

LEGISLATIVE BILL 833

Approved by the Governor April 19, 1994

Introduced by Nebraska Retirement Systems Committee: Horgan, 4, Chairperson; Crosby, 29; Day, 19; Fisher, 35; Moore, 24; Robak, 22

AN ACT relating to retirement; to amend sections 23-2309, 23-2309.01, 23-2311, 23-2315, 23-2318, 23-2323, 23-2331, 24-702, 24-705 to 24-708, 24-710.02, 24-712, 48-155.01, 84-1320, and 84-1325, Reissue Revised Statutes of Nebraska, 1943, sections 23-2310, 24-701, 24-703, 24-704, 24-710, 24-714, 79-1501, 79-1528, 79-1531, 81-2014, 81-2015, 81-2017 to 81-2019, 81-2021, 81-2031, 81-2032, 84-1310, 84-1310.01, 84-1311, 84-1331, and 84-1503, Revised Statutes Supplement, 1992, and sections 23-2301, 24-710.03, 79-1501.01, 81-2025, and 81-2026, Revised Statutes Supplement, 1993; to define and redefine terms; to change provisions relating to state and local retirement systems; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections, and also section 79-1522.03, Reissue Revised Statutes of Nebraska, 1943, and section 84-1312, Revised Statutes Supplement, 1992; and to declare an emergency.

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

Section 1. That section 23-2301, Revised Statutes Supplement, 1993, be amended to read as follows:

23-2301. As used in For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Employees shall mean all persons or officers who are employed by a county of the State of Nebraska devoting for twenty or more hours per week to such employment and who have completed at least twelve months of continuous service at any time, 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 whom they are employed, except that the term employees shall not include judges, persons making contributions to the School Retirement System of the State of Nebraska, or nonelected employees and nonelected officials of any county having a population in excess of one hundred thousand inhabitants;

(2) Retirement shall mean qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the County Employees Retirement Act;

(3) Retirement board or board shall mean the Public Employees Retirement Board;

(4) Retirement system shall mean the Retirement System for Nebraska Counties;

(5) Required contribution shall mean the deduction to be made from the compensation of employees as provided in the County Employees Retirement Act;

(6) Service shall mean the actual total length of employment as an employee and shall include leave of absence because of disability or military service when properly authorized by the retirement board, except that service shall not include any period of disability for which disability retirement benefits are received under section 23-2315;

(7) Straight life annuity shall mean an ordinary annuity, payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind;

(8) Date of adoption of the retirement system by each county shall mean 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;

(9) Prior service shall mean service prior to the date of adoption of the retirement system;

(10) Future service shall mean service following the date of adoption of the retirement system;

(11) Group annuity contract shall mean the contract issued by one or more life insurance companies to the board in order to provide the future service benefits described in the County Employees Retirement Act;

(12) Primary carrier shall mean the life insurance company or trust company designated by the retirement board as the administrator of the retirement system;

(13) Regular interest shall mean the rate of interest earned each

calendar year as determined by the retirement board in conformity with actual and expected earnings on its investments;

(14) Disability shall mean 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;

(15) Date of disability shall mean the date on which a member is determined by the board to be disabled;

(16) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(17) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the funds of the County Employees Retirement Act.

Sec. 2. That section 23-2309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2309. 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 guaranteed investment stable return account, equities account, and any assets of additional accounts created pursuant to section 23-2309.01.

Sec. 3. That section 23-2309.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2309.01. (1) On or after January 1, 1986, on such date as is established by the retirement board, each member of the retirement system shall be allowed to allocate all contributions to his or her employee account after such date to various investment options. Such investment options shall include, but not be limited to, the following:

(a) A fund which shall be known as a guaranteed investment stable return account and which shall be invested in one or more guaranteed investment contracts; and

(b) An account which shall be known as an equities account and which shall be invested in common stocks.

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 (a) 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 increments of twenty-five percent in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options, except that a member's investment in a guaranteed investment stable return account shall not be transferred. The board shall establish provisions 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.

If the board directs withdrawal of funds from an investment manager, the member shall also direct the investment of those funds.

(3) The board shall develop a schedule for the allocation of administrative costs of the various investment options and shall assess such costs so that each member pays a fair proportion based upon his or her choice of options and number of transfers among options.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. 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 county and its participating employees.

Sec. 4. That section 23-2310, Revised Statutes Supplement, 1992, be amended to read as follows:

23-2310. (1) 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 reduced by any expense charges made under the provisions of the guaranteed investment contract. 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 23-2319.

(2) Notwithstanding anything to the contrary in the County Employees Retirement Act, the total additions made to both the employee account and the employer account for any calendar year shall not exceed the lesser of thirty thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, or twenty-five percent of the member's compensation for such year. For purposes of this subsection, total additions for a calendar year shall equal the full amount allocated to the employer account for that year plus the lesser of (a) one-half of the member's contributions for that year or (b) the amount of the member's contributions in excess of six percent of his or her compensation for that year.

Sec. 5. For purposes of this section and section 6 of this act:

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code of 1986, as amended, for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation year shall mean the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 6. (1) Notwithstanding any other provision of the County Employees Retirement Act, the sum of the annual additions to a member's account for any limitation year shall not exceed the lesser of: (a) Thirty thousand dollars or, if greater, one-fourth of the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, as in effect for the limitation year, or (b) twenty-five percent of the member's 415 compensation for the entire limitation year.

(2) The term annual additions to a member's account for any limitation year shall mean the sum of:

(a) The member's allocable share of employer contributions for the limitation year;

(b) The amount of the member's contributions for the limitation year; and

(c) The member's allocable share of forfeitures, if any, credited to the member within the limitation year.

