 35.

**81-2020. State Treasurer; duties; warrants.** The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the State Patrol Retirement Fund. The State Treasurer shall disburse money from such fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

**Source:** Laws 1947, c. 211, § 7, p. 689; Laws 1971, LB 987, § 12; R.S.1943, (1978), § 60-447; Laws 1991, LB 549, § 52; Laws 1997, LB 623, § 34.

**81-2021. Retirement system; director; records; employer education program.** (1) The director in charge of the system shall keep a record of all acts and proceedings taken by the board. He or she shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the Nebraska State Patrol Retirement Act. The board shall prescribe the form in which such information shall be reported by the Nebraska State Patrol to the board. The information in the records shall be provided by the Nebraska State Patrol in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to

the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1947, c. 211, § 8, p. 689; Laws 1971, LB 987, § 13; R.S.1943, (1978), § 60-448; Laws 1991, LB 549, § 53; Laws 1994, LB 833, § 39; Laws 2000, LB 1192, § 21; Laws 2005, LB 503, § 13.

**81-2022. Retirement system; funds; investment; charges.** Any funds of the Nebraska State Patrol Retirement System available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee.

The state investment officer shall sell any securities upon request from the director so as to provide money for the payment of benefits or annuities.

**Source:** Laws 1947, c. 211, § 9, p. 689; Laws 1967, c. 486, § 40, p. 1530; Laws 1969, c. 584, § 59, p. 2382; R.S.1943, (1978), § 60-449; Laws 1986, LB 311, § 24; Laws 1991, LB 549, § 54; Laws 1994, LB 1066, § 128.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2023. Auditor of Public Accounts; annual audit; report to Clerk of the Legislature.** It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system, and an annual report to the Clerk of the Legislature of its condition. Each member of the Legislature shall receive a copy of such report by making a request for it to the Auditor of Public Accounts.

**Source:** Laws 1947, c. 211, § 10, p. 689; Laws 1971, LB 987, § 14; Laws 1979, LB 322, § 24; R.S.Supp.,1980, § 60-450.

**81-2024. Retirement system; powers.** The system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

**Source:** Laws 1947, c. 211, § 11, p. 690; R.S.1943, (1978), § 60-451; Laws 1996, LB 847, § 36.

**81-2025. Retirement; conditions; deferment of payment; board; duties.** (1) Every officer who has been in the employ of the state as such and who becomes disabled and physically unfit to perform the duties of an officer shall be entitled to retire and receive an annuity as provided by law.

(2) Every officer who has been in the employ of the state as such for ten years or more, as calculated in section 81-2033, and has attained the age of fifty years or more shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(3) Any officer who has attained the age of sixty years upon his or her separation from state service but who has not been in the employ of the state for ten years as such shall be entitled to the annuity as provided for in the Nebraska State Patrol Retirement Act.

(4) Every officer who has been in the employ of the state as such for twenty-five years or more, as calculated in section 81-2033, and has attained the age of fifty years shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years with twenty-five years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(5) Every officer who has been in the employ of the state as such for thirty years or more, as calculated in section 81-2033, shall be entitled to retire and receive an annuity as provided by law. The right to retire with thirty years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(6) Payment of any benefit provided under the act may not be deferred later than April 1 of the year following the year in which the officer has both attained at least age seventy and one-half years and terminated his or her employment with the Nebraska State Patrol.

(7) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

(8) The board shall make reasonable efforts to locate the officer or the officer's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the account shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any officer would otherwise receive under the Nebraska State Patrol Retirement Act.

**Source:** Laws 1947, c. 211, § 12(1), p. 690; Laws 1953, c. 333, § 1, p. 1093; Laws 1969, c. 510, § 3, p. 2090; Laws 1969, c. 511, § 7, p. 2095; Laws 1975, LB 235, § 2; R.S.1943, (1978), § 60-452; Laws 1986, LB 311, § 25; Laws 1989, LB 506, § 15; Laws 1990, LB 953, § 1; Laws 1993, LB 724, § 15; Laws 1994, LB 833, § 40; Laws 1994, LB 1306, § 5; Laws 1997, LB 623, § 35; Laws 1997, LB 624, § 30; Laws 2003, LB 451, § 22.

**Cross Reference**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**81-2026. Retirement; annuity; officers; surviving spouse; children; benefit; disability or death in line of duty; benefit; maximum benefit.** (1)(a) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The annuity payments shall continue until the end of the calendar month in which the officer dies. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who

has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of creditable service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

(b) For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of creditable service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

(c) For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of creditable service. If the officer has completed more than seventeen years of creditable service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of creditable service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, benefits shall be provided as a percentage of the amount of the officer's annuity, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such

dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If there is no surviving spouse or no dependent child or children of the officer under nineteen years of age, the amount of benefit such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate.

(4) Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability.

(5) Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If no benefits are paid to a surviving spouse or dependent child or children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

(8) Any changes made to this section by Laws 2004, LB 1097, shall apply only to retirements, disabilities, and deaths occurring on or after July 16, 2004.

**Source:** Laws 1953, c. 333, § 2, p. 1093; Laws 1957, c. 276, § 1, p. 1004; Laws 1959, c. 296, § 1, p. 1104; Laws 1961, c. 307, § 6, p. 973; Laws 1965, c. 386, § 2, p. 1241; Laws 1969, c. 510, § 4, p. 2090; Laws 1969, c. 511, § 8, p. 2095; Laws 1974, LB 1004, § 1; Laws 1975, LB 235, § 3; Laws 1976, LB 644, § 1; Laws 1977, LB 347, § 1; Laws 1979, LB 80, § 107; R.S.Supp.,1980, § 60-452.01; Laws 1981, LB 462, § 6; Laws 1986, LB 311, § 26; Laws 1987, LB 493, § 1; Laws 1989, LB 506, § 16; Laws 1990, LB 953, § 2; Laws 1991, LB 549, § 55; Laws 1993, LB 724, § 16; Laws 1994, LB 833, § 41; Laws 1994, LB 1306, § 6; Laws 1996, LB 847, § 37; Laws 1996, LB 1273, § 28; Laws 1997, LB 623, § 36; Laws 1997, LB 624, § 31; Laws 2004, LB 1097, § 30; Laws 2006, LB 1019, § 13; Laws 2011, LB 509, § 42; Laws 2012, LB 916, § 29.

**81-2027. Retirement benefit; adjusted by increase in cost of living.** Each retired officer of the Nebraska State Patrol, or surviving beneficiary who is receiving a retirement benefit as of December 31, 1977, shall have such retirement benefits adjusted by the increase in the cost of living, as determined by the difference between the Consumer Price Index for Urban Wage Earners and Clerical Workers from the date his or her retirement benefit commenced and January 1, 1978.

**Source:** Laws 1977, LB 347, § 2; Laws 1979, LB 80, § 108; R.S.Supp.,1980, § 60-452.02.

**81-2027.08. Annual benefit adjustment; cost-of-living adjustment calculation method.** (1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that

provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than sixty percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by sixty percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than sixty percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (i) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (ii) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 81-2025, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 81-2026 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Nebraska State Patrol Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The minimum accrual rate under this subsection is thirty-eight dollars and eighty-four cents until adjusted pursuant to this subsection. Beginning July 1, 2011, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) The state shall contribute to the State Patrol Retirement Fund an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 3.04888 percent of six million eight hundred ninety-five thousand dollars.

**Source:** Laws 2011, LB 509, § 41.

**81-2028. Retirement; disability; exceptions.** No officer shall receive any disability benefit payments when there remains to his or her credit unused annual leave or sick leave or under any other circumstances if during the period of disability there has been no impairment of his or her compensation.

**Source:** Laws 1947, c. 211, § 13(2), p. 691; R.S.1943, (1978), § 60-455; Laws 1991, LB 549, § 56.

**81-2029. Retirement; disability; proof.** No disability benefit payments shall be made except upon adequate proof furnished to the system of the existence of such disability, and during the time when any such benefits are being paid, the system shall have the right, at reasonable times, to require the disabled officer to submit proof of the continuance of the disability claimed. Disability is defined to be the complete inability of the officer, for reasons of accident or sickness, to perform the duties of an officer.

**Source:** Laws 1947, c. 211, § 13(3), p. 691; Laws 1969, c. 511, § 9, p. 2097; Laws 1974, LB 1004, § 2; R.S.1943, (1978), § 60-456; Laws 1991, LB 549, § 57.

**81-2030. Retirement; disability; medical examinations; expense.** The board shall have the right to demand a physical examination of the member by a disinterested Physician legally authorized to practice medicine under the laws of the state in which he or she practices, chosen by the system and at the expense of the system.

**Source:** Laws 1947, c. 211, § 13(4), p. 691; R.S.1943, (1978), § 60-457; Laws 1997, LB 623, § 39.

**81-2031. Termination of employment; return of contributions, when; rejoining system; deferred annuity.** (1) Upon termination of employment prior to becoming eligible to retire, as provided in section 81-2025, and for reasons other than death or disability, an officer shall be entitled to receive all payments which have been made by compensation deductions into the State Patrol Retirement Fund plus regular interest. The return of such contributions and interest to such officer shall preclude such officer from any benefits under the Nebraska State Patrol Retirement Act unless and until such officer is reemployed in such capacity and repays such withdrawals pursuant to section 81-2031.06. If the officer chooses not to repay such withdrawals with interest, the officer shall enter the system as a new member with no prior rights.

(2) In lieu of the benefit described in subsection (1) of this section, the officer may elect to receive a deferred annuity to commence as early as age fifty. If this election is made, the contributions made to the system by the officer may not be withdrawn from the system. The deferred annuity shall be computed as a percentage of the retirement annuity, as computed in subsection (1) of section 81-2026. The percentage shall be:

(a) Zero percent for the first five years of (i) creditable service plus (ii) eligibility and vesting credit; (b) Twenty percent for each completed year for the next five years of (i) creditable service plus (ii) eligibility and vesting credit; and

(c) One hundred percent after ten completed years of (i) creditable service plus (ii) eligibility and vesting credit.

In the event of the death of any officer during the deferred period, the accumulated value of the officer's contributions at the date of termination plus regular interest to the date of his or her death shall be paid to such officer's beneficiary.

**Source:** Laws 1947, c. 211, § 14, p. 692; Laws 1959, c. 297, § 1, p. 1106; Laws 1969, c. 511, § 10, p. 2097; Laws 1974, LB 905, § 6; Laws 1974, LB 1004, § 3; Laws 1975, LB 55, § 1; Laws 1975, LB 235, § 4; R.S.1943, (1978), § 60-458; Laws 1986, LB 311, § 27; Laws 1989, LB 506, § 17; Laws 1991, LB 549, § 58; Laws 1994, LB 833, § 44; Laws 1994, LB 1306, § 7; Laws 1996, LB 1076, § 34; Laws 1997, LB 624, § 32; Laws 1999, LB 703, § 19; Laws 2001, LB 408, § 23.

**81-2031.01. Retirement system; reemployment; election to repay system; amount; status; exception.** From January 1, 1991, to June 30, 1991, any person who withdrew his or her accumulated contributions pursuant to subsection (1) of section 81-2031 prior to January 1, 1991, and has again become an employee of the Nebraska State Patrol may elect to repay the retirement system for any number of years of service which he or she accumulated prior to withdrawing his or her accumulated contributions. The amount to be repaid shall not exceed the amount of the withdrawal for the years of service for which the repayment is being made plus the interest which would have accrued on that amount under the retirement system. Any person who repays such amount shall be restored to the same status for the years of service for which repayment is made as he or she had prior to the withdrawal of the accumulated

contributions. This section shall not apply to employees of the Nebraska State Patrol retiring prior to January 1, 1991.

**Source:** Laws 1990, LB 1105, § 1.

**81-2031.02. Retirement system; current employee; participation in another governmental plan; how treated.** For one year after September 9, 1995, any member employed on or before September 9, 1995, may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation.

**Source:** Laws 1995, LB 501, § 9.

**81-2031.03. Direct rollover; terms, defined; distributee; powers; board; duties.** (1) For purposes of this section and section 81-2031.04:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 81-2031.04, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 39; Laws 2002, LB 407, § 51; Laws 2012, LB 916, § 30.

**81-2031.04. Retirement system; accept payments and rollovers; limitations; board; duties.** (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 81-2031 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 40; Laws 2002, LB 407, § 52.

**81-2031.05. Retired officer; reemployment; how treated.** A retired officer of the Nebraska State Patrol who becomes a member of the Nebraska State Patrol shall continue

receiving retirement benefits and shall be treated for all purposes of the Nebraska State Patrol Retirement Act as a new member of the system.

**Source:** Laws 1997, LB 624, § 33.

**81-2031.06. Termination of employment prior to eligibility to retire; rejoining system; effect.** An officer who terminates employment prior to becoming eligible to retire and again serves as an officer in the Nebraska State Patrol may elect to repay part or all of the amount he or she had withdrawn as a refund pursuant to section 81-2031 plus the interest that would have accrued on such amount. Payment shall commence prior to termination of employment, shall not be extended more than five years after the date the officer elects to repay his or her refund, and shall be completed prior to termination of employment. Prior service and rights shall be restored in proportion to the amounts repaid, and the prior service and rights of the officer shall be fully restored only if he or she repays all accumulated withdrawals plus interest which would have accrued on that amount.

