

CORRECTED COPY

LEGISLATIVE BILL 847

Approved by the Governor April 3, 1996

Introduced by Wickersham, 49, at the request of the Governor

AN ACT relating to state funds; to amend sections 23-2314, 24-701, 24-704, 24-710.03, 72-1238, 72-1240, 72-1242, 79-1501, 79-1515, 81-2024, 81-2026, 81-2034, 84-1301, 84-1309.01, 84-1310.01, 84-1311, 84-1316, 84-1325, 84-1501, 84-1504 to 84-1506, and 84-1509, Reissue Revised Statutes of Nebraska, sections 2-1608, 23-2309.01, 23-2310, 72-1237, 72-1239, 72-1243, and 72-1260, Revised Statutes Supplement, 1994, and sections 23-2301, 23-2305, 23-2331, 79-1043, 79-1501.01, 79-1503, 81-2014, 81-2019, 84-1305, 84-1331, and 84-1503, Revised Statutes Supplement, 1995; to define and redefine terms; to change investment provisions for retirement funds and deferred compensation; to change membership provisions for the Nebraska Investment Council and the Public Employees Retirement Board; to change appointment provisions for the state investment officer and the director of the Nebraska Public Employees Retirement Systems; to provide and change powers and duties; to change provisions relating to military service credit and rollover contributions and distributions; to change and eliminate provisions relating to the legal advisor of retirement systems and the Public Employees Retirement Board; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 79-1505, 84-1306, and 84-1508, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 2-1608, Revised Statutes Supplement, 1994, is amended to read:

2-1608. Whenever two or more county extension organizations have united as provided in section 2-1607 for the purpose of support and management of extension work, county extension employees jointly employed by the participating extension organizations shall be considered persons employed by a county for the purpose of subdivision (5) of section 23-2301 and shall participate in the Retirement System for Nebraska Counties under the County Employees Retirement Act. To accomplish such participation the participating county extension organizations shall (1) pick up employee contributions as salary deductions on behalf of such county extension employees in the manner required for a county in section 23-2307, and (2) pay to the carrier an amount in accordance with the provisions of section 23-2308. In all other respects the participation of such county extension employees in the retirement system shall be in accordance with the act.

Sec. 2. Section 23-2301, Revised Statutes Supplement, 1995, is amended to read:

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

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

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

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

earlier;

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

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

(5) Employees means 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 does not include judges, persons making contributions to the School Retirement System of the State of Nebraska, or non-elected employees and non-elected officials of any county having a population in excess of one hundred fifty thousand inhabitants;

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

(7) Group annuity contract means the contract issued by one or more life insurance companies to the board in order to provide the future service benefits described in the act;

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

(9) Until January 1, 1997, investment manager means the state investment officer or one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the funds of the act;

(10) Primary carrier means the life insurance company or trust company designated by the retirement board as the administrator of the retirement system;

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

(12) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on its investments;

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

(14) Retirement means qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the act;

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

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

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

(18) Straight life annuity means 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.

(19) 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 non-elected employees and non-elected 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, Revised Statutes Supplement, 1995, 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 23-2309.01, Revised Statutes Supplement, 1994, is amended to read:

23-2309.01. (1) On or after January 1, 1986 ~~1997~~, 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~~ The investment options

shall include, but not be limited to, the following:

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

(b) An account which shall be known as an equities An equities account and which shall be invested by or under the direction of the state investment officer in common stocks- domestic equities;

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

(d) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of domestic common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

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

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

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 ten 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 for restrictions on transfers to or from the stable return account pursuant to rule or regulation, that a member's investment in a stable return account shall not be transferred. The board shall establish provisions adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

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 the 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. 5. Section 23-2310, Revised Statutes Supplement, 1994, is amended to read:

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 any gains on investments and reduced by any losses on investments, any expense charges made under the provisions of the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 23-2319, except that a - 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) On and after January 1, 1997, the state investment officer shall invest the employer account, and upon maturity, the employer account funds

which have been invested in guaranteed investment contracts prior to January 1, 1997. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Sec. 6. Section 23-2314, Reissue Revised Statutes of Nebraska, is amended to read:

23-2314. The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General, who shall also be the legal advisor for the system.

Sec. 7. Under such rules and regulations as the retirement board adopts and promulgates, an employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (1) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (2) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (3) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this section, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

Sec. 8. (1) For purposes of this section and section 9 of this act:

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

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

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified trust described in section 401(a) of the code, and (iv) an annuity plan described in section 403(a) of the code. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means only subdivisions (i)(c)(i) and (ii) of this section; and

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

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

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

Sec. 9. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 7 of this act if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is

attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

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

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

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

Sec. 10. Section 23-2331, Revised Statutes Supplement, 1995, is amended to read:

23-2331. Sections 23-2301 to 23-2310.02, 23-2312 to 23-2317, 23-2319 to 23-2322, and 23-2324 to 23-2332 and sections 7 to 9 of this act shall be known and may be cited as the County Employees Retirement Act.

Sec. 11. Section 24-701, Reissue Revised Statutes of Nebraska, is amended to read:

24-701. For purposes of sections 24-701 to 24-714 the Judges Retirement Act, unless the context otherwise requires:

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

(2) Judge shall mean and include means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who 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 means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

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

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

(6) Total years of service shall mean means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year;

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

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

(8) Beneficiary shall mean means 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 means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710. 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 means the Public Employees Retirement Board;

(11) Member shall mean means a judge eligible to participate in the retirement system established under sections 24-701 to 24-714 the Judges Retirement Act;

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

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

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

(15) Regular interest shall mean means 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 means the first day of the month following attainment of age sixty-five; and

(17) Actuarial equivalence shall mean means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 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. 12. Sections 24-701 to 24-714, sections 14 to 16 of this act, and this section shall be known and may be cited as the Judges Retirement Act.