(3) Solely for purposes of this section, the determination of a member's contributions for a limitation year shall exclude the items set forth in 26 C.F.R. 1.415-6(b)(3)(i) through (iv), and the determination of a member's allocable share of employer contributions and forfeitures, if any, for a limitation year shall exclude any employer contributions and forfeitures, if any, allocated to the member for any of the reasons set forth in 26 C.F.R. 1.415-6(b)(2)(ii) through (vi), except as otherwise provided in such regulations.

(4) If it is determined that the annual additions to a member's account for any limitation year will exceed the limitations contained in this section, the annual additions shall be reduced to the extent necessary to meet the limitations contained in this section in accordance with income tax regulations by reducing the member's employee contributions.

(5) If the amount of any member's contributions is reduced in

accordance with subsection (4) of this section, the amount of the reduction shall be refunded to the member.

(6) In the event that any member is also a member under any other defined contribution plan maintained by a controlled group member, the total amount of annual additions to the member's accounts under all such defined contribution plans shall not exceed the limitations set forth in this section. If the total amount of annual additions to a member's accounts under all such defined contribution plans does exceed the limitations set forth in this section, then the annual additions to a member's account shall be reduced subsequent to a reduction in the annual additions under any other defined contribution plan.

(7) If a member is or has been a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by section 415(b)(1)(A) of the code, as adjusted for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(b)(1)(B) of the code for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 6, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(8) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever

maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(9) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the Internal Revenue Code of 1986, as amended, and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 7. That section 23-2315, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2315. (1) An employee may elect to retire at any time after attaining the age of fifty-five. An employee may retire as a result of disability at any age. The first day of the month immediately following the last day of work shall be the retirement date, except that disability retirement benefits shall be paid from the date of disability as determined by the board.

(2) Payment of any benefit provided under the retirement system may not be deferred later than the sixtieth day after the end of 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.

(3) Any member of the retirement system who, on August 30, 1987, has attained fifty-five years of age and who ceases to be an employee before his or her sixtieth birthday may elect to receive a termination benefit as provided in section 23-2319.

Sec. 8. That section 23-2331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2331. Sections 23-2301 to 23-2310, 23-2312 to 23-2317, 23-2319 to 23-2322, and 23-2324 to 23-2332 and sections 5 and 6 of this act shall be known and may be cited as the County Employees Retirement Act.

Sec. 9. That section 23-2311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2311. For purposes of sections 9 to 11 of this act, 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.

Sec. 10. That section 23-2318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2318. The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the retirement date, in an amount determined in accordance with section 23-2311 9 of this act, 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 shall have 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 23-2311 9 of this act prior to attaining age sixty-five.

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

Sec. 11. That section 23-2323, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2323. 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 23-2311 9 of this act, 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.

Sec. 12. That section 24-701, Revised Statutes Supplement, 1992, be amended to read as follows:

24-701. For purposes of sections 24-701 to 24-714 and sections 16 and 17 of this act, unless the context otherwise requires:

(1) Fund shall mean the Nebraska Retirement Fund for Judges;

(2) Judge shall mean and include (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who shall 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 shall 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 shall serve in such capacity on and after January 5, 1961, except acting judges of the county court appointed pursuant to section 24-507, (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 shall mean 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) Current service shall mean the period of service (a) any judge of the Supreme Court or judge of the district court shall serve in such capacity from and after January 3, 1957, (b)(i) 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 (ii) any judge of the Nebraska Workers' Compensation Court shall serve in such capacity on and after July 17, 1986, (c) any county judge shall serve in such capacity from and after January 5, 1961, (d) any judge of a separate juvenile court shall serve in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (f) any judge of the county court or associate county judge shall serve in such capacity subsequent to January 4, 1973, (g) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, shall serve in such capacity from and after July 1, 1986, and (h) any judge of the Court of Appeals shall serve in such capacity on or after September 6, 1991;

(5) Military service shall mean 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) Total years of service shall mean the total number of years

served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year;

(7) Salary shall mean the statutory salary of a judge or the salary being received by such judge pursuant to law;

(8) Beneficiary shall mean a person so designated by a judge in the last written 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 shall mean 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. 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 shall mean the Public Employees Retirement Board;

(11) Member shall mean a judge eligible to participate in the retirement system established under sections 24-701 to 24-714 and sections 16 and 17 of this act;

(12) Original member shall mean a judge who first served as a judge prior to December 25, 1969, and 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 shall mean a judge who first served as a judge on or after December 25, 1969, or shall mean 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 shall mean the average monthly compensation for the last three years of service as a judge or, in the event of a judge serving less than three years, the average monthly compensation for such judge's period of service;

(15) Regular interest shall mean the rate of interest earned each fiscal year commencing July 1, 1974, as determined by the board in conformity with actual and expected earnings on its investments, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

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

(17) Actuarial equivalence shall mean 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 1971 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 seven percent per annum shall be reflected in making these determinations.

Sec. 13. That section 24-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-702. 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. ~~Said~~ The fund is hereby appropriated and made available to the board for the uses and purposes prescribed by the provisions of sections 24-701 to 24-714 and sections 16 and 17 of this act.

Sec. 14. That section 24-703, Revised Statutes Supplement, 1992, be amended to read as follows:

24-703. (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) Each future member 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. 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. It shall be the duty of the Director of Administrative Services to make a deduction of six percent 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 six 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.

(3) A Nebraska Retirement Fund for Judges fee of one dollar shall be taxed as costs in each civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts and the county courts. 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. 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 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. Such director shall promptly thereafter remit the same to the state treasury. ~~Upon the receipt thereof, the State Treasurer shall for credit the same 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, 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. Any change in the unfunded accrued liabilities due to benefit or assumption changes shall be fully funded over the average expected future service of the active members of the retirement system or by the first day of the twenty-sixth calendar year after the date of the actuarial valuation which first recognized these changes, whichever occurs first. The change in the unfunded accrued liabilities shall be funded by level annual payments which shall be made over the lesser of twenty-five years or the average expected future service of the active members of the retirement system. If the unfunded accrued liability for the retirement system, determined under the entry age actuarial cost method, is zero or less than zero on any actuarial valuation date, then all prior unfunded accrued

liability amounts shall be considered fully funded. Effective July 1, 1988, actuarial gains and losses shall be amortized over the expected future service of the active members as part of the annual normal cost.