**Source:** Laws 2001, LB 408, § 24.

**81-2031.07. Retirement system; accept transfers; limitations; how treated.** The retirement system may accept as payment for withdrawn amounts made pursuant to the Nebraska State Patrol Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 53.

**81-2032. Retirement system; funds; exemption from legal process; exception.** (1) Except as provided in subsection (2) of this section, all annuities or benefits which any person shall be entitled to receive under sections 81-2014 to 81-2036 shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section shall

apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1947, c. 211, § 15, p. 692; Laws 1969, c. 511, § 11, p. 2098; R.S.1943, (1978), § 60-459; Laws 1986, LB 311, § 28; Laws 1989, LB 506, § 18; Laws 1994, LB 833, § 45; Laws 1995, LB 574, § 84; Laws 1996, LB 1273, § 29; Laws 2012, LB 916, § 31.

**Cross Reference**

Spousal Pension Rights Act, see section 42-1101.

**81-2033. Retirement; total service credit.** In computing length of creditable service under the Nebraska State Patrol Retirement Act, such service shall include the years of service with the Nebraska State Patrol, permanent force, as established by the law creating the Nebraska State Patrol computed to the nearest one-twelfth year and shall only include such years during which the person was a contributing member of the Nebraska State Patrol Retirement System. Length of creditable service shall also include credit for time served in the armed forces pursuant to section 81-2034. For subsection (2) of section 81-2031 only, service shall also include credit for vesting pursuant to sections 60-1304, 81-2016, and 81-2031.02.

**Source:** Laws 1947, c. 211, § 16, p. 692; Laws 1969, c. 511, § 12, p. 2098; R.S.1943, (1978), § 60-460; Laws 1993, LB 724, § 17; Laws 1995, LB 501, § 10; Laws 1997, LB 624, § 34; Laws 2002, LB 470, § 9.

**81-2034. Retirement; method of crediting for time served in armed forces; effect.**

(1) Any member of the Nebraska State Patrol who, while a member of the Nebraska State Patrol, entered into and served or shall enter into and serve in the armed forces of the United States during a declared emergency, as defined and prescribed under such rules and regulations as the board may adopt, and who, within six months after honorable discharge or honorable separation from active duty, returned or returns to the service of the state and again becomes a member of the Nebraska State Patrol shall be credited, in determining benefits due such member from the State Patrol Retirement Fund, for all the time actually served in the armed forces as if such person had been in the service of the Nebraska State Patrol throughout such declared emergency service in the armed forces.

(2) Under such rules and regulations as the board adopts and promulgates, any member of the Nebraska State Patrol who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, shall be treated as not having incurred a break in service by reason of his or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan. The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

**Source:** Laws 1949, c. 177, § 1, p. 481; Laws 1967, c. 391, § 5, p. 1216; Laws 1971, LB 987, § 15; R.S.1943, (1978), § 60-461; Laws 1991, LB 549, § 59; Laws 1996, LB 847, § 38.

**81-2035. Annuity; adjustment; amount.** Any annuity paid pursuant to sections 81-2014 to 81-2034 to any officer or surviving spouse qualified to receive such payment shall be adjusted on May 27, 1989, to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement. The adjustment shall be an increase in an amount

equal to three percent for each year since the date of such officer's retirement commencing on and after January 1, 1978, until December 31, 1984.

**Source:** Laws 1989, LB 137, § 1.

**81-2036. Annuity; additional adjustment; changes in family unit.** After the adjustment prescribed in section 81-2035 is made, any annuity paid pursuant to sections 81-2014 to 81-2034 to any officer or surviving spouse qualified to receive such payment shall be adjusted on May 27, 1989, to reflect changes in the cost of living and wage levels which have occurred subsequent to the date of retirement up to an annuity total amount equal to five thousand nine hundred eighty dollars for a one-member family unit. For each additional member of the family unit the amount shall be increased by two thousand forty dollars. The annuity shall be adjusted to reflect any changes in the family unit when the change occurs. A change in the family unit after retirement occurs (1) upon the death of the officer, (2) upon the death of the spouse or a dependent child, (3) upon the birth of a dependent child, (4) upon the divorce of the officer and his or her spouse, (5) when the officer no longer provides support for a dependent child, and (6) when a dependent child becomes nineteen years of age. Each officer or surviving spouse whose annuity is adjusted pursuant to this section shall file an annual report with the retirement system, on a form prescribed by the Public Employees Retirement Board, to verify the size of the family unit. For purposes of this section, family unit shall include the officer, his or her spouse at the time of retirement, the officer's legal dependent children under nineteen years of age, and the officer's dependent handicapped children.

**Source:** Laws 1989, LB 137, § 2.

**81-2037. Limitation of actions.** Every claim and demand under sections 81-2014 to 81-2036 and against the retirement system or the board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 36.

**81-2038. False or fraudulent actions; prohibited acts; penalty; denial of benefits.** Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the officer to recover any benefits already paid on the basis of such information.

**Source:** Laws 1998, LB 1191, § 66.

**81-2039. Retirement system contributions, property, and rights; how treated.** All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and

shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the Nebraska State Patrol Retirement Act.

**Source:** Laws 1998, LB 1191, § 67.

**81-2040. Termination of system or contributions; effect.** Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 68.

**81-2041. DROP participation authorized; requirements; fees.** (1) Any member who meets the participation requirements of subsection (2) of this section may participate in DROP. DROP provides that subsequent to attaining normal age and service retirement eligibility, a member may voluntarily choose to participate in DROP upon its adoption which, for purposes of this section, shall be the earlier of September 1, 2008, or the first of the month following a favorable letter determination by the Internal Revenue Service. If the member chooses to participate in DROP, the member shall be deemed to have retired but shall not be deemed to be terminated, and the member may continue in active employment for up to a five-year period. During the DROP period, the member's retirement benefit payments shall be deposited into the DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future retirement benefit payments shall be made directly to the member, and the member shall have access to all funds in the DROP account designated for the benefit of the member.

(2) To participate in the DROP program, a member shall meet the following requirements:

(a) A member shall be eligible to enter DROP at any time subsequent to the date when the member has (i) attained normal retirement age and (ii) completed twenty-five years of service. Members having attained normal retirement age and completed twenty-five years of service on or before the date of adoption of DROP shall be eligible to enter DROP at any future date;

(b) A member who elects to enter DROP shall be entitled to receive regular age and service retirement benefits in accordance with section 81-2026. A member is entitled to remain in DROP for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit DROP at any time during the DROP period. On or before the completion of the DROP period, the member must separate from active employment and exit DROP. During the DROP period, a member's retirement benefit shall be payable to the DROP account vendor designated in the member's name. Amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under section 415 of the Internal Revenue Code;

(c) A member electing to enter DROP shall choose an annuity payment option. After the option is chosen, the member shall not be entitled to any retirement benefit changes, for reasons including, but not limited to, wage increases, promotions, and demotions, except that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be fixed as of the date of election and shall be

payable as if the employee retired on that date and separated from active employment. Upon the death of a member during the DROP period, monthly benefits shall be provided as a percentage of the amount of the member's annuity as set forth in subsection (3) of section 81-2026 based upon the annuity benefit calculation made at commencement of the DROP period. In addition, the balance of the DROP account, if any, shall be provided to the beneficiary or beneficiaries of the member in accordance with subsection (6) of section 81-2026 or, if no beneficiary is provided, to the estate of the member. Upon the disability of a member during the DROP period, the member shall be deemed to have completed the DROP period, shall begin receiving the annuity benefit as calculated at the commencement of the DROP period, and shall be paid the balance of the DROP account, if any;

(d) No member shall be allowed to continue making the required contributions while the member is enrolled in DROP;

(e) During the DROP period, the Nebraska State Patrol shall not be assessed the amount required under subsection (2) of section 81-2017 nor shall such amount be credited to the State Patrol Retirement Fund;

(f) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in DROP. If a member has not voluntarily separated from active employment on or before the completion of the DROP period, the member's retirement benefit shall be paid directly to the member thereby ending the member's active employment. The member's DROP account shall consist of accrued retirement benefits and interest on such benefits;

(g) Any member that is enrolled in DROP shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any DROP investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges, or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member shall not be made up by the retirement system but all of the same shall be borne by the participating DROP member. The retirement system, the state, the board, and the state investment officer shall not be responsible for any investment results under the DROP agreement. Transfers between investment options shall be in accordance with the rules and regulations of DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for the member's retirement benefit distributions and net investment earnings and losses;

(h) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account; and

(i) Cost-of-living adjustments as provided for in section 81-2027.08 shall not be applied to retirement benefits during the DROP period.

**Source:** Laws 2007, LB 324, § 3; Laws 2011, LB 509, § 43; Laws 2012, LB 916, § 32.

## CHAPTER 84 STATE OFFICERS

### ARTICLE 13 STATE EMPLOYEES RETIREMENT ACT

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- 84-1333. County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.

**84-1301. Terms, defined.** For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of disability means the date on which a member is determined to be disabled by the board;

(7) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 84-1310 and, if vested, employer contributions and earnings pursuant to section 84-1311;

(8) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(9) Employee means any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, except that if the contributory retirement plan or contract let pursuant to section 48-609 is terminated, such employees shall become employees for purposes of the State Employees Retirement Act on the first day of the first pay period following the termination of such contributory retirement plan or contract, (g) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (h) the Nebraska National Guard air and army technicians, (i) persons eligible for membership under the School Employees Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (j) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(13) Five-year break in service means five consecutive one-year breaks in service;

(14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(15) Fund means the State Employees Retirement Fund created by section 84-1309;

(16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(18) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(19) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(20) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(21) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(22) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(23) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(24) Prior service means service before January 1, 1964;

(25) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

(26) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(27) Retirement means qualifying for and accepting the retirement benefit granted under the State Employees Retirement Act after terminating employment;

(28) Retirement board or board means the Public Employees Retirement Board;

(29) Retirement system means the State Employees Retirement System of the State of Nebraska;

(30) Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(31) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1963, c. 532, § 1, p. 1667; Laws 1965, c. 574, § 1, p. 1864; Laws 1965, c. 573, § 1, p. 1861; Laws 1969, c. 584, § 116, p. 2420; Laws 1971, LB 987, § 33; Laws 1973, LB 498, § 1; Laws 1974, LB 905, § 8; Laws 1980, LB 818, § 3; Laws 1982, LB 942, § 8; Laws 1983, LB 223, § 4; Laws 1984, LB 747, § 6; Laws 1984, LB 751, § 1; Laws 1986, LB 325, § 15; Laws 1986, LB 529, § 54; Laws 1986, LB 311, § 29; Laws 1989, LB 506, § 19; Laws 1991, LB 549, § 60; Laws 1993, LB 417, § 6; Laws 1994, LB 1068, § 4; Laws 1996, LB 847, § 41; Laws 1996, LB 900, § 1070; Laws 1996, LB 1076, § 37; Laws 1996, LB 1273, § 30; Laws 1997, LB 624, § 35; Laws 1998, LB 1191, § 69; Laws 1999, LB 703, § 20; Laws 2000, LB 1192, § 22; Laws 2002, LB 407, § 54; Laws 2002, LB 470, § 10; Laws 2002, LB 687, § 18; Laws 2003, LB 451, § 23; Laws 2004, LB 1097, § 32; Laws 2006, LB 366, § 7; Laws 2006, LB 1019, § 14; Laws 2011, LB 509, § 44; Laws 2012, LB 916, § 33.

**Cross References**

For provisions on Public Employees Retirement Board, see sections 84-1501 to 84-1513.  
Spousal Pension Rights Act, see section 42-1101.

**84-1302. State Employees Retirement System; established; operative date; official name; acceptance of contributions.** (1) An employees retirement system is hereby established for the purpose of providing a retirement annuity or other benefits for employees as provided by the State Employees Retirement Act and sections 84-1332 and 84-1333. The retirement system so created shall begin operation January 1, 1964. It shall be known as the State Employees Retirement System of the State of Nebraska and by such name shall transact all business and hold all cash and other property as provided in such sections.

(2) The retirement system shall not accept as contributions any money from members or the state except the following:

- (a) Mandatory contributions established by sections 84-1308 and 84-1309;
- (b) Money that is a repayment of refunded contributions made pursuant to section 84-1322;
- (c) Contributions for military service credit made pursuant to section 84-1325;
- (d) Actuarially required contributions pursuant to subdivision (4)(b) of section 84-1319;
- (e) Trustee-to-trustee transfers pursuant to section 84-1313.01; or
- (f) Corrections ordered by the board pursuant to section 84-1305.02.

**Source:** Laws 1963, c. 532, § 2, p. 1668; Laws 1991, LB 549, § 61; Laws 2003, LB 451, § 24; Laws 2009, LB 188, § 9.

**84-1305. Retirement board; duties.** The general administration of the retirement system shall be vested in the retirement board. The board shall adopt and promulgate rules and regulations to carry out the State Employees Retirement Act. The board shall maintain records and may employ any assistance as may be necessary to carry out the act.

