

LEGISLATIVE BILL 237

Approved by the Governor April 10, 1989

Introduced by Goodrich, 20

AN ACT relating to school retirement; to amend sections 79-1044.01, 79-1046, 79-1051, 79-1051.06, 79-1056, and 79-1056.06, Reissue Revised Statutes of Nebraska, 1943, and section 79-1032, Revised Statutes Supplement, 1988; to increase retirement benefits as prescribed; to provide additional options for annuities; to authorize investments as prescribed; to increase employee contributions; to provide a cost-of-living adjustment; to eliminate provisions relating to authorized investments; to harmonize provisions; to repeal the original sections, and also sections 79-1051.03 and 79-1051.04, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 79-1032, Revised Statutes Supplement, 1988, be amended to read as follows:

79-1032. As used in For purposes of sections 79-1032 to 79-1060 and section 6 of this act, unless the context otherwise requires:

(1) Retirement system or system shall mean the School Employees' Retirement System of (corporate name of the school district as described in section 79-401) as provided for in sections 79-1032 to 79-1060;

(2) Board shall mean the board of education of the school district;

(3) Trustee shall mean the trustees provided for in section 79-1034;

(4) Employee shall mean the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not teachers, hired upon a full-time basis, which basis shall contemplate a work week of not less than thirty hours;

(5) Member shall mean any employee included in the membership of the retirement system or any former employee who ~~shall~~ has made contributions to the

system and shall not have has not received a refund;

(6) Annuitant shall mean any member receiving an allowance;

(7) Beneficiary shall mean any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Membership service shall mean service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the school district;

(9) Prior service shall mean service rendered prior to September 1, 1951, for which credit is allowed under section 79-1044, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-1043, 79-1045, 79-1049.02, 79-1049.03, and 79-1049.05;

(10) Creditable service shall mean the sum of the membership service and the prior service;

(11) Compensation shall mean salary or wages payable by the school district;

(12) Military service shall mean service in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or any women's auxiliary thereof;

(13) Accumulated contributions shall mean the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(14) Regular interest shall mean interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c) at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during such year;

(15) Retirement date shall mean the date of retirement of a member for service or disability as fixed by the board;

(16) Normal retirement date shall mean the end of the fiscal year during which the member attains age sixty-five;

(17) Early retirement date shall mean that month and year selected by a member having at least ten years of creditable service which includes a minimum of five years of membership service and who has attained age fifty-five;

(18) Retirement allowance shall mean the total annual retirement benefit payable to a member for

service or disability;

(19) Annuity shall mean annual payments, for both prior service and membership service, for life as provided in sections 79-1032 to 79-1060;

(20) Actuarial tables shall mean:

(a) For retirement allowances at an early retirement date, a unisex mortality table using thirty percent of the male mortality and seventy percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually; and

(b) For joint and survivorship annuities, a unisex retiree mortality table using sixty-five percent of the male mortality and thirty-five percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually and a unisex joint annuitant mortality table using thirty-five percent of the male mortality and sixty-five percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually;

(21) Actuarial equivalent shall mean the equality in value of the retirement allowance for early retirement or the retirement allowance for a joint and survivorship annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(22) Withdrawal from service shall mean complete severance of employment of a member as an employee of the school district by resignation, discharge, or dismissal; and

(23) Fiscal year shall mean the period beginning September 1 in any year and ending on August 31 of the next succeeding year.

Sec. 2. That section 79-1044.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1044.01. In lieu of the retirement annuity provided by section 79-1044 or 79-1056, any member who becomes eligible to receive a retirement annuity after February 20, 1982, under sections 79-1032 to 79-1060 shall receive a formula retirement annuity based on

final average compensation, except that if the monthly formula retirement annuity based on final average compensation is less than the monthly retirement annuity specified in section 79-1044 or 79-1056, accrued to the date of retirement or August 31, 1983, whichever first occurs, the member shall receive the monthly retirement annuity specified in section 79-1044 or 79-1056 accrued to the date of retirement or August 31, 1983, whichever first occurs.

The monthly formula retirement annuity based on final average compensation shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the retirement annuity provided by section 79-1044 or 79-1056 by one and one-half percent of his or her final average compensation. For retirements after June 15, 1989, the applicable percentage shall be one and sixty-five hundredths percent of his or her final average compensation.

Final average compensation shall be determined by dividing the member's total compensation for the three fiscal years in which such compensation was the highest by thirty-six.

If the annuity begins prior to the sixty-second birthday of the member and the member has not completed thirty-five or more years of creditable service, the annuity at the date it begins shall be the actuarial equivalent of the annuity deferred to the sixty-second birthday of the member. If the annuity begins prior to the sixty-second birthday of the member and the member has completed thirty-five or more years of creditable service, the annuity shall not be reduced.

The normal form of the formula retirement annuity based on final average compensation 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 a total of sixty monthly payments have been made. A member may elect to receive, in lieu of the normal form of annuity, the joint and survivorship an actuarially equivalent annuity in any optional form provided by section 79-1046, which shall be the actuarial equivalent of the formula retirement annuity based on final average compensation.

Any member receiving a formula retirement annuity based on final average compensation shall also receive in addition thereto the service annuity to be

paid by the State of Nebraska as provided in sections 79-1522 to 79-1523.