(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 of 1986, as amended, 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 Internal Revenue 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 either through a reduction in the compensation of the member or a combination of a reduction in compensation and offset against a future compensation increase. Member contributions picked up shall be treated for all purposes of sections 24-701 to 24-714 and sections 16 and 17 of this act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 15. That section 24-704, Revised Statutes Supplement, 1992, be amended to read as follows:

24-704. The general administration of the retirement system for judges provided for in sections 24-701 to 24-714 and sections 16 and 17 of this act, except the investment of funds, is hereby vested in the board. The Attorney General shall be the legal advisor of 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 sections 24-701 to 24-714 and sections 16 and 17 of this act which shall include provisions defining what constitutes compensation of a member of the retirement system for purposes of such sections. The definition of compensation shall include base salary or wages paid by the employer to the employee, including overtime pay for services rendered, and any other amounts determined by the board to appropriately constitute compensation.

The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by such sections. The director 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 such sections. For the purpose of obtaining such facts, the director shall have access to the records of the various state departments and agencies. 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.

Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to sections 72-1237 to 72-1276. 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.

Sec. 16. For purposes of this section and section 17 of this act:

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code of 1986, as amended, for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation year shall mean the twelve-consecutive-month period

beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 17. (1) Notwithstanding any other provision of sections 24-701 to 24-714, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of:

(a) Ninety thousand dollars as adjusted; or

(b) One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.

(3)(a) For purposes of this section, annual benefit shall mean a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code of 1986, as amended.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the limitations in subsection (2) of this section are met. If the aggregate benefits otherwise payable from any qualified plans created under sections 24-701 to 24-714 and sections 16 and 17 of this act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) If the annual benefit begins before a member attains age sixty-two, the ninety-thousand-dollar limitation, as adjusted, shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. The adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five; and

(b) If the annual benefit begins after a member attains age sixty-five, the ninety-thousand-dollar limitation, as adjusted, shall be increased so that it is the actuarial equivalent of the ninety-thousand-dollar limitation at age sixty-five.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section, but not the seventy-five-thousand-dollar limitation provided by subsection (5) of this section, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in computing the limitations under this section:

(a) For the purpose of adjusting the ninety-thousand-dollar limitation before a member attains age sixty-two, the interest rate assumption shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ninety-thousand-dollar limitation after a member attains age sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the

member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) If a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ninety-thousand-dollar limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The one-hundred-percent limitation under subdivision (2)(b) of this section, the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.

(10) If a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by subdivision (2)(a) of this section, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under subdivision (2)(b) of this section for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986.

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 6, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 18. That section 24-705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-705. 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 sections 24-701 to 24-714 and sections 16 and 17 of this act. 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 provisions of such sections, 24-701 to 24-714. 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.

Sec. 19. That section 24-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-706. (1) Any member whose service is terminated prior to age sixty-five for any cause other than death may, upon written request to the board:

(a) Have ~~7~~ ⁽¹⁾ 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 sections 24-701 to 24-714 and sections 16 and 17 of this act unless and until such judge again serves in such capacity and repays, within three years of rejoining the retirement system, part or all of the amount withdrawn plus interest which would have accrued on such amount under the retirement system. 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 ~~2~~ ⁽²⁾ 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.

Sec. 20. That section 24-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-707. In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of service, the spouse of such judge shall at his or her option be immediately entitled to receive those benefits which the spouse would have been entitled to under subsection (3) of section 24-710 had the judge elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the judge or the judge's spouse should survive and had the judge retired (1) on the date of death if his or her age at death is sixty-five or more or (2) at age sixty-five if his

or her age at death is less than sixty-five. If such option is not exercised by such spouse within ninety days of the judge's death, if no spouse survives, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a written 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. In the event of the death of a judge subsequent to retirement, if such judge has not filed a written statement of intent with the board to elect to receive any other form of annuity which may be provided for by section 24-710, the amount of annuities such judge has received under the provisions of sections 24-701 to 24-714 and sections 16 and 17 of this 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. Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

Sec. 21. That section 24-708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-708. (1) Any judge may retire upon reaching the age of sixty-five and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) A judge may retire upon the attainment of age fifty-five 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 monthly retirement income shall be calculated based on the length of service and average compensation at the actual retirement date and shall be reduced when the payments commence prior to the normal retirement date to an amount that is actuarially equivalent to the deferred vested annuity payable at the normal retirement date.

(3) Payment of any benefit provided under sections 24-701 to 24-714 and sections 16 and 17 of this act may not be deferred later than the sixtieth day after the end of 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.

Sec. 22. That section 24-710, Revised Statutes Supplement, 1992, be amended to read as follows:

24-710. (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 total years of 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 sections 24-701 to 24-714 and sections 16 and 17 of this 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 total years of service, except that 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) 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 sections 24-701 to 24-714 and sections 16 and 17 of this act,

any form of annuity 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 promptly after September 27, 1993, (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, (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) Notwithstanding anything to the contrary in sections 24-701 to 24-714, the annual benefit payable under such sections shall not at any time exceed the lesser of (a) ninety thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, actuarially reduced to reflect distributions prior to age sixty-two, or (b) one hundred percent of the member's average compensation for the highest three consecutive calendar years of service during which the member was an active member in the retirement system provided by sections 24-701 to 24-714. The maximum amount shall be adjusted, when necessary, as follows: (i) When the annual benefit is payable under the retirement system to a member in a form other than a straight life annuity or a qualified joint and survivor annuity, the maximum amount shall be adjusted to the equivalent of a straight life annuity beginning at the same age on the basis of the actuarial assumptions referred to in subsection (3) of this section, and (ii) when the annual benefit is payable under the retirement system to a member who has less than ten years of service under the retirement system, the maximum amount shall be multiplied by a fraction, the numerator of which is the member's number of years of service under the retirement system and the denominator of which is ten. For purposes of this subsection, qualified joint and survivor annuity means an annuity for the life of the member with not less than fifty percent nor more than one hundred percent of the amount the member was receiving being paid to the member's surviving spouse for the life of the spouse following the death of the member.