**Source:** Laws 1963, c. 532, § 5, p. 1669; Laws 1969, c. 584, § 117, p. 2421; Laws 1973, LB 498, § 2; Laws 1984, LB 751, § 2; Laws 1991, LB 549, § 62; Laws 1995, LB 369, § 8; Laws 1996, LB 847, § 42.

**84-1305.01. Records; employer education program.** (1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to name, current address, age, contributions, and any other facts as may be necessary in the administration of the State Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1991, LB 549, § 69; Laws 1998, LB 1191, § 70; Laws 2000, LB 1192, § 23; Laws 2005, LB 503, § 14.

**84-1305.02. Retirement board; power to adjust contributions and benefits.** (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the State Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 41; Laws 2002, LB 687, § 19; Laws 2006, LB 1019, § 15.

**84-1307. Retirement system; membership; requirements; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.** (1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment; and (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee shall be authorized to participate in the retirement system provided for in the State Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(5)(a) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(b) If the contributory retirement plan or contract let pursuant to section 48-609 is terminated, employees of the Department of Labor who are active participants in such contributory retirement plan or contract on the date of termination of such plan or contract shall be granted vesting credit for their years of participation in such plan or contract.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

**Source:** Laws 1963, c. 532, § 7, p. 1670; Laws 1969, c. 842, § 1, p. 3177; Laws 1973, LB 492, § 1; Laws 1983, LB 219, § 1; Laws 1986, LB 325, § 16; Laws 1986, LB 311, § 30; Laws 1990, LB 834, § 1; Laws 1995, LB 501, § 11; Laws 1996, LB 1076, § 38; Laws 1997, LB 624, § 36; Laws 1998, LB 1191, § 71; Laws 1999, LB 703, § 21; Laws 2000, LB 1192, § 24; Laws 2002, LB 407, § 55; Laws 2002, LB 687, § 20; Laws 2004, LB 1097, § 33; Laws 2006, LB 366, § 8; Laws 2008, LB 1147, § 13; Laws 2009, LB 188, § 10; Laws 2010, LB 950, § 21; Laws 2011, LB 509, § 45.

**84-1308. Retirement system; contribution of employees; method of payment; amount; employer pick up contributions.** (1) Each employee who is a member of the retirement system shall pay or have paid on his or her behalf a sum equal to four and eight-tenths percent of his or her monthly compensation. Such amounts shall be deducted monthly pursuant to subsection (2) of this section by the Director of Administrative Services. All money received shall be set aside by the State Treasurer and credited to the State Employees Retirement Fund.

(2) The employer shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The employer shall pick up these contributions by a deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the State Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

**Source:** Laws 1963, c. 532, § 8, p. 1670; Laws 1967, c. 617, § 3, p. 2070; Laws 1969, c. 584, § 118, p. 2421; Laws 1981, LB 459, § 6; Laws 1984, LB 218, § 5; Laws 1984, LB 751, § 3; Laws 1991, LB 549, § 63; Laws 1995, LB 574, § 85; Laws 1998, LB 1191, § 72; Laws 2001, LB 408, § 25; Laws 2006, LB 366, § 9.

**84-1309. State Employees Retirement Fund; established; amounts credited; disbursements.** (1) There is hereby established in the state treasury a special fund to be known as the State Employees Retirement Fund to consist of such funds as the Legislature shall from time to time appropriate. The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from funds appropriated from the General Fund.

(2) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund from the funds of each department with at least one employee who is a member of the retirement system for a sum equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from any funds other than funds appropriated from the General Fund.

(3) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund for prior service benefits. After receiving the annual report required by section 84-1315, the Legislature may make such adjustments in the funding of prior service benefits as necessary to keep the plan sound. The contribution for prior service purposes shall cease when the prior service obligation is properly funded.

(4) The Department of Administrative Services may, for accounting purposes, create subfunds of the State Employees Retirement Fund to separately account for defined contribution plan assets and cash balance plan assets.

(5) The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the fund. He or she shall disburse money from the fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

**Source:** Laws 1963, c. 532, § 9, p. 1671; Laws 1967, c. 619, § 1, p. 2074; Laws 1969, c. 584, § 119, p. 2422; Laws 1971, LB 476, § 1; Laws 1971, LB 987, § 34; Laws 1981, LB 459, § 7; Laws 1984, LB 751, § 4; Laws 1991, LB 549, § 64; Laws 1997, LB 623, § 41; Laws 2012, LB 916, § 34.

**84-1309.01. Board; provide benefit liability information; verify investments.** The board shall provide benefit liability information and other assistance to the Nebraska Investment Council for the establishment of policy portfolio objectives for the investing and reinvesting of the assets of the retirement system. The board shall verify that the investments of the assets of the retirement system by the council and the state investment officer are invested and reinvested for the exclusive purposes of providing benefits to members and members' beneficiaries and that the assets of the retirement system are not invested with the sole or primary investment objective of economic development or social purposes or objectives. Such verification shall be included in the written plan of action pursuant to subsection (3) of section 84-1503.

**Source:** Laws 1984, LB 653, § 1; Laws 1996, LB 847, § 43; Laws 2005, LB 503, § 15.

**84-1309.02. Cash balance benefit; election; effect; administrative services agreements; authorized.** (1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012 does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 84-1321.01, the employee cash balance account within the State Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

**Source:** Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB 328, § 7; Laws 2009, LB 188, § 11; Laws 2010, LB 950, § 22; Laws 2011, LB 509, § 46; Laws 2012, LB 916, § 35.

**84-1310. Defined contribution benefit; employee account.** For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 84-1308 shall be known as his or her employee account. Each year commencing January 1, 1975, and ending December 31, 1984, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1 increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with the provisions of section 84-1308. On and after January 1, 1985, the employee account shall be equal to the sum of the stable return account, the equities account, and any assets of additional accounts created by the board pursuant to section 84-1310.01.

**Source:** Laws 1963, c. 532, § 10, p. 1671; Laws 1969, c. 842, § 2, p. 3178; Laws 1974, LB 905, § 9; Laws 1983, LB 313, § 3; Laws 1984, LB 751, § 5; Laws 1991, LB 549, § 65; Laws 1994, LB 833, § 46; Laws 2002, LB 687, § 22.

**84-1310.01. Defined contribution benefit; employee account; investment options; procedures; administration.** (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. Such investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning on July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

**Source:** Laws 1984, LB 751, § 11; Laws 1991, LB 549, § 66; Laws 1994, LB 833, § 47; Laws 1996, LB 847, § 44; Laws 1999, LB 703, § 22; Laws 2000, LB 1200, § 5; Laws 2001, LB 408, § 26; Laws 2002, LB 407, § 56; Laws 2002, LB 687, § 23; Laws 2005, LB 503, § 16; Laws 2008, LB 1147, § 14; Laws 2010, LB 950, § 23; Laws 2012, LB 916, § 36.

**84-1311. Defined contribution benefit; employer account; investment.** (1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the state contributions made in accordance with section 84-1309 shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred four percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred four percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty-six percent of the amount so deducted for the final three months of the year in accordance with section 84-1308. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty-six percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in

excess of those provided for in section 84-1321.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with section 84-1321.01. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 84-1311.03.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 84-1311.03. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

**Source:** Laws 1963, c. 532, § 11, p. 1672; Laws 1971, LB 987, § 35; Laws 1973, LB 498, § 3; Laws 1981, LB 459, § 8; Laws 1983, LB 313, § 4; Laws 1984, LB 751, § 6; Laws 1986, LB 311, § 31; Laws 1991, LB 549, § 67; Laws 1994, LB 833, § 48; Laws 1996, LB 847, § 45; Laws 1999, LB 687, § 5; Laws 1999, LB 703, § 23; Laws 2002, LB 687, § 24.

**84-1311.03. Defined contribution benefit; employer account; investment options; procedures; administration.** (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 84-1310.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 84-1310.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

**Source:** Laws 1999, LB 687, § 4; Laws 2000, LB 1200, § 6; Laws 2001, LB 408, § 27; Laws 2002, LB 407, § 57; Laws 2002, LB 687, § 25; Laws 2004, LB 1097, § 34; Laws 2005, LB 503, § 17; Laws 2008, LB 1147, § 15; Laws 2010, LB 950, § 24; Laws 2012, LB 916, § 37.

**84-1312. Direct rollover; terms, defined; distributee; powers; board; duties.** (1) For purposes of this section and section 84-1313:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 84-1313, an individual retirement plan described in 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 48; Laws 2002, LB 407, § 58; Laws 2012, LB 916, § 38.

**84-1313. Retirement system; accept payments and rollovers; limitations; board; duties.** (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 84-1322 or 84-1325 if the contributions do not exceed the amount of payment authorized to be paid by the member pursuant to section 84-1322 or 84-1325 and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 84-1322 or 84-1325.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 49; Laws 1997, LB 624, § 37; Laws 2002, LB 407, § 59.

**84-1313.01. Retirement system; accept transfers; limitations; how treated.** The retirement system may accept as payment for withdrawn amounts made pursuant to the State Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 61.

**84-1313.02. Retirement system; transfer eligible rollover distribution; conditions.** The retirement system may transfer any distribution of benefits to a member which is an eligible

rollover distribution as defined in section 84-1312 in a direct rollover to the deferred compensation plan authorized under section 84-1504 if the following conditions are met:

- (1) The member has an amount of compensation deferred immediately after the rollover at least equal to the amount of compensation deferred immediately before the rollover;
- (2) The account of the member is valued as of the date of final account value;
- (3) The member is not eligible for additional annual deferrals in the receiving plan unless the member is performing services for the state; and
- (4) The deferred compensation plan provides for such rollovers.

**Source:** Laws 2009, LB 188, § 12; Laws 2011, LB 509, § 47.

**84-1314. State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment.** (1) The State Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1997, LB 623, § 40; Laws 2000, LB 1200, § 7; Laws 2001, LB 408, § 28; Laws 2003, LB 451, § 26; Laws 2005, LB 364, § 18; Laws 2007, LB 328, § 8; Laws 2010, LB 950, § 25.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-1315. Auditor of Public Accounts; annual audit of retirement system; annual report to Clerk of the Legislature.** It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. Each member of the Legislature shall receive a copy of the report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

**Source:** Laws 1963, c. 532, § 15, p. 1673; Laws 1971, LB 987, § 37; Laws 1972, LB 1072, § 1; Laws 1979, LB 322, § 75; Laws 1988, LB 1169, § 2.

**84-1316. Retirement system; sue and be sued; actions; representation by Attorney General.** The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

**Source:** Laws 1963, c. 532, § 16, p. 1673; Laws 1996, LB 847, § 46.

**84-1317. Employees; retirement date; application for benefits; deferment of benefits; board; duties.** (1) Upon filing an application for benefits with the board, an employee may elect to retire after the attainment of age fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the State Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

**Source:** Laws 1963, c. 532, § 17, p. 1673; Laws 1967, c. 619, § 2, p. 2075; Laws 1971, LB 360, § 1; Laws 1973, LB 498, § 4; Laws 1973, LB 55, § 1; Laws 1974, LB 740, § 2; Laws 1979, LB 391, § 7; Laws 1979, LB 161, § 3; Laws 1981, LB 288, § 1; Laws 1982, LB 287, § 5; Laws 1983, LB 604, § 25; Laws 1983, LB 219, § 2; Laws 1986, LB 325, § 17; Laws 1986, LB 311, § 32; Laws 1987, LB 296, § 4; Laws 1996, LB 1076, § 39; Laws 1997, LB 624, § 38; Laws 2003, LB 451, § 27; Laws 2009, LB 188, § 13.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**84-1318. Employees; benefits; retirement value; how computed.** The retirement value for any employee who retires under the provisions of section 84-1317 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02 as of the date of final account value.

**Source:** Laws 1963, c. 532, § 18, p. 1674; Laws 2002, LB 687, § 26; Laws 2003, LB 451, § 28.

**84-1319. Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.** (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier

than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 84-1318 except as provided in this section.

The board shall provide to any state employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 84-1309.02, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 84-1309.02, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the

actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

**Source:** Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB 328, § 9; Laws 2009, LB 188, § 14; Laws 2012, LB 916, § 39.

**84-1319.01. State Equal Retirement Benefit Fund; created; use.** There is hereby created the State Equal Retirement Benefit Fund, to be administered by the board. Each state agency participating in the retirement system shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 84-1319 and to provide for direct expenses incurred in administering the fund. The amount contributed to the fund by each state agency participating in the retirement system shall be proportionate to the total amount such agency contributes to the system for retirement benefits.