Sec. 3. That section 79-1046, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1046. Any time prior to receiving the first annuity payment the member may elect to receive in lieu of such annuity, but payable in the same manner, a an actuarially equivalent annuity in one of the following forms:

(1) A joint and survivorship annuity which shall continue after the death of the member to the death of the (a) member's spouse, or (b) other designated beneficiary whose attained age at the time of such election is fifty-five years or more; 7 in an amount which is the actuarial equivalent of the life annuity otherwise payable.

(2) A joint and survivorship annuity which shall continue after the death of the member so that seventy-five percent of the amount of the member's monthly benefit under this option shall be paid monthly to the (a) member's spouse until his or her death or (b) other designated beneficiary whose age at the time of such election is fifty-five years or more until his or her death;

(3) 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 one hundred twenty 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 a total of one hundred twenty monthly payments have been made;
or

(4) A joint and survivorship annuity which will continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose attained age at the time of such election is fifty-five years or more, but which annuity shall, upon the spouse's or designated beneficiary's death before the death of the member, be increased after such death for the remaining life of the member so that the monthly benefit equals the monthly benefit which would have been payable to the member had the member selected the normal form of the formula retirement annuity specified in section 79-1044.01.

Sec. 4. That section 79-1051, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1051. The funds of the retirement system

which are not required for current operations shall be invested and reinvested by the trustees subject to the approval of the board of education as provided in sections 79-1051.01 to 79-1051.06 and section 6 of this act. Except as otherwise provided herein in sections 79-1032 to 79-1060, no trustee and no member of the board shall have any direct interest in the income, gains, or profits of any investment made by the trustees, nor shall any such person receive any pay or emolument for services in connection with any such investment. No trustee or member of the board shall become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the system. Any person who shall have violated violates any of these restrictions shall be guilty of a Class II misdemeanor.

Sec. 5. That section 79-1051.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1051.06. An investment which is authorized by sections 79-1051 to ~~79-1051.05~~ 79-1051.02 and section 6 of this act shall not be made if it does not meet the requirements for the investment of state funds pursuant to sections 72-1270 to 72-1276. After July 1, 1989, no funds shall remain invested in any stock which does not meet the requirements of sections 72-1270 to 72-1276.

Sec. 6. The trustees shall invest the funds of the system in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees shall not buy on margin or buy call options or put options but may write call options and put options. The trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. If shares of stock are purchased under this section, all proxies may be voted by the trustees.

Sec. 7. That section 79-1056, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1056. (1) If, at any future time, a majority of the eligible members of the system shall vote votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to

be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-1044, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year, and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. The , and the contributions by the school district shall be such amount as may be necessary to maintain the

solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees. The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions; and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment; except as to benefits provided under sections 79-1032 to 79-1060. After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance; and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance; and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-1041 not to become members of the system; shall not be less than they would have been had they remained under any preexisting system to date of retirement. Members of this system having the service qualifications of members of the state school retirement system, as provided by section 79-1515, shall receive the state service annuity provided by sections 79-1522 to 79-1523.

(2) The school district 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 United States Internal Revenue Code, except that the school district 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 United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated for all purposes of sections 79-1032 to 79-1060 in the same manner and to the extent as employee contributions made prior to the date picked up.

Sec. 8. That section 79-1056.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1056.06. (1) Any annuity paid on or after September 1, 1983, to a member who retired prior to February 21, 1982, pursuant to sections 79-1032 to 79-1060, or to such member's beneficiary, or to a person who retired under the provisions of the retirement system established in Chapter 79, article 10, in effect prior to September 1, 1951, or to such person's beneficiary, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1983, except that such increase shall not exceed the sum of one dollar and fifty cents per month for each year of creditable service and one dollar per month for each completed year of retirement as measured from the effective date of retirement to June 30, 1983. No separate adjustment in such annuity shall be made as a result of the changes made in section 79-1056 pursuant to Laws 1983, LB 488. If a joint and survivor annuity was elected, the increase shall be actuarially adjusted so that the joint and survivor annuity remains the actuarial equivalent of the life annuity otherwise payable.

(2) In addition to the cost-of-living adjustment provided in subsection (1) of this section,

any annuity paid on or after September 1, 1986, pursuant to sections 79-1032 to 79-1060 or pursuant to the provisions of the retirement system established in Chapter 79, article 10, in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1985, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1986, except that such increase shall not exceed (a) three and one-half percent for annuities first paid on or after September 1, 1984, (b) seven percent for annuities first paid on or after September 1, 1983, but before September 1, 1984, or (c) ten and one-half percent for all other annuities.

(3) In addition to the cost-of-living adjustment provided in subsections (1) and (2) of this section, any annuity paid on or after September 1, 1989, pursuant to sections 79-1032 to 79-1060 or pursuant to the provisions of the retirement system established in Chapter 79, article 10, in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1988, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1989, except that such increase shall not exceed (a) three percent for annuities first paid on or after September 1, 1987, (b) six percent for annuities first paid on or after September 1, 1986, but before September 1, 1987, or (c) nine percent for all other annuities.

Sec. 9. That original sections 79-1044.01, 79-1046, 79-1051, 79-1051.06, 79-1056, and 79-1056.06, Reissue Revised Statutes of Nebraska, 1943, and section 79-1032, Revised Statutes Supplement, 1988, and also sections 79-1051.03 and 79-1051.04, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.