(5) 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.

Sec. 23. That section 24-710.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-710.02. All annuities or benefits which any person shall be entitled to receive under sections 24-701 to 24-714 and sections 16 and 17 of this 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 as such term is defined in section 414(p) of the Internal Revenue Code of 1986, as amended.

Sec. 24. That section 24-710.03, Revised Statutes Supplement, 1993, be amended to read as follows:

24-710.03. 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 salary 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 sections 24-701 to 24-714 and sections 16 and 17 of this 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.

Sec. 25. That section 24-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-712. 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 by ~~sections 24-701 to 24-714~~ 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 ~~said~~ 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 retirement fund.

Sec. 26. That section 24-714, Revised Statutes Supplement, 1992, be amended to read as follows:

24-714. 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 provisions of sections 24-701 to 24-714 and sections 16 and 17 of this 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.

Sec. 27. That section 48-155.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-155.01. When any judge of the Nebraska Workers' Compensation Court shall be disqualified from acting in any case or matter before him or her, is temporarily absent from the state, or shall be temporarily unable to act in any cause or matter before him or her because of sickness or other emergency, the Governor may appoint a competent and disinterested person to act in place of such judge in such case or other matter, during such disqualification, absence, or emergency. The person so appointed shall possess the same powers and be subject to the duties, restrictions, and liabilities therein as are prescribed by law respecting judges of the compensation court. The Governor may, in his or her discretion, by a single order, appoint some competent and disinterested person to act as acting judge in the place of any judge of the compensation court during all such disqualifications, absences, and emergencies. Such appointment shall be for a period of two years from July 1 of each odd-numbered year. The acting judge shall be paid a salary per diem at the same rate and in the same manner as the regularly appointed judges and expenses as provided in sections 81-1174 to 81-1177 for state employees, which shall be paid by the compensation court in the same manner as other compensation court expenses except that such acting judge shall not pay into the Nebraska Retirement Fund for Judges nor be eligible for retirement benefits under sections 24-701 to 24-714 and sections 16 and 17 of this act. The acting judge shall be subject to call by the presiding judge.

Sec. 28. That section 79-1501, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1501. For purposes of the School Employees Retirement Act, unless the context otherwise requires:

- (1) Accumulated contributions shall mean 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 shall mean any person in receipt of a school retirement allowance or other benefit provided by the act;
- (3) Member shall mean any person who has an account in the School

Retirement Fund;

(4) County school official shall mean 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;

(5) Creditable service shall mean prior service for which credit is granted under sections 79-1515 to 79-1518 plus all service rendered while a member of the retirement system and shall include 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 shall not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days;

(6) Disability retirement allowance shall mean the annuity paid to a person upon retirement for disability under section 79-1524;

(7) Employer shall mean 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 shall mean any year beginning July 1 and ending June 30 next following;

(9) Regular interest shall mean interest at such a rate as shall be determined by the retirement board in conformity with actual and expected earnings on its investments;

(10) Junior school employee shall mean a school employee who has not arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(11) Present senior school employee shall mean a senior school employee who was employed within the State of Nebraska on September 1, 1945;

(12) School employee shall mean a contributing member who acquires five hundred sixteen hours or more of service in a fiscal year and thereby earns one-half year of service credit. A contributing member who acquires one thousand thirty-two hours or more of service in a fiscal year shall earn one year of service credit. For purposes of this subdivision, contributing member shall mean the following persons who receive compensation from a public school: (a) Regular teachers and administrators employed on a written contract basis; (b) regular employees, not certified, hired upon a full-time basis which contemplates a workweek of not less than thirty hours; and (c) part-time employees hired on a workweek of not less than fifteen hours;

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

(14) Public school shall mean any and all schools supported by public funds and wholly under the control and management of the State of Nebraska or any subdivision thereof, including schools or other entities established, maintained, and controlled by the school boards of local school districts and schools under the control and management of the Nebraska state colleges or the Board of Regents of the University of Nebraska, any educational service unit, and any other educational institution wholly supported by public funds;

(15) Retirement shall mean qualifying for and accepting a school or disability retirement allowance granted under the act;

(16) Retirement board or board shall mean the Public Employees Retirement Board;

(17) Retirement system shall mean the School Retirement System of the State of Nebraska;

(18) Required deposit shall mean the deduction from a member's compensation as provided for in section 79-1531 which shall be deposited in the School Retirement Fund;

(19) School year shall mean one fiscal year which shall include not less than one thousand thirty-two 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;

(20) Senior school employee shall mean a school employee who has arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(21) Service shall mean service as a school employee;

(22) School retirement allowance shall mean the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-1520 to 79-1522-03 79-1522.02 and sections 30 and 31 of this act. 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;

(23) Service annuity shall mean payments for life, made in equal

monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(24) State deposit shall mean the deposit by the state in the retirement system on behalf of any member;

(25) State school official shall mean the Commissioner of Education and his or her professional staff and the assistant commissioner of education in charge of vocational education and his or her professional staff;

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

(27) Emeritus member shall mean 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 79-1512, (b) who has thereafter been reemployed in any capacity by a public school in Nebraska 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;

(28) Primary carrier shall mean the life insurance companies and trust companies designated as the underwriter or trustee of the retirement system;

(29) Actuarial equivalent shall mean the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1971 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 seven percent per annum shall be reflected in making these determinations;

(30) Retirement date shall mean the first day of the month following the date upon which a member's request for retirement is received on an application form provided by the retirement system if the member has ceased employment in the school system. An application may be filed no more than ninety days in advance of the date on which a member ceases employment in the school system;

(31) Disability retirement date shall mean the first day of the month following the date upon which a member's request for disability retirement is received on an application form provided by the retirement system if the member has ceased employment in the school system and has complied with sections 79-1523 to 79-1526 as such sections refer to disability retirement; and

(32) Retirement application form shall mean the form approved by the retirement system for acceptance of a member's request for either regular or disability retirement.