**Source:** Laws 1983, LB 210, § 3; Laws 1998, LB 1191, § 73.

**84-1320. Prior service retirement benefits; when payable; how computed; deferment; reduction in amount, when.** The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with the State Employees Retirement Act, except that the payments may be made less often than monthly if the monthly payment would be less than fifteen dollars. At the option of the member, the first payment may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such deferred benefit shall be the actuarial equivalent, based on factors designated by the board, of the prior service benefit. In the event of retirement before age sixty-five under section 84-1317, the amount of the prior service annuity shall be reduced in accordance with the principles of actuarial equivalence based on factors designated by the board. Any member of the retirement system who ceases to be an employee before becoming eligible for retirement under section 84-1317, who has accrued a prior service retirement benefit as defined in the act, and who has been continuously employed by the state for ten or more years immediately prior to termination shall receive the prior service retirement benefit determined in accordance with the act upon attaining age sixty-five. At the option of the terminating member, such annuity may commence as of the first of the month at any time after

such member attains the age of fifty-five or may be deferred, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Any terminating employee who forfeits a vested future service retirement benefit by withdrawing his or her employee account shall also forfeit any vested prior service retirement benefit to which he or she would otherwise be entitled.

**Source:** Laws 1963, c. 532, § 20, p. 1675; Laws 1973, LB 479, § 1; Laws 1976, LB 643, § 1; Laws 1984, LB 751, § 8; Laws 1986, LB 325, § 19; Laws 1986, LB 311, § 34; Laws 1987, LB 308, § 2; Laws 1994, LB 833, § 51; Laws 2003, LB 451, § 30.

**84-1321. Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits.** (1) Except as provided in section 42-1107, upon termination of employment before becoming eligible for retirement under section 84-1317, a member may, upon application to the board, receive:

(a) If not vested, a termination benefit equal to the amount in his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount in his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or member cash balance account or any annuity provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the state or may be deferred, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no

distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 84-1307, including vesting credit. If an employee retires pursuant to section 84-1317, such an employee shall be fully vested in the retirement system.

**Source:** Laws 1963, c. 532, § 21, p. 1675; Laws 1973, LB 498, § 6; Laws 1975, LB 56, § 3; Laws 1983, LB 604, § 26; Laws 1983, LB 219, § 3; Laws 1984, LB 751, § 9; Laws 1986, LB 325, § 20; Laws 1986, LB 311, § 35; Laws 1987, LB 308, § 3; Laws 1987, LB 60, § 5; Laws 1991, LB 549, § 71; Laws 1993, LB 417, § 7; Laws 1994, LB 1306, § 9; Laws 1996, LB 1076, § 40; Laws 1996, LB 1273, § 32; Laws 1997, LB 624, § 39; Laws 2002, LB 687, § 28; Laws 2003, LB 451, § 31; Laws 2006, LB 366, § 11; Laws 2009, LB 188, § 15.

**84-1321.01. Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; investment.** (1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the State Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the State Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the State Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subdivision (4)(c) of section 84-1319, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of this subsection, transactions for payment of benefits under sections 84-1317 and 84-1321 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 84-1317 and 84-1321 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The State Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the fund shall be used to meet expenses of the State Employees Retirement System of the State of Nebraska whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the State Employees Defined Contribution Retirement Expense Fund or State Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. On July 1, 2012, or as soon as practicable thereafter, any money in the State Employer Retirement Expense Fund shall be transferred by the State Treasurer to the State Employees Retirement Fund and credited to the cash balance benefit established in section 84-1309.02.

(4) Prior to July 1, 2012, the director of the Nebraska Public Employees Retirement Systems shall certify to the Accounting Administrator of the Department of Administrative Services when accumulated employer account forfeiture funds are available to reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. Following such certification, the Accounting Administrator shall transfer the amount reduced from the state contribution from the Imprest Payroll Distributive Fund to the State Employer Retirement Expense Fund. Expenses incurred as a result of the state depositing amounts into the State Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the State Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1997, LB 624, § 40; Laws 2000, LB 1200, § 8; Laws 2002, LB 687, § 29; Laws 2003, LB 451, § 32; Laws 2005, LB 364, § 19; Laws 2007, LB 328, § 10; Laws 2010, LB 950, § 26; Laws 2011, LB 509, § 48; Laws 2012, LB 916, § 40.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-1322. Employees; reemployment; status; how treated; reinstatement; repay amount received.** (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the State Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 84-1317 and again becomes a permanent full-time or permanent part-time state employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after reentry into the retirement system under subsection (3) of section 84-1321, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 84-1321, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 84-1321. This subsection shall apply whether or not the person was a state employee on April 20, 1986, or July 17, 1986.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 84-1321 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending. Following reinstatement, the member shall repay the value of the amount received from his or her employee account or member cash balance account under subdivision (2)(b) of section 84-1321.01.

**Source:** Laws 1963, c. 532, § 22, p. 1676; Laws 1986, LB 325, § 21; Laws 1986, LB 311, § 36; Laws 1991, LB 549, § 72; Laws 1997, LB 624, § 41; Laws 1999, LB 703, § 24; Laws 2002, LB 407, § 60; Laws 2002, LB 687, § 30; Laws 2003, LB 451, § 33; Laws 2004, LB 1097, § 35; Laws 2007, LB 328, § 11; Laws 2008, LB 1147, § 16; Laws 2011, LB 509, § 49.

**84-1323. Employees; death before retirement; death benefit; amount.** (1) In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (a) for participants in the defined contribution benefit, the total of the employee account and the employer account and (b) for participants in the cash balance benefit, the benefit provided in section 84-1309.02. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service.

The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

**Source:** Laws 1963, c. 532, § 23, p. 1676; Laws 1973, LB 498, § 7; Laws 1984, LB 751, § 10; Laws 1994, LB 1306, § 10; Laws 1996, LB 1273, § 33; Laws 2002, LB 687, § 31; Laws 2003, LB 451, § 34; Laws 2004, LB 1097, § 36; Laws 2009, LB 188, § 16; Laws 2012, LB 916, § 41.

**84-1323.01. Employee; retirement; disability; medical examination.** (1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five to undergo a medical examination at the expense of the board once each year. If any disability beneficiary refuses to undergo such an examination, the disability retirement benefit may be discontinued by the board.

**Source:** Laws 1973, LB 498, § 8; Laws 1993, LB 417, § 8; Laws 1997, LB 623, § 44; Laws 1999, LB 703, § 25; Laws 2001, LB 408, § 29; Laws 2010, LB 950, § 27.

**84-1324. Retirement benefits; exemption from legal process; exception.** (1) Except as provided in subsection (2) of this section, all annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section shall

apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1963, c. 532, § 24, p. 1676; Laws 1986, LB 311, § 37; Laws 1989, LB 506, § 20; Laws 1996, LB 1273, § 34; Laws 2012, LB 916, § 42.

**Cross Reference**

Spousal Pension Rights Act, see section 42-1101.

**84-1325. Employees; military service; credit; payments.** (1) Any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of the provisions of section 84-1317, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, any employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this subsection, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (1) of section 84-1308.

**Source:** Laws 1963, c. 532, § 25, p. 1676; Laws 1994, LB 833, § 52; Laws 1996, LB 847, § 47; Laws 1999, LB 703, § 26; Laws 2004, LB 1097, § 37.

**84-1326. Retirement system; membership status; not lost while employment continues.** Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

**Source:** Laws 1963, c. 532, § 26, p. 1676.

**84-1326.01. Retirement system; member; employee status changed to behavioral health region or community mental health center; benefits retained; application; immediate participation; when.** (1) Any state employee who is a member of the State

Employees Retirement System of the State of Nebraska and whose status is changed by the Legislature to that of an employee of a behavioral health region or an employee of a community mental health center shall, upon application to the Public Employees Retirement Board, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have accrued to the date of transfer. Such employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits.

(2) Any employee shall be eligible for immediate participation in the retirement program available to the employee in the political subdivision of the State of Nebraska to which such employee is transferred with no minimum period of service required, if the minimum age requirement and length of service, with either the State of Nebraska or the political subdivision, total the requirements of the retirement system to which the employee is transferred.

**Source:** Laws 1975, LB 189, § 9; Laws 1976, LB 794, § 1; Laws 2004, LB 1083, § 144.

**84-1326.02. Current employee; participation in another governmental plan; how treated.** For one year after September 9, 1995, any full-time employee employed on or before September 9, 1995, may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee.

**Source:** Laws 1995, LB 501, § 12.

**84-1327. Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.** Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

**Source:** Laws 1963, c. 532, § 27, p. 1676; Laws 1977, LB 39, § 317; Laws 1998, LB 1191, § 76.

**84-1328. Retirement benefits; declared additional to benefits under federal Social Security Act.** The retirement allowances and benefits shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

**Source:** Laws 1963, c. 532, § 28, p. 1677.

**Cross Reference**

For other provisions relating to social security, see Chapter 68, article 6.

**84-1329. Limitation of actions.** Every claim and demand under the State Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 42.

**84-1329.04. Retirement system contributions, property, and rights; how treated.** All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the State Employees Retirement Act.

**Source:** Laws 1998, LB 1191, § 74.

**84-1329.05. Termination of system or contributions; effect.** Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 75.

**84-1330. Elected officials and employees having regular term; act, when operative.** The provisions of the State Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1963, c. 532, § 30, p. 1677; Laws 2009, LB 188, § 17.

**84-1330.01. State Employees Retirement Fund; elected officials and employees having a regular term; sections, when operative.** The provisions of sections 84-1309, 84-1317, and 84-1330.01 pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate their general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1967, c. 619, § 3, p. 2075.

**84-1331. Act, how cited.** Sections 84-1301 to 84-1331 shall be known and may be cited as the State Employees Retirement Act.

**Source:** Laws 1963, c. 532, § 31, p. 1677; Laws 1984, LB 751, § 12; Laws 1991, LB 549, § 73; Laws 1994, LB 833, § 53; Laws 1995, LB 501, § 13; Laws 1996, LB 847, § 50; Laws 1996, LB 1076, § 43; Laws 1997, LB 623, § 45; Laws 1997, LB 624, § 42; Laws 1998, LB 1191, § 77; Laws 1999, LB 687, § 6; Laws 2002, LB 407, § 62; Laws 2002, LB 687, § 32; Laws 2009, LB 188, § 18.

**84-1332. City or county employee changed by Legislature to state employee; vesting of prior service retirement benefits; application; vested benefits.** (1) Any city or county employee who is a member under a city or county employees retirement system, including retirement systems authorized by section 23-1118, and whose status as a city or county employee is changed by the Legislature to that of a state employee shall, upon application to the Public

Employees Retirement Board and to the city or county or to the county board of a county having a retirement system authorized by section 23-1118, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may withdraw the amount in his or her employee account prior to his or her retirement as provided in section 84-1321. Each employee's service as a city or county employee, after he or she has attained the minimum age required under the State Employees Retirement System of the State of Nebraska and has completed two years of service, shall be credited as though it were participation in the State Employees Retirement System of the State of Nebraska for purposes of calculating the termination benefits established by section 84-1321. Such service shall be counted as state service for purposes of calculating entitlement to retirement benefits under section 84-1319.

(2) Any city or county employee whose status as a city or county employee is or has been changed by the Legislature to that of a state employee shall be eligible for immediate participation in the State Employees Retirement System of the State of Nebraska with no minimum period of service required if the minimum age requirement of the State Employees Retirement System of the State of Nebraska is satisfied, or if the minimum age requirement is not satisfied on the date of transfer, the employee shall be eligible to participate at the date he or she satisfies the minimum age requirement.

**Source:** Laws 1973, LB 573, § 1; Laws 1983, LB 604, § 27; Laws 1984, LB 13, § 86; Laws 1986, LB 325, § 22; Laws 1986, LB 311, § 38; Laws 1987, LB 549, § 13

**84-1333. County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.** Any county employee who is a member under a county employees retirement system and whose status as a county employee is changed by the Legislature to that of a judge shall, upon application to the Public Employees Retirement Board and to the county, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits. Any such employee shall be eligible for immediate participation in the Nebraska Retirement Fund for Judges.

**Source:** Laws 1973, LB 573, § 2.

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**ARTICLE 15**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**

- 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; expenses; removal.
- 84-1502. Board; chairperson; secretary; election; meetings; compensation.
- 84-1503. Board; duties.
- 84-1503.02. Board, duties and responsibilities.
- 84-1503.03. Director; employ personnel; employees; duties.
- 84-1503.04. Internal auditor; duties and responsibilities.
- 84-1504. Deferred compensation; treatment.
- 84-1505. Deferred compensation; treatment; investment.
- 84-1506. Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.
- 84-1506.01. Deferred Compensation Expense Fund; created; use; investment.
- 84-1507. Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.
- 84-1509. Administrative services agreement; authorized.
- 84-1510. Administrative services agreement; terms.
- 84-1511. Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.
- 84-1511.01. Board; retirement education and financial planning program; for whom; required information; funding; attendance; fee.
- 84-1512. Board; access to records; director; duties; employer education program.
- 84-1513. Board; members; personal liability.

**84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; expenses; removal.** (1) The Public Employees Retirement Board is hereby established.

(2)(a) The board shall consist of eight appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Six of the appointed members shall be active or retired participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be employees of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan.

(b) The six appointed members who are participants in the systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Employees Retirement System of the State of Nebraska and shall include one administrator and one teacher;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System;

(iv) One of the appointed members shall be a participant in the Retirement System for Nebraska Counties; and

(v) One of the appointed members shall be a participant in the State Employees Retirement System of the State of Nebraska.

(c) Appointments to the board shall be made by the Governor and shall be subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska.

