LEGISLATIVE BILL 369

Approved by the Governor June 7, 1995

Introduced by Nebraska Retirement Systems Committee:
Wickersham, 49, Chairperson; Crosby, 29; Lynch, 13; Robak, 22; Wehrbein, 2

AN ACT relating to retirement; to amend sections 23-2305, 79-1503, 81-2017, 81-2019, 84-1305, 84-1511, and 84-1511.01, Reissue Revised Statutes of Nebraska, and sections 23-1118, 23-2301, and 24-704, Revised Statutes Supplement, 1994; to change applicability provisions for county retirement systems; to change compensation calculations; to change provisions relating to retirement education and preretirement planning programs; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 23-1118, Revised Statutes Supplement, 1994, is amended to read:

23-1118. (1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county having a population of two hundred thousand or more inhabitants but not more than three hundred thousand inhabitants, the county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county shall contribute at least an amount equal to each employee's mandatory contribution, if any, to the cost of any such retirement program and by January 1, 1996, shall be contributing one hundred fifty percent of each employee's mandatory contribution. The combined contributions of the county and its employees to the cost of any such retirement program shall not exceed thirteen percent of the employees' salaries.

(2) Before the county board provides retirement benefits for the employees of the county, such question shall be submitted at a regular general or primary election held within the county, and in which election all persons eligible to vote for the county officials of the county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board provide retirement benefits for present and future employees of the county? If a majority of the votes cast upon such question are in favor of such question, then the county board shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county employees are approved by the voters and authorized by the county board, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county, all elected officers of the county, and such other persons or officers as are classified from time to time as permanent employees by the county board.

(4) The county may 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 United States Internal Revenue Code, except that the county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service, or the federal courts, rule that, pursuant to section 414(h) of the United States 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 county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

Sec. 2. Section 23-2301, Revised Statutes Supplement, 1994, is amended to read:

23-2301. 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 for twenty or more hours per week 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 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 fifty 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. 3. Section 23-2305, Reissue Revised Statutes of Nebraska, is amended to read:

23-2305. It shall be the duty of the board to administer the County Employees Retirement Act as provided in section 84-1503. The board shall adopt and promulgate rules and regulations to carry out the act which shall include provisions defining what constitutes compensation of a member of the retirement system for purposes of the act. 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. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993.

Sec. 4. Section 24-704, Revised Statutes Supplement, 1994, is amended to read:

24-704. The general administration of the retirement system for judges provided for in sections 24-701 to 24-714, 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 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. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993.

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

Sec. 5. Section 79-1503, Reissue Revised Statutes of Nebraska, is amended to read:

79-1503. The general administration of the School Retirement System of the State of Nebraska, except the investment of funds, is hereby vested in the retirement board. The board shall, by a majority vote of its members, adopt bylaws and adopt and promulgate rules and regulations, from time to time, to carry out the School Employees Retirement Act which shall include provisions defining what constitutes compensation of a member of the retirement system for purposes of the act. 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. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993. The board shall perform such other duties as may be required to execute the provisions of the act.

Sec. 6. Section 81-2017, Reissue Revised Statutes of Nebraska, is amended to read:

81-2017. (1) Prior to July 1, 1995, 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. Commencing July 1, 1995, and through June 30, 1996, 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 ten percent of his or her monthly compensation. Commencing July 1, 1996, 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 eleven 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 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 which shall 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 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 in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 7. Section 81-2019, Reissue Revised Statutes of Nebraska, is amended to read:

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 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

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include the expense allowance provided in section 81-2002. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993. 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.

Sec. 8. Section 84-1305, Reissue Revised Statutes of Nebraska, is amended to read:

84-1305. The general administration of the retirement system shall be vested in the retirement board. The board shall adopt and promulgate rules and regulations to carry out the State Employees Retirement Act which shall include provisions defining what constitutes compensation of a member of the retirement system for purposes of the act. 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. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993. The board shall maintain records and may employ any assistance as may be necessary to carry out the act.

Sec. 9. Section 84-1511, Reissue Revised Statutes of Nebraska, is amended to read:

84-1511. (1) The Public Employees Retirement Board shall establish a comprehensive preretirement planning program for state patrol officers, state employees, judges, county employees, and school employees who are members of the retirement systems established pursuant to Chapter 23, article 23, Chapter 24, article 7, Chapter 79, articles 10 and 15, Chapter 81, article 20, and Chapter 84, article 13. The program shall provide information and advice regarding the many changes employees face upon retirement including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(2) The preretirement planning program shall be available to all employees who have attained the age of fifty or are within five years of qualifying for retirement or early retirement under their retirement systems.

(3) The preretirement planning program shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to the employee, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board deems valuable in assisting public employees in the transition from public employment to retirement.

(4) The board shall work with the Department on Aging, personnel division of the Department of Administrative Services, employee groups, and any other governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) Funding to cover the expense of the preretirement planning program shall be charged back to each retirement fund on a pro rata share based on the number of employees in each plan.

(6) The employer shall provide each eligible employee leave with pay to attend up to two preretirement planning programs. For purposes of this subsection, leave with pay shall mean a day off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than twice, but such leave shall be at the expense of the employee and shall be at the discretion of the employer. An eligible employee ~~Leave with pay shall be provided by the employer to each employee qualified and registered to attend a preretirement planning program. An employee eligible to attend such a program~~ shall not be entitled to attend more than one preretirement planning program per fiscal year prior to actual election of retirement.

(7) A nominal registration fee shall be charged each person attending a preretirement planning program to cover the costs for meals, meeting rooms, or other expenses incurred under such program.

Sec. 10. Section 84-1511.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1511.01. (1) The Public Employees Retirement Board shall~~,~~ ~~within~~

~~two years after September 6, 1991,~~ establish a comprehensive retirement education and financial planning program for all members of the State Employees Retirement System of the State of Nebraska, and after the effective date of this act, for all members of the Retirement System for Nebraska Counties, who are under age fifty and not eligible to attend the preretirement planning program established in section 84-1511.

(2) The retirement education and financial planning program shall include discussion on the retirement system, financial planning, and budgeting as well as any other planning information valuable to employees before they reach age fifty.

(3) The employer shall provide each eligible employee leave with pay to attend a retirement education and financial planning program ~~once within four years from September 6, 1991~~ twice prior to age fifty. For purposes of this subsection, leave with pay shall mean a day off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than ~~once~~ twice, but leave to attend a program shall be at the expense of the employee and shall be at the discretion of the employer. An employee may not attend a program more than once per fiscal year.

(4) ~~Any new member of the retirement system shall have the option of attending a retirement education and financial planning program within the first twelve months of his or her membership in the system.~~

~~(5)~~ Funding to cover the expense of the retirement education and financial planning program shall be charged proportionately to the State Employees Retirement Fund and the County Employees Retirement Fund.

(5) ~~(6)~~ A nominal registration fee shall be charged each person attending a retirement education and financial planning program to cover the costs for meals or meeting rooms or other expenses incurred for the program.

Sec. 11. Original sections 23-2305, 79-1503, 81-2017, 81-2019, 84-1305, 84-1511, and 84-1511.01, Reissue Revised Statutes of Nebraska, and sections 23-1118, 23-2301, and 24-704, Revised Statutes Supplement, 1994, are repealed.