Sec. 29. That section 79-1501.01, Revised Statutes Supplement, 1993, be amended to read as follows:

79-1501.01. Sections 79-1501 to 79-1567 and sections 30 and 31 of this act shall be known and may be cited as the School Employees Retirement Act.

Sec. 30. For purposes of this section and section 31 of this act:

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code of 1986, as amended, for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation year shall mean the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 31. (1) Notwithstanding any other provision of the School Employees Retirement Act, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of:

(a) Ninety thousand dollars, as adjusted; or

(b) One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation

years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.

(3)(a) For purposes of this section, annual benefit shall mean a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code of 1986, as amended.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the limitations in subsection (2) of this section are met. If the aggregate benefits otherwise payable from any qualified plans created under the School Employees Retirement Act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) If the annual benefit begins before a member attains age sixty-two, the ninety-thousand-dollar limitation, as adjusted, shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. The adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five, and

(b) If the annual benefit begins after a member attains age sixty-five, the ninety-thousand-dollar limitation, as adjusted, shall be increased so that it is the actuarial equivalent of the ninety-thousand-dollar limitation at age sixty-five.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section, but not the seventy-five-thousand-dollar limitation provided by subsection (5) of this section, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in computing the limitations under this section:

(a) For the purpose of adjusting the ninety-thousand-dollar limitation before a member attains age sixty-two, the interest rate assumption shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ninety-thousand-dollar limitation after a member attains age sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) If a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ninety-thousand-dollar limitation, as adjusted, shall be reduced by

multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The one-hundred-percent limitation under subdivision (2)(b) of this section, the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.

(10) If a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0.

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by subdivision (2)(a) of this section, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under subdivision (2)(b) of this section for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 6, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever

maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 32. That section 79-1528, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1528. (1) If a member dies before retirement, his or her accumulated contributions shall be paid to his or her estate or to the person he or she has nominated by written designation duly executed and filed with the retirement board. If no legal representatives or beneficiary designated in writing applies for his or her accumulated contributions within five years following (a) his or her sixty-fifth birthday if death occurred prior to such date or (b) the date of his or her death if death occurred after his or her sixty-fifth birthday, the contributions shall be forfeited to the retirement system and credited to the Contingent Account at that time.

(2) When the deceased member has not less than twenty years 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 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 ninety days after the death of the member, 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 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 or more or (b) at age sixty-five if his or her age at death is less than sixty-five. If the requirements of this subsection are not met, then the beneficiary or the estate, if the member has not filed a written 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.

(3) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to subsections (1) and (2) of this section shall commence immediately upon the death of such member.

Sec. 33. That section 79-1531, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1531. (1) For the purpose of providing the funds to be transferred from the School Employees Savings Account for formula annuities, every employee shall be required to make deposits in the School Retirement Fund. Such deposits shall be a percentage of total compensation and shall be transmitted at the same time and in the same manner as required employer contributions. For each fiscal year, such percentage shall be determined set by the retirement board, taking into consideration the upon recommendation of the actuary, and shall be equal to forty-nine and seventy-five hundredths percent of the amount determined by deducting from the then actuarial present value of all future liabilities to be funded by transfers from the School Employers Deposit Account and the School Employees Savings Account the amount then credited to such accounts and dividing the remainder by the actuarial present value of one percent of future compensation for current active members.

(2) For the purpose of providing the funds to be transferred from the School Employers Deposit Account for formula annuities, every employer shall be required to make deposits in the School Retirement Fund. Such deposits shall be one hundred one percent of the required contributions of the school employees of each employer and 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 United States Internal Revenue Code of 1986, as amended, 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

United States Internal Revenue Code ~~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 either through a reduction in the cash compensation of the member or a combination of a reduction in compensation and offset against a future compensation increase. 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.

Sec. 34. That section 81-2014, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2014. For purposes of sections 81-2014 to 81-2036 and sections 42 and 43 of this act:

(1) Actuarial equivalent shall mean 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 1983 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;

(2) Board shall mean the Public Employees Retirement Board; and

~~(3)~~ (3) Officer shall mean an officer provided for in sections 81-2001 to 81-2009.

Sec. 35. That section 81-2015, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2015. 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 and sections 42 and 43 of this act 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, ~~then and in that event~~ 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.

Sec. 36. That section 81-2017, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2017. (1) 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 eight 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 (2) 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. In addition thereto, there shall be transferred from the General Fund monthly, by the State Treasurer, a sum equal to the amount of such compensation deductions each month, the same to be credited to the State Patrol Retirement Fund. The fund shall further be supplemented annually by an appropriation in such amount, if any, as may be determined on the basis of an actuarial valuation prepared by a member of the American Academy of Actuaries to be sufficient to fully fund (a) the unfunded accrued liability of the system as of June 30, 1988, by January 1, 2005, (b) any change in the unfunded accrued liabilities due to benefit or assumption changes during the average expected future service of the active members of the system or by the first day of the twenty-sixth calendar year after the date of the actuarial valuation which first recognized these changes, whichever occurs first. The change in the unfunded accrued liabilities shall be funded by level annual payments which shall be made over the lesser of twenty-five years or the average expected future service of the active members of the system, and (c) any other increase or decrease in the unfunded accrued liability occurring after June 30, 1988, that is not attributable to changes in benefits or assumptions over the expected future service of the active member group as part of the normal cost. If the unfunded accrued liability, determined under the entry age actuarial cost method, is zero or less than zero on any actuarial valuation date, then all prior unfunded accrued liabilities shall be considered fully funded. 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.