(3) All members shall serve for terms of five years or until a successor has been appointed and qualified. The terms shall begin on January 1 of the appropriate year. The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

**Source:** Laws 1971, LB 987, § 1; Laws 1973, LB 250, § 1; Laws 1975, LB 36, § 1; Laws 1981, LB 204, § 216; Laws 1987, LB 59, § 1; Laws 1989, LB 418, § 1; Laws 1996, LB 847, § 51; Laws 1997, LB 623, § 46; Laws 2004, LB 1097, § 38; Laws 2005, LB 364, § 20; Laws 2011, LB 509, § 50.

**Cross References**

Judges Retirement Act, see section 24-701.01.

**84-1502. Board; chairperson; secretary; election; meetings; compensation.** (1) Within thirty days after its appointment, the Public Employees Retirement Board shall meet and select a chairperson and secretary. Thereafter, the chairperson and the secretary shall be elected in January of each year.

(2) The board shall meet upon call of the chairperson or upon the request of three members of the board filed with the board office. Meetings of the board shall be held in this state and may be held by telecommunication equipment if the requirements of the Open Meetings Act are met.

(3) The members of the board, except the state investment officer, shall be paid fifty dollars per diem, and all members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as board members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1971, LB 987, § 2; Laws 1986, LB 311, § 39; Laws 2004, LB 821, § 41; Laws 2005, LB 503, § 18.

**Cross Reference**

Open Meetings Act, see section 84-1407.

**84-1503. Board; duties.** (1) It shall be the duty of the Public Employees Retirement Board:

(a) To administer the retirement systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The director shall be qualified by training and have at least five years of experience in the administration of a qualified public or private employee retirement plan. The director shall not be a member of the board. The salary of the director shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income

earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law;

(d) To administer the deferred compensation program authorized in section 84-1504;

(e) To hire an attorney, admitted to the Nebraska State Bar Association, to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection;

(f) To hire an internal auditor to perform the duties described in section 84-1503.04 who meets the minimum standards as described in section 84-304.03;

(g) To adopt and implement procedures for reporting information by employers, as well as testing and monitoring procedures in order to verify the accuracy of such information. The information necessary to determine membership shall be provided by the employer. The board shall adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision. Nothing in this subdivision shall be construed to require the board to conduct onsite audits of political subdivisions for compliance with statutes, rules, and regulations governing the retirement systems listed in subdivision (1)(a) of this section regarding membership and contributions; and

(h) To prescribe and furnish forms for the public retirement system plan reports required to be filed pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) To determine, based on information provided by the employer, the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations for the management of the board;

(d) To keep a complete record of all proceedings taken at any meeting of the board;

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board, the Nebraska Retirement Systems Committee of the Legislature, and the Legislative Fiscal Analyst upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once every three years, unless the board determines that such a process would not be cost effective under the circumstances and that the actuarial services performed have been satisfactory, in which case the contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to three additional years. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall occur beginning

on or after July 1, 2005, and at intervals of not less than five years and not more than fifteen years and shall be in such amounts as the Legislature shall direct;

(g) To adopt and promulgate rules and regulations to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which includes, but is not limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 2012, and from time to time thereafter at the request of the Nebraska Retirement Systems Committee of the Legislature, to be completed not more than every four years but not less than every ten years. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. A copy of the compliance audit shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee of the Legislature and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations for the adjustment of contributions or benefits, which includes, but is not limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; (iii) establishing materiality and de minimus amounts for agency transactions, adjustments, and inactive account closures; and (iv) notice provided to all affected persons. Following an adjustment, a timely notice shall be sent that describes the adjustment and the process for disputing an adjustment to contributions or benefits; and

(j) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code, as defined by section 49-801.01 including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(16) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service. The board shall adopt and promulgate rules and regulations necessary or appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) By March 31 of each year, the board shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the board's funding policy, the administrative costs and other fees associated with each fund and plan overseen by the board, member education and informational programs, the director's duties and limitations, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

**Source:** Laws 1971, LB 987, § 3; Laws 1973, LB 216, § 3; Laws 1973, LB 498, § 10; Laws 1979, LB 416, § 3; Laws 1983, LB 70, § 1; Laws 1984, LB 751, § 13; Laws 1986, LB 311, § 40; Laws 1987, LB 549, § 14; Laws 1988, LB 1170, § 22; Laws 1991, LB 549, § 74; Laws 1992, LB 672, § 33; Laws 1994, LB 833, § 54; Laws 1994, LB 1306, § 11; Laws 1995, LB 502, § 3; Laws 1996, LB 847, § 52; Laws 1996, LB 1076, § 44; Laws 1998, LB 1191, § 78; Laws 1999, LB 849, § 33; Laws 2000, LB 1192, § 25; Laws 2001, LB 808, § 21; Laws 2002, LB 407, § 63; Laws 2003, LB 451, § 35; Laws 2005, LB 503, § 19; Laws 2011, LB 474, § 14; Laws 2011, LB 509, § 51; Laws 2012, LB 916, § 43.

**Cross References**

County Employees Retirement Act, see section 23-2331.  
Judges Retirement Act, see section 24-701.01.  
Nebraska State Patrol Retirement Act, see section 81-2014.01.  
School Employees Retirement Act, see section 79-901.  
State Employees Retirement Act, see section 84-1331.

**84-1503.02. Board; duties and responsibilities.** (1) The appointed members of the Public Employees Retirement Board shall have the responsibility for the administration of the retirement systems pursuant to subdivision (1)(a) of section 84-1503, shall be deemed fiduciaries with respect to the administration of the retirement systems, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section. The nonvoting, ex officio member of the board shall not be deemed a fiduciary.

(2) As fiduciaries, the appointed members of the board shall discharge their duties with respect to the retirement systems solely in the interests of the members and beneficiaries of the retirement systems for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law at the time such duties are discharged. The appointed members of the board shall not have a duty in their official capacity to seek the enhancement of plan benefits through the legislative process if such benefits are not already contained within the plan documents. The appointed members of the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

**Source:** Laws 1996, LB 847, § 53; Laws 2006, LB 1019, § 18.

**84-1503.03. Director; employ personnel; employees; duties.** The director of the Nebraska Public Employees Retirement Systems shall employ qualified personnel as may be required to carry out the duties and responsibilities required under sections 84-1501 to 84-1513. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. The positions of the internal auditor and the attorney hired by the board pursuant to section 84-1503 shall be classified positions covered by the State Personnel System and shall not be noncovered positions under subsection (2) of section 81-1316. The director shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties.

**Source:** Laws 1996, LB 847, § 54; Laws 1997, LB 623, § 48; Laws 2001, LB 408, § 30; Laws 2005, LB 364, § 21; Laws 2005, LB 503, § 21; Laws 2006, LB 1019, § 19.

**84-1503.04. Internal auditor; duties and responsibilities.** The duties and responsibilities of the internal auditor employed by the Public Employees Retirement Board shall be consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors and include the following:

(1) Prepare a formal written three-year audit plan and work schedule each year and present them to the board;

(2) Conduct ongoing reviews of the internal procedures of the Nebraska Public Employees Retirement Systems and recommend improvements to the board;

(3) Ensure that the Nebraska Public Employees Retirement Systems' internal accounting and operational controls are appropriate and operating correctly and report inconsistencies to the board;

(4) Examine and evaluate system records and operating procedures; verify compliance with established plans, policies, procedures, and control systems; assure compliance with regulatory and statutory conditions; and assure adherence to generally accepted accounting and auditing principles and report inconsistencies to the board;

(5) Perform internal auditing functions, including review of contributions received and creditable service granted; review benefit payments for completeness of information, appropriateness, accuracy, and timeliness; verify accuracy of data and financial information reported to the systems' actuary for all applicable plans; and verify accuracy of data and financial information reported to the systems' record keeper for all applicable plans; and

(6) Develop standards to be used by independent auditors in their review of the practices and procedures used by various employers to provide for employee participation in the respective retirement systems included in subdivision (1)(a) of section 84-1503.

**Source:** Laws 2005, LB 503, § 20.

**84-1504. Deferred compensation; treatment; participation; requirements.** (1) The Public Employees Retirement Board, on behalf of the state, may contract with any individual to defer a portion of such individual's compensation or with the Legislative Council to defer any other amount that the Legislative Council agrees to credit to an individual's account pursuant to section 457 of the Internal Revenue Code.

(2) The compensation to be deferred at the election of the individual and any other amount credited on behalf of such individual by the Legislative Council shall not exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) The deferred compensation program shall serve in addition to but not be a part of any existing retirement or pension system provided for state or county employees or any other benefit program.

(4) Any compensation deferred at the election of the individual under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(5) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(6) The state, the board, the state investment officer, the agency, or the county shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(7) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(8) On and after July 1, 2010, no employee of the state or any political subdivision of the state shall be authorized to participate in a deferred compensation plan unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(9) For purposes of this section, individual means (a) any state employee, whether employed on a permanent or temporary basis, full-time or part-time, (b) a person under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges and who has entered into a contract with the state to have compensation deferred prior to August 28, 1999, and (c) any county employee designated as a permanent part-time or full-time employee or elected official whose employer does not offer a deferred compensation plan and who has entered into an agreement pursuant to section 48-1401.

**Source:** Laws 1973, LB 428, § 1; R.S.Supp., 1974, § 84-1329.01; Laws 1975, LB 42, § 2; Laws 1987, LB 549, § 15; Laws 1994, LB 460, § 1; Laws 1996, LB 847, § 55; Laws 1997, LB 623, § 49; Laws 1997, LB 624, § 43; Laws 1998, LB 1191, § 79; Laws 1999, LB 703, § 27; Laws 2001, LB 75, § 2; Laws 2010, LB 950, § 28.

**84-1505. Deferred compensation; treatment; investment.** (1) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. All such assets held in trust shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall be the custodian of the funds and securities of the deferred compensation plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly authorized by the retirement board. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31 of each year.

(3) Except as provided in subsection (4) of this section, all compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(4) If a participant of the deferred compensation plan is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the participant's compensation deferred under the plan, property and

rights purchased with the deferred compensation, or investment income attributable to the deferred compensation, property, or rights from the plan, the court may order the payment of such compensation, property and rights, or investment income for such civil damages, except that the compensation, property and rights, or investment income to the extent reasonably necessary for the support of the participant or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of compensation, property and rights, or investment income shall not be stayed on the filing of any appeal or conviction. If the conviction is reversed on final judgment, all compensation, property and rights, or investment income paid as civil damages shall be forfeited and returned to the participant. The changes made to this section shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1973, LB 428, § 2; R.S.Supp.,1974, § 84-1329.02; Laws 1994, LB 460, § 2; Laws 1996, LB 847, § 56; Laws 1997, LB 623, § 50; Laws 1998, LB 1191, § 80; Laws 2012, LB 916, § 44.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**84-1506. Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.** (1) Under the deferred compensation plan, any amount shall not be available to the participant or beneficiary prior to (a) the calendar year in which the participant attains age seventy and one-half years, (b) when the participant is separated from service with the state, or (c) when the participant has an unforeseeable emergency as determined by the Public Employees Retirement Board. The deferred compensation plan shall meet the minimum distribution requirements of section 457 of the Internal Revenue Code. Distribution shall be made as provided in subsection (2) of this section or sections 84-1509 and 84-1510.

(2) For amounts under the deferred compensation plan which are not provided for under an administrative services agreement pursuant to section 84-1509, payments and benefits shall be deposited in the Deferred Compensation Fund which is hereby created. The State Treasurer shall make payments to the employees from the Deferred Compensation Fund.

**Source:** Laws 1973, LB 428, § 3; R.S.Supp.,1974, § 84-1329.03; Laws 1979, LB 411, § 2; Laws 1994, LB 460, § 3; Laws 1996, LB 847, § 57.

**84-1506.01. Deferred Compensation Expense Fund; created; use; investment.** All expenses necessary in connection with the administration and operation of the deferred compensation plan authorized in section 84-1504 shall be paid from the Deferred Compensation Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the deferred compensation plan assets and income as directed by the Public Employees Retirement Board for the proper administration of the plan. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1997, LB 623, § 51.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**84-1507. Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.** All actuarial reports, statements of actuarial assumptions and methods, and actuarial valuations and experience investigations required for any retirement system in Nebraska covering employees of any political subdivision in the state and supported, in whole or in part, by Nebraska tax dollars shall be prepared and signed by an actuary certified as qualified by the Public Employees Retirement Board. Such certification may be applied for by written request to the Public Employees Retirement Board.

**Source:** Laws 1973, LB 297, § 1; R.S.Supp., 1974, § 84-1315.01.

**84-1509. Administrative services agreement; authorized.** The Public Employees Retirement Board may enter into an administrative services agreement with an organization authorized to conduct business in Nebraska and to administer public employee deferred compensation retirement plans. No such agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

**Source:** Laws 1979, LB 411, § 3; Laws 1994, LB 460, § 4; Laws 1996, LB 847, § 58.

**84-1510. Administrative services agreement; terms.** The agreement authorized by section 84-1509 shall provide: (1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the state whether on account of retirement, termination of services, total disability, or death;

(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;

(3) That the organization shall furnish to the board a monthly statement of all disbursements and withholdings as stipulated in the agreement;

(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;

(5) For the right of the state, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;

(6) Protection to the state against assignment of the agreement or the subletting of work done or services furnished under the agreement;

(7) For termination of the agreement; and

(8) Such other terms as may be agreed upon and which the board determines to be in the best interest of the state and its participating employees.