(2) 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 of 1986, as amended, 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 Internal Revenue 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 either through a reduction in the cash compensation of the member or a combination of a reduction in compensation and offset against a future compensation increase. Member contributions picked up shall be treated for all purposes of sections 81-2014 to 81-2036 and sections 42 and 43 of this act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 37. That section 81-2018, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2018. All money received by the Nebraska State Patrol Retirement System shall be ~~set aside by~~ remitted to the State Treasurer and credited for credit to the State Patrol Retirement Fund which is hereby created. Out of the fund shall be paid the expenses of the system and the benefits and annuities as provided in sections 81-2014 to 81-2036 and sections 42 and 43 of this act.

~~Any money in the State Patroimen's Retirement Fund on June 1, 1991, shall be transferred to the State Patrol Retirement Fund on such date.~~

Sec. 38. That section 81-2019, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2019. 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 sections 81-2014 to 81-2036 and sections 42 and 43 of this act which shall include provisions defining what constitutes compensation of a member of the retirement system for purposes of such sections. The definition of compensation shall include base salary or wages paid by the employer to the employee, including overtime pay for services rendered, and any other amounts determined by the board to appropriately constitute compensation but shall not include the expense allowance provided in section 81-2002. The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by sections 81-2014 to 81-2036 and sections 42 and 43 of this act.

Sec. 39. That section 81-2021, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2021. 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 sections 81-2014 to 81-2036 and sections 42 and 43 of this act. For the purpose of obtaining such facts, the director shall have access to the records of the various state departments and agencies. 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.

Sec. 40. That section 81-2025, Revised Statutes Supplement, 1993, be amended to read as follows:

81-2025. (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 twenty 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 twenty years as such shall be entitled to the annuity as provided for in sections 81-2014 to 81-2036 and sections 42 and 43 of this 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 of service or more shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(5) Payment of any benefit provided under sections 81-2014 to 81-2036 and sections 42 and 43 of this act may not be deferred later than the sixtieth day after the end of 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.

(6) 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.

Sec. 41. That section 81-2026, Revised Statutes Supplement, 1993, be amended to read as follows:

81-2026. (1) 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 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 service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

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 service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the final three years of service as an officer 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 and compensatory time 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 service. If the officer has completed more than seventeen years of 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 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, the officer's surviving spouse, if married to the officer on the date of retirement, shall continue to receive seventy-five percent of the amount of such officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries. If the surviving spouse has a dependent child or children under the age of nineteen years in his or her care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest such dependent child attains the age of nineteen years, after which time the benefit shall be reduced to seventy-five percent of the amount of such officer's annuity. If there is no surviving spouse living at the date of the officer's death, the officer's child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest such child attains the age of nineteen years. If there is more than one such child

under the age of nineteen years at such time, the amount thereof shall be divided equally among such children under such age and, as they attain the age of nineteen years, only the other child or children under such age shall participate therein. If there is no surviving spouse or no child under the age of nineteen years at the date of the officer's death, the amount of annuities such officer has received under sections 81-2014 to 81-2036 and sections 42 and 43 of this 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. 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. 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 as follows: (a) To the surviving spouse and dependent child or children under the age of nineteen years in such spouse's care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest dependent child attains the age of nineteen years after which time the benefit shall be reduced to seventy-five percent of the officer's annuity for the remainder of his or her life or until he or she remarries; (b) if there is no spouse living at the date of the officer's death, his or her child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest child attains the age of nineteen years; (c) if there is more than one child under the age of nineteen years at the date of the officer's death, the benefit shall be divided equally among such children and, as they attain the age of nineteen years, only the child or children under the age of nineteen years shall participate therein; and (d) if there is no child or children under the age of nineteen years living at the date of the officer's death, the surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of his or her life or until he or she remarries. If no benefits are paid to a surviving spouse or dependent children, benefits will be paid as described in subsection (1) of section 81-2031.

(4) Any benefits provided in subsections (1), (2), and (3) of this section shall apply only to retirements, disabilities, and deaths occurring on or after September 2, 1977. No benefits being paid under the system on September 2, 1977, shall be modified, in any way, by the enactment of Laws 1977, LB 347.

(5) Notwithstanding anything to the contrary in sections 81-2014 to 81-2036, the annual benefit payable under such sections shall not at any time exceed the lesser of (a) ninety thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, actuarially reduced to reflect distributions prior to age sixty-two, or (b) one hundred percent of the member's average annual compensation for the three consecutive calendar years of service during which the member received his or her highest compensation and was an active member in the Nebraska State Patrol Retirement System. The maximum amount shall be adjusted, when necessary, as follows: (i) When the annual benefit is payable under this system to a member in a form other than a straight life annuity or the joint and survivor annuity described by subsections (1) and (3) of this section, the maximum amount shall be adjusted to the equivalent of a straight life annuity beginning at the same age on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board; and (ii) when the annual benefit is payable under this system to a member who has less than ten years of service under the system, the maximum amount shall be multiplied by a fraction, the numerator of which is the member's number of years of service under the system and the denominator of which is ten.

Sec. 42. For purposes of this section and section 43 of this act:

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code of 1986, as amended, for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation year shall mean the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans

maintained by an employer shall use the same limitation year.

Sec. 43. (1) Notwithstanding any other provision of sections 81-2014 to 81-2036, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of:

(a) Ninety thousand dollars, as adjusted; or

(b) One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.