**Source:** Laws 1979, LB 411, § 4; Laws 1987, LB 549, § 16; Laws 1994, LB 460, § 5.

**84-1511. Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.** (1) The Public Employees Retirement Board shall establish a comprehensive preretirement planning program for state patrol officers, state employees, judges, county employees, and school employees who are members of the retirement

systems established pursuant to the County Employees Retirement Act, the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, and the State Employees Retirement Act. The program shall provide information and advice regarding the many changes employees face upon retirement, including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(2) The preretirement planning program shall be available to all employees who have attained the age of fifty years or are within five years of qualifying for retirement or early retirement under their retirement systems.

(3) The preretirement planning program shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to the employee, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board deems valuable in assisting public employees in the transition from public employment to retirement.

(4) The board shall work with the Department of Health and Human Services, the personnel division of the Department of Administrative Services, employee groups, and any other governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) Funding to cover the expense of the preretirement planning program shall be charged back to each retirement fund on a pro rata share based on the number of employees in each plan.

(6) The employer shall provide each eligible employee leave with pay to attend up to two preretirement planning programs. For purposes of this subsection, leave with pay shall mean a day off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than twice, but such leave shall be at the expense of the employee and shall be at the discretion of the employer. An eligible employee shall not be entitled to attend more than one preretirement planning program per fiscal year prior to actual election of retirement.

(7) A nominal registration fee shall be charged each person attending a preretirement planning program to cover the costs for meals, meeting rooms, or other expenses incurred under such program.

**Source:** Laws 1986, LB 311, § 1; Laws 1992, Third Spec. Sess., LB 14, § 31; Laws 1995, LB 369, § 9; Laws 1996, LB 900, § 1076; Laws 1996, LB 1044, § 979; Laws 1997, LB 624, § 44; Laws 1998, LB 497, § 29; Laws 2011, LB 509, § 52.

**Cross References**

County Employees Retirement Act, see section 23-2331.  
Judges Retirement Act, see section 24-701.01.  
Nebraska State Patrol Retirement Act, see section 81-2014.01.  
School Employees Retirement Act, see section 79-901.  
State Employees Retirement Act, see section 84-1331.

**84-1511.01. Board; retirement education and financial planning program; for whom; required information; funding; attendance; fee.** (1) The Public Employees Retirement Board shall establish a comprehensive retirement education and financial planning program for all members of the State Employees Retirement System of the State of Nebraska and for all members of the Retirement System for Nebraska Counties, who are under age fifty and

not eligible to attend the preretirement planning program established in section 84-1511. The program may be provided to members in a single-day format, or may be provided in equivalent partial-day segments.

(2) The retirement education and financial planning program shall include discussion on the retirement system, financial planning, and budgeting as well as any other planning information valuable to employees before they reach age fifty.

(3) The employer shall provide each eligible employee leave with pay to attend a retirement education and financial planning program twice prior to age fifty. For purposes of this subsection, leave with pay means time off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. Leave with pay shall be provided to each eligible employee in order that the employee may attend the full retirement education and financial planning program, whether it is provided in a single-day program or in the equivalent partial-day segments. An employee may choose to attend a full program more than twice, but leave to attend any additional single-day programs or equivalent segments shall be at the expense of the employee and shall be at the discretion of the employer. An employee may not attend a full program more than once per fiscal year.

(4) Funding to cover the expense of the retirement education and financial planning program shall be charged proportionately to the State Employees Retirement Fund and the County Employees Retirement Fund.

(5) A nominal registration fee shall be charged each person attending a retirement education and financial planning program to cover the costs for meals or meeting rooms or other expenses incurred for the program.

**Source:** Laws 1991, LB 254, § 1; Laws 1995, LB 369, § 10; Laws 2004, LB 1097, § 39.

**84-1512. Board; access to records; director; duties; employer education program.**

(1) The Public Employees Retirement Board, for purposes of administering the various retirement systems under its jurisdiction, shall receive from the Department of Administrative Services and other employers such information as is necessary for the efficient and accurate administration of the systems and shall consult with the Department of Administrative Services and other employers as to the form in which the information is to be presented and received by the board. The information in the records shall be provided by the employers in an accurate and verifiable form, as specified by the director of the Nebraska Public Employees Retirement Systems. The director shall, from time to time, carry out testing procedures to verify the accuracy of such information. The director shall have access to records maintained by the Department of Administrative Services on the Nebraska employees information system data base for the purpose of obtaining any information which may be necessary to verify the accuracy of information and administer the systems and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) The information obtained by the board pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09, except that the following information shall be considered public records: The member's name, the retirement system in which the member is a participant, the date the member's participation in the retirement system

commenced, and the date the member's participation in the retirement system ended, if applicable.

**Source:** Laws 1986, LB 311, § 41; Laws 2000, LB 1192, § 26; Laws 2005, LB 503, § 22; Laws 2009, LB 188, § 19.

**84-1513. Board; members; personal liability.** No member of the Public Employees Retirement Board shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to administrative decisions pertaining to the retirement funds of retirement plans administered by the board.

**Source:** Laws 1986, LB 311, § 42; Laws 1998, LB 1191, § 81.

**STATE OF NEBRASKA  
DEFERRED COMPENSATION PLAN**

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**CERTIFICATE OF ADOPTION**

STATE OF NEBRASKA        )  
  )  
COUNTY OF LANCASTER    )

I, Phyllis G. Chambers, Director of Nebraska Public Employees Retirement Systems, on behalf of and with the authority of the Public Employees Retirement Board and as Secretary of said Board, hereby certify that the following Restatement of the Plan document for the Deferred Compensation Plan of the State of Nebraska was adopted by the Public Employees Retirement Board at its June 18, 2012, meeting, and represents the most recent restatement of the provisions of the Plan.

In witness whereof, I have signed this certificate at the direction of the Board and as Director on this 18<sup>th</sup> day of June, 2012.

/s/ Phyllis G. Chambers, Director  
Nebraska Public Employees Retirement Systems  
Secretary, Public Employees Retirement Board  
State of Nebraska

**1. Purpose.**

The State of Nebraska Deferred Compensation Plan is an eligible deferred compensation plan created and administered pursuant to Internal Revenue Code § 457 and Neb. Rev. Stat. §§ 84-1504, et seq. The primary purpose of this Plan is to attract and hold certain individuals for purposes of employment with the State of Nebraska by permitting them to enter into agreements with the State of Nebraska to defer a portion of their compensation as allowed by IRC § 457.

According to Neb. Rev. Stat. § 84-1504:

(a) The Public Employees Retirement Board, on behalf of the State, may contract with any individual to defer a portion of such individual's compensation pursuant to § 457 of the Internal Revenue Code.

(b) The compensation to be deferred shall not exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such an eligible § 457(b) plan.

(c) The Plan shall serve in addition to but not be a part of any existing retirement or pension system provided for state or county employees or any other benefit program.

(d) Any compensation deferred under the Plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(e) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(f) The State, the Board, the State Investment Officer, the Nebraska Public Employees Retirement Systems, or the county shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(g) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska.

**2. Definitions.**

For purposes of this Plan, the following words or phrases shall mean:

(a) "Amount(s) deferred" means the total annual deferrals under the Plan in the current and prior years, adjusted for gain or loss. Except as otherwise specifically indicated, amount(s) deferred includes any rollover amount held by the Plan.

(b) "Annual deferral(s)" means, with respect to a taxable year, the amount of compensation deferred under the Plan by salary reduction, which is taken into account as an annual deferral in the taxable year of the participant in which deferred.

(c) "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(d) "Board" means the Public Employees Retirement Board.

(e) "Catch-up" means a catch-up amount or catch-up limitation for a participant for a taxable year per the annual deferral permitted under § 414(v) or § 457(b)(3) of the Internal Revenue Code to the extent the amount of the annual deferral for the participant for the taxable year is permitted to exceed the plan ceiling applicable under § 457(b)(2), and as permitted pursuant to section 5 of this Plan document.

(f) "Compensation" means the participant's compensation from the State for the taxable year, which also includes certain tax-deferred amounts including:

(i) any elective deferral as defined in § 402(g)(3);

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Internal Revenue Code §§ 125, 132(f)(4) or 457; and

(iii) any deferral to a 403(b) that is compensation within the meaning of Internal Revenue Code § 403(b)(3).

(g) "Includible Compensation" means with respect to a specific taxable year, the participant's compensation for services performed for State during that taxable year.

(h) "Normal Retirement" means:

(i) A date or age designated by the participant, but no earlier than age 55 and no later than age 70½,

(ii) Or if the participant continues to work past age 70½, then the age at which the participant separates from service with the State of Nebraska.

(i) "Retirement" means a separation from service with the State that occurs on or after the participant's "Normal Retirement" date.

(j) "Participant" means any employee of the State who fulfills the eligibility and enrollment requirements set forth in section 4 of this Plan document and who is currently deferring compensation or who has previously deferred compensation under the Plan and who has not received a distribution of his or her entire benefit in the Plan.

(k) "Plan" means the State of Nebraska Deferred Compensation Plan.

(l) "Plan Year" means the twelve-month period beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup>.

(m) "Termination of Services" shall mean a separation from service prior to the participant's "Normal Retirement" date.

(n) "Separation from Service" occurs on the date on which the participant experiences a bona fide dissolution of the employment relationship with the participant's current employer, the date of which dissolution is determined by the employer. The employer shall notify the Board within two weeks after the date such a separation has occurred. Separation from service does not include ceasing employment if the participant enters another employment relationship with the State of Nebraska within 120 calendar days after ceasing employment or if it is determined that a purported separation was not bona fide. If the Board determines that a separation from service has not occurred and a termination benefit has been paid, the Board shall require the participant who has received such benefit to repay the benefit to the Plan.

(o) "State" means the State of Nebraska and any counties that are political subdivisions of the State of Nebraska that participate in the Plan.

### **3. Administration.**

(a) The Plan shall be administered by the Board. The Board shall have full power to adopt policies, make agreements and issue rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any policies, agreements or rules and regulations so adopted.

(b) All amounts deferred pursuant to this Plan are held in trust for the benefit of participants and beneficiaries of the Deferred Compensation Plan, and shall be invested by the

State Investment Officer pursuant to the Nebraska Capital Expansion Act, the Nebraska State Funds Investment Act, and in accordance with each participant's directions made pursuant to section 6 of this Plan document ("Investment Options").

(c) The State Treasurer shall be the custodian of the funds and securities of the Plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall ensure that all disbursements therefrom shall be paid only upon vouchers duly authorized by the Board. Payment to a participant or beneficiary may be made by the State Treasurer or by the third-party administrator(s) at the direction of the State Treasurer. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31<sup>st</sup> of each year.

(d) The Board may delegate its duties of administration to the Director of the Nebraska Public Employees Retirement Systems. The Board may also engage one or more third-party administrator(s) as it deems necessary and prudent for purposes of the administration of the Plan.

(e) If the Board or its designees find that this Plan document is in any way ambiguous, they shall use the provisions of the State Employees Retirement Act for guidance in administering the Plan, if such provisions are consistent with IRC § 457 or the rules and regulations issued thereunder.

(f) One or more third party administrator(s) may perform those duties of administration as assigned by the Board and/or the State Treasurer. Such duties shall include, but are not limited to, receiving monthly deferrals and allocating them to participant's accounts, maintaining the daily valuation of the participant's accounts, and paying out participant accounts to duly-authorized participants and beneficiaries.

(g) All expenses necessary in connection with the administration and operation of the Plan shall be paid from the Deferred Compensation Expense Fund. The fund shall be credited with the proportionate share of the administration expenses from the Plan assets and income as directed by the Board for the proper administration of the Plan.

#### **4. Participation in the plan.**

(a) Eligibility:

(i) Only the following individuals who provide services as employees of the State of Nebraska or its counties shall be eligible to initiate deferrals to the Plan:

(A) Any State employee, whether employed on a permanent or temporary basis, full-time or part-time;

(B) Any county employee designated as a permanent part-time or full-time employee or elected official whose employer does not offer a deferred compensation plan and who has entered into an agreement pursuant to Neb. Rev. Stat. § 48-1401;

(ii) Excluded from initiating deferrals in the plan are State employees who are employed by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any community college area board, the Nebraska Technical Community College, or employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become participants of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska.

(iii) On and after July 1, 2010, no employee of the state or any political subdivision of the State shall be authorized to participate in a deferred compensation plan unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(b) Enrollment in the Plan:

(i) Participants may initially enroll in the Plan at any age.

(ii) All participants may initiate deferrals by submitting an application to the Director, of the Nebraska Public Employees Retirement Systems. The Application shall refer to this Plan document, shall incorporate this Plan document by reference, and shall constitute an agreement for deferring compensation for purposes of IRC § 457.