(3)(a) For purposes of this section, annual benefit shall mean a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code of 1986, as amended.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the limitations in subsection (2) of this section are met. If the aggregate benefits otherwise payable from any qualified plans created under sections 81-2014 to 81-2036 and sections 42 and 43 of this act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) If the annual benefit begins before a member attains age sixty-two, the ninety-thousand-dollar limitation, as adjusted, shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. Except as provided in subdivision (5)(c) of this section, the adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five;

(b) If the annual benefit begins after a member attains age sixty-five, the ninety-thousand-dollar limitation, as adjusted, shall be increased so that it is the actuarial equivalent of the ninety-thousand-dollar limitation at age sixty-five; and

(c) For a member with at least fifteen years of service as a full-time employee of the Nebraska State Patrol, including credit for full-time service in the armed forces of the United States, the adjustment under subdivision (5)(a) of this section shall not reduce the benefit limitation below fifty thousand dollars, as adjusted by the Secretary of the Treasury of the United States under section 415(d) of the code.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section and the fifty-thousand-dollar limitation provided by subsection (5) of this section, but not the seventy-five-thousand-dollar limitation provided by such subsection, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in computing the limitations under this section:

(a) For the purpose of adjusting the ninety-thousand-dollar limitation before a member attains age sixty-two, the interest rate assumption

shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ninety-thousand-dollar limitation after a member attains age sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) If a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ninety-thousand-dollar limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The one-hundred-percent limitation under subdivision (2)(b) of this section, the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.

(10) If a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by subdivision (2)(a) of this section, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under subdivision (2)(b) of this section for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986.

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment

shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 44. That section 81-2031, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2031. (1) If any officer, prior to becoming eligible to retire, as provided in section 81-2025, separates from state service as an officer for reasons other than death or disability, either voluntarily or involuntarily, such officer shall thereupon be entitled to receive all payments which have been made by compensation deductions into the State Patrol Retirement Fund plus regular interest earned each fiscal year commencing July 1, 1974, as determined by the board in conformity with actual and expected earnings on its investments and credited monthly, quarterly, semiannually, or annually as the board may direct. The return of such contributions and interest to such officer shall preclude such officer from any benefits under sections 81-2014 to 81-2036 and sections 42 and 43 of this act unless and until such officer is reemployed in such capacity and repays, within three years of rejoining the system, part or all of the amount withdrawn plus interest which would have accrued on that amount under the system. 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 at any age from fifty to fifty-five. If this election is made, the contributions made to the system by the officer may not be withdrawn from the system. The deferred annuity ~~is~~ shall be computed as a percentage of the retirement annuity, as computed in subsection (1) of section 81-2026. The percentage ~~is~~ shall be zero percent for the first five years of service; twenty percent for each completed year of service for the next five years of service; and one hundred percent after ten completed years of service. 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.

Sec. 45. That section 81-2032, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2032. All annuities or benefits which any person shall be entitled to receive under sections 81-2014 to 81-2034 ~~81-2036 and sections 42 and 43 of this 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 as such term is defined in section 414(p) of the Internal Revenue Code of 1986, as amended.

Sec. 46. That section 84-1310, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1310. 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 guaranteed investment stable return account, the equities account, and any assets of additional accounts created by the board pursuant to section 84-1310.01.

Sec. 47. That section 84-1310.01, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1310.01. (1) On or after January 1, 1985, on such date as is established by the retirement board, each member of the retirement system shall be allowed to allocate all contributions to his or her employee account after such date to various investment options. Such investment options shall include, but not be limited to, the following:

(a) A fund which shall be known as a guaranteed investment stable return account and which shall be invested in one or more guaranteed investment contracts; and

(b) An account which shall be known as an equities account and which shall be invested in common stocks.

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 (a) 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 increments of twenty-five percent in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options, except that a member's investment in a guaranteed investment stable return account shall not be transferred. The board shall establish provisions 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.

If the board directs withdrawal of funds from an investment manager, the member shall also direct the investment of those funds.

(3) The board shall develop a schedule for the allocation of administrative costs of the various investment options and shall assess such costs so that each member pays a fair proportion based upon his or her choice of options and number of transfers among options.

(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 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.

Sec. 48. That section 84-1311, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1311. (1) 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 reduced by any expense charges made under the provisions of the guaranteed investment contract and by any expense charges incurred by the board in connection with administering the system in excess of

those provided for in section 84-1321, 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.

(2) Notwithstanding anything to the contrary in the State Employees Retirement Act, the total additions made to both the employee account and the employer account for any calendar year shall not exceed the lesser of thirty thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, or twenty-five percent of the member's compensation for such year. For purposes of this subsection, total additions for a calendar year shall equal the full amount allocated to the employer account for that year plus the lesser of (a) one-half of the member's contributions for that year or (b) the amount of the member's contributions in excess of six percent of his or her compensation for that year.

Sec. 49. For purposes of this section and section 50 of this act:

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code of 1986, as amended, for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation year shall mean the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 50. (1) Notwithstanding any other provision of the State Employees Retirement Act, the sum of the annual additions to a member's account for any limitation year shall not exceed the lesser of: (a) Thirty thousand dollars or, if greater, one-fourth of the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, as in effect for the limitation year, or (b) twenty-five percent of such member's 415 compensation for the entire limitation year.

(2) The term annual additions to a member's account for any limitation year shall mean the sum of:

(a) The member's allocable share of employer contributions for the limitation year;

(b) The amount of the member's contributions for the limitation year; and

(c) The member's allocable share of forfeitures, if any, credited to the member within the limitation year.

(3) Solely for purposes of this section, the determination of a member's contributions for a limitation year shall exclude the items set forth in 26 C.F.R. 1.415-6(b)(3)(i) through (iv), and the determination of a member's allocable share of employer contributions and forfeitures, if any, for a limitation year shall exclude any employer contributions and forfeitures, if any, allocated to the member for any of the reasons set forth in 26 C.F.R. 1.415-6(b)(2)(ii) through (vi), except as otherwise provided in such regulations.

(4) If it is determined that the annual additions to a member's account for any limitation year will exceed the limitations contained in this section, the annual additions shall be reduced to the extent necessary to meet the limitations contained in this section in accordance with income tax regulations by reducing the member's employee contributions.