(c) Deferral of Compensation:

(i) Deferrals shall begin the calendar month after an agreement to defer compensation is signed, and such compensation may be deferred in any calendar month only if an agreement providing for such deferral has been entered into before the first day of such month. This rule applies even if a participant is paid on a biweekly rather than monthly basis.

(ii) However, with respect to a new employee, compensation may be deferred for the calendar month during which the participant first becomes an employee if an agreement providing for such deferral is entered into on or before the first day on which the participant becomes an employee. Employees electing to utilize the catch-up funding provision in section 5(b) of this Plan document must notify the Board of such intent in writing.

(iii) At the time of any agreement hereunder, a participant must agree to defer a minimum of twenty-five dollars (\$25.00) per month. The State shall reduce the participant's total annual compensation, on a pay period basis, by the amount indicated on the participant's application.

(d) Discontinuing deferrals. A participant may revoke any or all agreements deferring compensation by notifying the Director, of the Nebraska Public Employees Retirement System in writing. Deferrals will cease effective the first pay period after participant has indicated that deferrals should cease. The participant may enter a new agreement to defer compensation at any time.

## **5. Deferral limits.**

(a) Maximum annual deferral – general rule. The maximum annual deferral in the Plan for the taxable year in which the participant can not initiate a catch-up shall be the lesser of:

(i) \$11,000 for 2002, \$12,000 for 2003, \$13,000 for 2004, \$14,000 for 2005, \$15,000 for 2006 , and after 2006, the limit will be the amount to which it is adjusted pursuant to subsection (f) of this section, or

(ii) 100% of the participant's includible compensation.

(b) Special Section 457 catch up: For any one or more of the participant's last three taxable years ending before the participant attains normal retirement age as defined in section 2(h) of this Plan document, the limitation set forth in subsection (a) of this section shall be the lesser of:

(i) Twice the dollar amount in effect under subsection (a) of this section, or

(ii) The sum of:

(A) the Plan ceiling established under subsection (a) of this section for the taxable year,  
plus,

(B) the Plan ceiling established under § 457(b) of the Internal Revenue Code any prior taxable year or years, less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the Plan permitted under the age fifty (50) catch-up provided for in subsection (c) of this section.

(iii) Determining underutilized limitations under subsection (b)(ii)(B) of this section:

(A) In determining the includible compensation of a participant under the Plan for purposes of calculating the amount described in subsection (b)(ii)(A) of this section, includible compensation is not reduced by contributions of amounts described in subsection (b)(ii)(B) of this section. In addition, a prior taxable year is taken into account under subsection (b)(ii)(B) of this section only if it is a year beginning after December 31, 1978, in which the participant was eligible to participate in the Plan, and in which compensation deferred (if any) under the plan during the year was subject to a plan ceiling established under § 457 of the Internal Revenue Code.

(B) Special rules concerning application of the coordination limit for years prior to 2002 for purposes of determining the underutilized limitation:

(1) General rule. For purposes of determining the underutilized limitation for years prior to 2002, participants remain subject to the rules in effect prior to the repeal of the coordination limitation under § 457(c)(2). Thus, the applicable basic annual limitation under subsection (a) of this section and the special § 457 catch-up under this subsection (b) for years in effect prior to 2002 are reduced, for purposes of determining a participant's underutilized amount under a plan, by amounts excluded from the participant's income for any prior taxable year by reason of a salary reduction or elective contribution under any other eligible § 457(b) plan, § 401(k) qualified cash or deferred arrangement, § 402(h)(1)(B) simplified employee pension (SARSEP), § 403(b) annuity contract, and § 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in § 501(c)(18) (pre-2002 coordination plans). Similarly, in applying the § 457(b)(2)(B) limitation for includible compensation for years prior to 2002, the limitation is  $33 \frac{1}{3}$  percent of the participant's compensation includible in gross income.

(2) Coordination limitation applied to participant. For purposes of determining the underutilized limitation for years prior to 2002, the coordination limitation applies to pre-2002 coordination plans of all employers for whom a participant has performed services, not only to those of the eligible employer. Thus, for purposes of determining the amount excluded from a participant's gross income in any prior taxable year under subsection (b)(ii)(B) of this section, the participant's annual deferral under an eligible plan, and salary reduction or elective deferrals under all other pre-2002 coordination plans, must be determined on an aggregate basis. To the extent that the combined deferral for years prior to 2002 exceeded the maximum deferral limitations, the amount is treated as an excess for those prior years.

(C) Special rule when no annual deferrals occur under the eligible plan. A participant who, although eligible, did not defer any compensation under the eligible plan in any given year before 2002 is not subject to the coordinated deferral limit, even though the participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under an eligible plan for a prior taxable year if all annual deferrals under the plan are distributed in accordance with this section. Thus, to the extent that a participant participated solely in one or more of the other pre-2002 coordination plans during a prior taxable year (and not the eligible plan), the participant is not subject to the coordinated limitation for that prior taxable year. However, the participant is treated as having

deferred amounts in a prior taxable year for purposes of determining the underutilized limitation for that prior taxable year under this subsection (b), but only to the extent that the participant's salary reduction contributions or elective deferrals under all pre-2002 coordination plans have not exceeded the maximum deferral limitations in effect under § 457(b) for that prior taxable year. To the extent the State or a county did not offer an eligible plan to an individual in a prior given year, no underutilized limitation is available to the individual for that prior year, even if the employee subsequently becomes eligible to participate in an eligible plan of the employer.

(D) To utilize the catch-up funding provision as outlined in this subsection (b), the participant must notify the Board of such intent three (3) years or less from the year the participant designates as his or her "Normal Retirement." This provision may be utilized one time only. If a participant continues to work beyond the age at which he or she has designated as his retirement age, he or she can continue in the Plan, but may not again invoke the limits of this subsection (b) and is subject to the limit of subsection (a) of this section.

(c) Age 50 catch-up: For any participant who will attain the age of fifty (50) during a calendar year, the limitation set forth in subsection (a) of this section shall be the greater of:

(i) The plan ceiling established under subsection (a) of this section for the taxable year, plus an amount equal to \$1,000 for year 2002, \$2,000 for year 2003, \$3,000 for year 2004, \$4,000 for year 2005, and \$5,000 for year 2006 and thereafter, or

(ii) The limit found in subsection (b) for any calendar year in which such limit applies.

(d) A participant may elect to defer accumulated sick pay, accumulated vacation pay, or back pay under the Plan, but only if he/she signs an agreement with the Board to defer such amounts prior to the calendar month in which the participant would otherwise receive such amounts. Such deferrals are subject to the limits found in subsections (a) through (c) of this section.

(e) The Board shall ensure that if the Plan has more than one administrative service provider, that the limits, as set forth in this section are not violated when aggregating amounts deferred to the several administrative service providers.

(f) Beginning in 2006 or thereafter, the limits for amounts deferred under a § 457 plan may be adjusted by the United States Secretary of the Treasury from time to time to reflect increases in the cost of living, such adjustments being rounded to the next lowest \$500 increment by the Secretary. The Director may amend the limitation on deferrals found in this Plan document by issuing a notification to all participants that the deferral limitations will be increased in accordance with the Secretary's adjustments.

## **6. Investment options.**

(a) Each participant in the Plan shall be allowed to allocate the amounts deferred to various investment options in increments of one whole percent (1%) in any proportion, including full allocation to any one option. Such investment options shall include, but not be limited to, the following:

(i) A stable return account which shall be invested by or under the direction of the State Investment Officer in one or more guaranteed investment contracts;

(ii) An equities account which shall be invested by or under the direction of the State Investment Officer in equities;

(iii) A balanced account which shall be invested by or under the direction of the State Investment Officer in equities and fixed income instruments;

(iv) An index fund account which shall be invested by or under the direction of the State Investment Officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(v) A fixed income account which shall be invested by or under the direction of the State Investment Officer in fixed income instruments;

(vi) A money market account which shall be invested by or under the direction of the State Investment Officer in short-term fixed income securities;

(vii) An aggressive growth fund which shall be invested by or under the direction of the State Investment Officer in the stocks of relatively small U.S. companies;

(viii) An international stock fund which shall be invested by or under the direction of the State Investment Officer in the stocks of foreign companies;

(ix) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(x) An age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches; and,

(xi) Other funds, as designated from time to time by the Board, and offered to participants in conjunction with those offered to participants of the State Employees Retirement System of the State of Nebraska.

(b) The participant may change the percentage of amounts deferred allocated to the various investment options via telephone call to the Board's administrative service provider's voice response unit, via written request on forms prescribed by the Nebraska Public Employees Retirement Systems, or via the administrative service provider's Internet-based technology.

(c) Change requests received on a business day shall be processed within three (3) business days of receipt. The Board and the administrative service provider(s) reserve the right to extend these deadlines if, in reasonable good faith or for reasons beyond the control of the Board and/or administrative service provider, the change requests can not be processed in accordance with such deadlines: all extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513.

(d) Except as provided in subsections (e)(i) and (e)(ii) of this section, participants may transfer any portion of their deferred compensation among the investment options available under the plan via telephone call to the Board's administrative service provider's voice response unit, via written request on forms prescribed by the Nebraska Public Employees Retirement Systems, or via the administrative service provider's Internet-based technology.

(e) Transfer requests received on a business day shall be processed within three (3) business days of receipt. The Board and the administrative service provider(s) reserve the right to extend these deadlines if, in reasonable good faith or for reasons beyond the control of the Board and/or administrative service provider, the transfer requests can not be processed in accordance

with such deadlines: all extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513:

(i) Funds invested in the stable return account shall be subject to restrictions on transfers depending upon the availability of liquid funds in such account. The Public Employees Retirement Board shall establish a percentage available for transfer each calendar quarter based upon information, advice and recommendations provided by the state investment officer. The percentage established by the Board shall be an amount which will permit the greatest amount of flexibility for all participants of the plan whose contributions were invested in the stable return account to transfer funds out of the stable return account. Such percentage shall be limited as necessary to prevent participants from incurring any surrender charges or other penalties for early termination of the guaranteed investment contracts into which such funds were invested.

(ii) Participants shall not make direct transfers from the stable return account to the money market account or any comparable investment option established by the Board. Participants wishing to move their funds between these accounts shall first pass them through one of the non-competing equity investment account options, i.e. the equities account, the balanced account, the index fund account, or any other comparable equity investment option established by the Board. The transferred funds must remain in a non-competing equity investment account for a minimum of three months.

(f) If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subsection (a)(i) of this section.

## **7. Elective withdrawals and payment options.**

(a) Amounts deferred under the Plan shall be paid or made available to a participant or the participant's beneficiary only after the participant has experienced one of these scenarios:

(i) If a participant has experienced a separation from service in the following contexts:

(A) Termination of the participant's employment prior to age fifty-five (55), or

(B) Retirement of participant after age fifty-five (55);

(ii) If the participant incurs an unforeseeable emergency, as described in section 9 of this document, but only under the terms set forth in section 9 of this Plan document;

(iii) If it is determined that the conditions for a "de minimus" withdrawal exist as described in section 10 of this Plan document; or

(iv) If the participant dies and a death benefit is paid as described in section 8 of this Plan document;

(v) If the participant has attained the age of 70 ½ years.

(b) Upon separation from service, the participant may elect one of the following options with respect to his or her amounts deferred:

(i) The participant may elect to leave the amounts deferred invested with the Plan, except that the Plan shall begin lifetime distributions to a participant no later than April 1<sup>st</sup> of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, as required by IRC § 401(a)(9) except that no distribution is required to be made for the plan year commencing January 1, 2009 through December 31, 2009;

(ii) The participant may elect to have money paid to him or her at the frequency and dollar amounts selected by the participant, with payment being made on a monthly, quarterly, semiannually or annual basis and with a minimum withdrawal of \$100.00;

- (iii) The participant may elect to rollover or transfer all or a portion of his or her amounts deferred pursuant to section 16 of this document;
- (iv) The participant may purchase a monthly annuity benefit through the Nebraska Public Employees Retirement Systems with the money in his or her account; or,
- (v) The participant may elect a combination of any of the above listed options.

**8. Death benefits under the plan.**

(a) A participant may designate one or more beneficiaries and may name contingent beneficiaries to whom the benefits will be payable if the designated beneficiary predeceases the participant. The participant will also have the right to change his designation of beneficiaries. Payment to beneficiaries must comply with IRC §§ 457 and 401(a)(9):

(i) In the event of death of a participant prior to the commencement of benefits as called for under the Plan, the designated beneficiary shall have the right to elect that payments to such beneficiary shall be in accordance with one of the available options provided under the Plan and in accordance with IRC § 457.

(A) If such an election is made within 120 days of the later of the participant's date of death or the appointment of an executor or administrator, the participant's designated beneficiary or beneficiaries may utilize any of the options outlined in section 7(b) of this Plan document, subject to the required minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(B) If the designated beneficiary or beneficiaries fail to make an election within the time period specified in subsection (a)(i)(A) of this section, payment shall be made to the participant's designated beneficiary or beneficiaries in a lump sum.

(C) In the event that a participant's beneficiary dies before all monthly benefit payments become payable to such beneficiary, then the Board will pay the commuted value of such monthly benefits to the estate of the beneficiary.

(ii) In the event of a participant's death without a designated beneficiary, or if the designated beneficiary and contingent beneficiary, if any, have predeceased the participant, payment will be made to the participant's estate in a lump sum.

(iii) If a participant dies while benefits are being paid under any option available under the Plan, any remaining benefits will be paid to the participant's designated beneficiary or the participant's estate, as the case may be and in accordance with IRC §§ 457 and 401(a)(9).

(b) The Board and the participant or beneficiary shall execute an agreement in writing confirming the distribution option chosen, and assuring that payments of amounts deferred shall commence not later than the required beginning date as provided in IRC § 401(a)(9), and shall comply with the minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(c) If the Board or Director has engaged more than one administrative service provider and the participant has deferred compensation with more than one administrative service provider, then payments made by all administrative service providers must be coordinated, so that the total distribution of payments to the participant shall comply with the provisions of IRC § 457. The Board or Director shall ensure that compliance with IRC § 457 is complete and shall enter agreements with all administrative service providers to assure compliance.

(d) Payments of amounts deferred by participants and beneficiaries shall commence not later than the required beginning date as provided in IRC § 401(a)(9), and shall comply with the

minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(e) For any participant who dies on or after January 1, 2007, while performing qualified military service as defined in IRC § 414(u), the participant's beneficiary shall be entitled to any additional death benefit that would have been provided by the Plan (other than the accrual of benefit relating to the period of qualified military service) determined as if the participant had returned to employment with the State and then terminated employment on account of death.

(f) A participant's beneficiary, other than the participant's estate, who is to receive a lump sum death benefit from the Plan that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

## **9. Emergency withdrawals.**

(a) A participant may obtain a distribution when faced with an unforeseeable emergency. Such an emergency distribution must satisfy the requirement of subsection (b) of this section.

(b) An unforeseeable emergency means a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in § 152(a) of the Internal Revenue Code); loss of the participant's or beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary:

(i) Examples of an unforeseeable emergency may include (but are not limited to):

(A) Imminent foreclosure of or eviction from the participant's or beneficiary's primary residence;

(B) The need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication;

(C) The need to repair the principal residence because of significant water damage that is not covered by insurance arising as a result of events beyond the control of the participant; and,

(D) The need to pay for the funeral expenses of a non-dependent adult child; however,

(E) Except in extraordinary circumstances, the purchase of a home, pay credit card debt, and the payment of college tuition are not unforeseeable emergencies under the plan.

(ii) Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under subsection (b) of this section is to be determined based on the relevant facts and circumstances of each case.

(iii) In all cases, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved:

(A) Through reimbursement or compensation from insurance or otherwise; by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or,

(B) By cessation of deferrals under the plan.

(c) Distributions because of an unforeseeable emergency shall be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) for an unforeseeable emergency resulting in a financial hardship.

(d) Applications for emergency withdrawals shall be made on forms prescribed by the Board and shall be accompanied by sufficient documentation to substantiate the hardship claimed. The decision of the Board concerning unforeseeable emergencies shall be final as to all participants.

(e) Additional amounts deferred to the plan will be restricted for a six month period following a distribution under this section.

**10. De minimus withdrawals (voluntary & involuntary).**

(a) A participant may apply to the Board to withdraw the total amount payable to the participant under the plan if:

(i) The total amount deferred by the participant under the plan does not exceed the dollar limit of IRC § 401(a)(11)(A), or \$5,000, whichever is lesser;

(ii) The participant has not deferred any amounts under the plan during the two year period ending on the date of the distribution from the plan; and

(iii) There has been no prior distribution under the plan to the participant under this subsection (a).

(b) When the Board deems it necessary for plan administration, the Board shall distribute without the participant's consent any amounts payable to the participant under the plan if:

(i) The total amount deferred by the participant under the plan does not exceed \$1,000;

(ii) The participant has not deferred any amounts under the plan during the two year period ending on the date of the distribution from the plan; and,

(iii) There has been no prior distribution under the plan to the participant under this subsection (b).

**11. Leave of absence.**

(a) If a participant is on an approved leave of absence from the State for a period of not more than one year, his or her participation in the plan shall not be discontinued solely on account of such a leave of absence, nor will his or her account be the subject of a non-elective "de minimus" distribution under section 10(b) of this Plan document.

(b) If a participant is on an approved leave of absence and does not return to State employment upon termination of such approved leave of absence, he or she shall experience a termination of service for purposes of the plan, and such termination shall be deemed to begin on the date such leave is terminated and the employee has not returned to employment.

**12. Amendment or termination of the Plan.**

(a) The Board may at any time terminate this Plan with respect to the entire enrollment. Upon such termination, the participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. If the Plan is terminated, all amounts deferred under the Plan shall be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the Plan.

(b) The Board may amend the provisions of the Plan at any time, provided however, that no amendment shall affect the rights of participants or their beneficiaries to the receipt of a payment of benefits or to all other amounts deferred at the time of the amendment.

**13. Non-assignability clause.**

(a) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable, except to the extent provided in Neb. Rev. Stat. § 84-1505.

(b) Neither the participant, nor his beneficiary nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the rights to receive any payments hereunder. The payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of any attempted assignment or transfer, the State and the Board shall have no further liability to any person or entity based on such a purported assignment or transfer.

**14. Right of the participant to receive payments.**

The participant shall have at all times a nonforfeitable right to receive the payments pursuant to the distribution provisions of this Plan, and at no time shall the participant or the State work a voluntary forfeiture of such right.

**15. Financial responsibility of the state.**

The State shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the State be required to replace any loss whatsoever which may result from said investments.

**16. Transfers between plans, transfers to purchase service credit, and rollovers.**

(a) Transfer by plan-to-plan transfers of Plan assets to another Nebraska § 457 Plan. A participant who has experienced a separation of employment from the State may transfer amounts he or she deferred in this Plan to another eligible § 457 governmental plan, if the conditions of this section are met:

- (i) The receiving plan must provide for the receipt of transfers;
- (ii) The participant whose amounts deferred are being transferred from this Plan will have an amount deferred in the receiving plan immediately after the transfer at least equal to the amount deferred with respect to that participant in this Plan immediately before the transfer; and,
- (iii) The participant whose amounts deferred are being transferred has had a severance from employment with State and is performing services for the entity maintaining the receiving plan.

(iv) However, subsection (a)(iii) of this section is not required to be satisfied if:

- (A) All of the assets held by the Plan are transferred to the receiving plan;
- (B) The transfer is to another eligible governmental plan maintained by an eligible employer that is a State entity within the State of Nebraska; and
- (C) The participant whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless he or she is performing services for the entity maintaining the receiving plan.

(b) Acceptance of deferred amounts via a plan-to-plan transfers from another Nebraska § 457 Plan. If the transferring plan is another eligible Nebraska governmental § 457 Plan, a participant in the Plan may transfer amounts he or she deferred in that plan to this Plan, if the conditions of this section are met:

(i) The transferring plan must provide for such a transfer out of the plan;

(ii) The participant whose amounts deferred are being transferred to this Plan will have an amount deferred in this Plan immediately after the transfer at least equal to the amount deferred with respect to that participant in the transferring plan immediately before the transfer; and,

(iii) The participant whose amounts deferred are being transferred has had a severance of employment with the entity that maintains the transferring plan and is performing services for the State of Nebraska.

(iv) However, subsection (b)(iii) of this section is not required to be satisfied if:

(A) All of the assets held by the transferring plan are transferred to this Plan;

(B) The transfer is from another eligible governmental plan, including a deferred compensation plan authorized in Neb. Rev. Stat. § 84-1504 or existing prior to this Plan and described in Neb. Rev. Stat. §84-1504(7), maintained by an eligible employer that is a state entity within the State of Nebraska; and,

(C) The participant whose deferred amounts are being transferred is not eligible for additional annual deferrals in this Plan unless he or she is performing services for the State of Nebraska.

(c) Permissive Past Service Credit Purchase via Plan-to-Plan Transfer. A participant may transfer amounts he or she deferred to a defined benefit governmental plan (as defined in IRC § 414(d)) located in Nebraska, and the amount shall not be includible in gross income by reason of the transfer, if the conditions in this subsection are met. A transfer under this subsection (c) is not a distribution for purposes of this Plan or IRC § 457 and does not require a severance from employment to be completed. A transfer may be made under this subsection (c) only if the transfer is either:

(i) For the purchase of permissive past service credit (as defined in IRC § 415(n)(3)(A)) under the receiving defined benefit governmental plan; or,

(ii) A repayment to which § 415 does not apply by reason of IRC § 415(k)(3).

(d) Rollovers from another eligible retirement plan. A participant may roll into the Plan contributions that are eligible rollover distributions within the meaning of IRC § 402(c)(4) from another eligible retirement plan, as defined in subsection (d)(i) of this section, if the conditions in subsection (d)(ii) of this section are met:

(i) For purposes of this subsection, an “eligible retirement plan” means:

(A) An IRC § 401(a) qualified retirement plan which is exempt from tax under IRC § 501(a);

(B) An IRC § 403(a) annuity plan;

(C) An IRC § 403(b) annuity contract;

(D) An IRC § 408(a) individual retirement account containing only monies from another qualified retirement plan; and,

(E) An IRC § 408(b) individual retirement annuity, other than an endowment contract.

(ii) Any amounts that constitute eligible rollover distributions that are rolled into this plan from another eligible retirement plan, as listed in subsection (d)(i) of this section shall be

accounted for separately from the amounts deferred under the plan or transferred into the plan pursuant to subsection (b) of this section:

(A) The eligible rollover amounts will be segregated for accounting purposes and will remain distinct and traceable within the Plan;

(B) For recordkeeping purposes, the earnings and losses on the participant's eligible rollover amounts will be accounted for separately; and

(C) Disbursements and payments made to the rollover account shall be separate from disbursements from payments made to other accounts held under the Plan.

(iii) Any amounts contributed to the Plan as eligible rollover distributions under this subsection shall not be taken into account for purposes of the annual limit on annual deferrals by a participant found in section 5 of this Plan document, but are otherwise treated in the same manner as amounts deferred under § 457 for other purposes of the Plan, however such amounts continue to be subject to a ten percent (10%) federal tax penalty if distributed prior to normal retirement age under the Plan.

(e) Rollovers to another eligible retirement plan: A participant, the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in IRC § 414(p)), or the beneficiary of a Participant, who is entitled to an eligible rollover distribution under sections 7 and 8 of this Plan document, may elect (at the time and in the manner prescribed by the Board) to have all or any portion of the distribution paid directly to another eligible retirement plan specified by the participant in a direct rollover:

(i) For purposes of this subsection, an "eligible retirement plan" means an individual retirement account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), a Roth individual retirement account described in IRC § 408A, a qualified trust described in IRC § 401(a), an annuity plan described in IRC §§ 403(a) or 403(b), or an eligible governmental plan described in IRC § 457(b), that accepts the eligible rollover distribution.

(ii) For purposes of this subsection, an "eligible rollover distribution" means any distribution of all or any portion of a participant's account balance, except that an eligible rollover distribution does not include (a) any distribution made under section 9 of this Plan document as a result of an unforeseeable emergency, or (b) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC § 401(a)(9).

(iii) An eligible rollover distribution on behalf of a designated beneficiary of the participant who is not a spouse or former spouse of the participant may be transferred to an individual retirement account or annuity described in IRC §§ 408(a) or 408(b) that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity as described in IRC § 408(d)(3)(c).

(f) In order to take advantage of any of the transfer and rollover options found in subsections (a) through (e) of this section, a participant must:

(i) Notifying the Board in writing of the intended transfer or rollover, and,

(ii) Complete the enrollment or other paperwork necessary to affect the transfer or rollover at both the transferring and receiving plans.

## **17. Uniformed Services Employment and Reemployment Rights Act (USERRA).**

(a) To the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law No. 103-353), codified at 38 U.S.C. §§ 4301 et seq., and IRC

§ 414(u), when a participant is reemployed with the State after service in the uniformed services, the participant may make contributions to the participant's account (if the participant has not already done so while engaged in service in the uniformed services) in the total amount that would have been permitted under section 5 of this Plan document if the participant had been steadily employed in the position previously held with the State. No such payment shall exceed the amount the reemployed person would have been permitted to contribute had the person remained continuously employed by the State throughout his/her service in the uniformed services.

(b) Consistent with IRC § 414(u)(2)(A)(i), any such payment to the plan may be made during the period beginning with the date of reemployment and whose duration is the lesser of five years or three times the period of the reemployed person's service in the uniformed services.

(c) This section shall apply to reemployments on or after December 12, 1994.

**18. Assets held in trust.**

All amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, shall be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. See Neb. Rev. Stat. § 84-1505 and IRC § 457(g).

**19. Effective date.**

This restatement of the State of Nebraska Deferred Compensation Plan shall become effective on June 18, 2012.

**Source:** Revised and adopted by the Board at its June 18, 2012 Board meeting. This version of the Nebraska Deferred Compensation Plan replaces the version last revised and adopted on March 19, 2012.