(5) If the amount of any member's contributions is reduced in accordance with subsection (4) of this section, the amount of the reduction shall be refunded to the member.

(6) In the event that any member is also a member under any other defined contribution plan maintained by a controlled group member, the total amount of annual additions to the member's accounts under all such defined contribution plans shall not exceed the limitations set forth in this section. If the total amount of annual additions to a member's accounts under all such defined contribution plans does exceed the limitations set forth in this section, then the annual additions to a member's account shall be reduced subsequent to a reduction in the annual additions under any other defined contribution plan.

(7) If a member is or has been a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by section 415(b)(1)(A) of the code, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(b)(1)(B) of the code for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(8) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(9) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the Internal Revenue Code of 1986, as amended, and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 51. That section 84-1320, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

84-1320. The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the retirement date, in an amount determined in accordance with section 84-1312 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 the sixtieth day after the end of 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 section 84-1312 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 section 84-1312 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 the sixtieth day after the end of 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.

Sec. 52. That section 84-1325, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1325. Any employee who, while an employee, entered into and served or shall enter into and serve in the armed forces of the United States and who, within ninety days after honorable discharge or honorable separation from active duty again became or becomes an employee, shall be credited, for the purposes of the provisions of sections 84-1312 and 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.

Sec. 53. That section 84-1331, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1331. Sections 84-1301 to 84-1331 and sections 49 and 50 of this act shall be known and may be cited as the State Employees Retirement Act.

Sec. 54. That section 84-1503, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1503. (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 School Employees Retirement Act, the State Employees Retirement Act, and sections 24-701 to 24-714 and sections 16 and 17 of this act and sections 81-2014 to 81-2036 and sections 42 and 43 of this act;

(b) To hire a director to administer the systems under direction of the board. The director shall not be a member of the board. Salaries of the director and his or her employees shall be set 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; and

(d) To administer the deferred compensation program authorized in section 84-1504.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) With respect to the retirement systems for which the board invests funds, to use the services of the state investment officer or to select, on the basis of the most sound proposal or proposals received, after written notice of such proposition to all domestic companies, one or more life insurance companies, banks, trust companies, or investment managers authorized to do business in Nebraska to underwrite, serve as trustee, or manage investments for the retirement system and to enter into a contract or

contracts with such company or companies in the name of the retirement system, except that if a bank, trust company, or investment manager is chosen as the primary carrier or investment manager, the funds shall be invested or reinvested in such securities and investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the life insurance company, bank, trust company, or investment manager has special skills or is named on the basis of representations of special skills or expertise, ~~the~~ such person is under a duty to use such skills;

(b) With respect to the retirement systems for which the board invests funds, to change underwriters, trustees, or investment managers if, in the judgment of the board, such action would be desirable. The cancellation notice may be given by telephone and shall be confirmed in writing within five days by the board or a designated person appointed by the board;

(c) To determine 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;

(d) 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 county board in his or her county;

(e) To adopt and promulgate rules and regulations for the management of the board;

(f) To keep a complete record of all proceedings taken at any meeting of the board;

(g) To employ such actuarial and other assistance as may be necessary in the performance of its duties. An actuary employed by the board shall be a member of the American Academy of Actuaries; and

(h) 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 31, 1992, and at intervals of not less than ten years and not more than fifteen years and shall be in such amounts as the Legislature shall direct.

(3) The board and the Nebraska Investment Council shall jointly have an analysis made of the investment return that has been achieved on the assets of each retirement system administered by the board. Such analysis shall be prepared annually as of January 1. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or providing investment management services to the retirement system. The analysis may be waived jointly by the board and the council for any retirement system with assets of less than ten million dollars. A copy of the analysis shall be given to the board, the council, and the Nebraska Retirement Systems Committee.

Sec. 55. The Public Employees Retirement Board shall develop a mechanism for identifying and monitoring members whose annual benefits or annual additions may exceed the 415 limitations contained in sections 6, 17, 31, 43, and 50 of this act. Such mechanism may include, but shall not be limited to, the review of a member's wages and a member's contributions to a plan established pursuant to sections 125, 401(k), 403(b), and 457 of the Internal Revenue Code of 1986, as amended. The board shall adopt and promulgate rules and regulations to carry out this section. In accordance with such rules and regulations, each county, school district, or appropriate state agency shall submit to the board annual information on member wages and contributions.

Sec. 56. The Revisor of Statutes shall assign sections 9 to 11 of this act outside sections 23-2301 to 23-2331, and any reference to sections 23-2301 to 23-2331 shall not be deemed to include sections 9 to 11 of this act.

Sec. 57. Sections 4 to 6, 16, 17, 22, 28, 30, 31, 41 to 43, 48 to 50, and 58 of this act shall become operative on January 1, 1996. The other sections of this act shall become operative on their effective date.

Sec. 58. That original sections 23-2310, 24-710, 79-1501, and 84-1311, Revised Statutes Supplement, 1992, and section 81-2026, Revised Statutes Supplement, 1993, and also section 79-1522.03, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 59. That original sections 23-2309, 23-2309.01, 23-2311, 23-2315, 23-2318, 23-2323, 23-2331, 24-702, 24-705 to 24-708, 24-710.02, 24-712, 48-155.01, 84-1320, and 84-1325, Reissue Revised Statutes of Nebraska, 1943, sections 24-701, 24-703, 24-704, 24-714, 79-1528, 79-1531, 81-2014, 81-2015, 81-2017 to 81-2019, 81-2021, 81-2031, 81-2032, 84-1310, 84-1310.01, 84-1331, and 84-1503, Revised Statutes Supplement, 1992, and sections 23-2301, 24-710.03, 79-1501.01, and 81-2025, Revised Statutes Supplement, 1993, and

also section 84-1312, Revised Statutes Supplement, 1992, are repealed.

Sec. 60. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.