Sec. 13. Section 24-704, Reissue Revised Statutes of Nebraska, is amended to read:

24-704. The general administration of the retirement system for judges provided for in sections 24-701 to 24-714 the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Attorney General shall be the legal adviser 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 the Judges Retirement Act. 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 act. 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 the 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.

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

Sec. 15. (1) For purposes of this section and section 16 of this act:

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

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

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified trust described in section 401(a) of the code, and (iv) an annuity plan described in section 403(a) of the code. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means only subdivisions (i)(c)(i) and (ii) of this section; and

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

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

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

Sec. 16. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 24-706 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

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

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

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

Sec. 17. Section 24-710.03, Reissue Revised Statutes of Nebraska, is amended to read:

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 compensation and two years of service immediately following the year in which the member reached the maximum benefit in effect prior to July 15, 1992, plus the interest on that amount which would have accrued under the retirement system provided by sections 24-701 to 24-714 the Judges Retirement Act. Any payment made pursuant to this section by a member to qualify for the maximum benefit in effect after July 15, 1992, shall be received by the retirement system office by December 31, 1993. Any such payment shall be made in a single lump sum.

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

Sec. 18. Section 72-1237, Revised Statutes Supplement, 1994, is amended to read:

72-1237. There is hereby created the Nebraska Investment Council, referred to in the Nebraska State Funds Investment Act as the council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature, and the State Treasurer and the director of the Nebraska Public Employees Retirement Systems as a nonvoting, ex officio member members. One of the appointed members shall be designated chairperson by the Governor.

Each of the appointed members of the council shall serve for a term of five years and may be removed by the Governor for cause after notice and an opportunity to be heard. The term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to investment decisions pertaining to funds the assets of the retirement systems invested by the council.

Sec. 19. Section 72-1238, Reissue Revised Statutes of Nebraska, is amended to read:

72-1238. The appointed members of the council shall have at least ten years of experience in the financial affairs of a public or private organization or have at least five years of experience in the field of investment management or analysis. The members serving on the operative date of this section shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective. be persons of good character and high standing in the community who are well known for their judgment and experience in business and financial affairs.

Sec. 20. Section 72-1239, Revised Statutes Supplement, 1994, is amended to read:

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

Sec. 21. (1) The appointed members of the Nebraska Investment Council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503, shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(2) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the retirement systems solely in the interests of the members and beneficiaries of the retirement systems for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law. The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

Sec. 22. Section 72-1240, Reissue Revised Statutes of Nebraska, is amended to read:

72-1240. The council shall appoint a state investment officer. The appointment shall be subject to the approval of the Governor and a majority of

the Legislature. The state investment officer shall be a person well qualified by training to administer and invest the money available for investment under the provisions of this act, and he or she shall have appropriate at least five years of experience in the management of investment portfolios. His The state investment officer's salary shall be fixed by the council at not less than twenty-five thousand dollars per year. He The state investment officer shall serve without term and may be removed for cause by the council.

Sec. 23. Section 72-1242, Reissue Revised Statutes of Nebraska, is amended to read:

72-1242. The state investment officer shall employ such qualified personnel as may be required to assist him in the performance of his carry out the duties and responsibilities required under the Nebraska State Funds Investment Act. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. At the discretion of the Nebraska Investment Council, investment managers who are employees of the council may be exempted from the State Personnel System. The state investment officer shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties. With the approval of the Governor, the state investment officer may retain counsel, auditors, financial advisors and private consultants on a contract basis or otherwise to render such professional service or advice as he or she may require in the performance of his or her duties.

Sec. 24. Section 72-1243, Revised Statutes Supplement, 1994, is amended to read:

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

(2) The council and the Public Employees Retirement Board 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 as provided in section 84-1503. By March 1 of each year, the analysis shall be presented to the Nebraska Retirement Systems Committee.

(3) By March 1 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee at a public hearing. The plan shall include, but not be limited to, the council's investment policy portfolio, investment strategies, the duties of the state investment officer and limits on his or her authority, and an organizational structure of the council's office.

Sec. 25. Section 72-1260, Revised Statutes Supplement, 1994, is amended to read:

72-1260. Sections 72-1237 to 72-1260 and section 21 of this act shall be known and may be cited as the Nebraska State Funds Investment Act.

Sec. 26. Section 79-1043, Revised Statutes Supplement, 1995, is amended to read:

79-1043. (1) Any member who is eligible for reemployment on or after December 12, 1994, pursuant to ~~30 U.S.C. Chapter 43~~, 38 U.S.C. chapter 43, as amended, or is eligible for reemployment under sections 55-160 to 55-163 may pay to the system after the date of his or her return from active military service, and within the period required by law, not to exceed five years, an amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the period of military service for which creditable service is desired. If such payment is made, the member shall be entitled to credit for membership service in determining his or her annuity for the period for which contributions have been made and the board shall be responsible for any funding necessary to provide for the benefit which is attributable to this increase in the member's creditable service. The member's payments shall be paid as the trustees may direct, through direct payments to the system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district. Creditable service may be purchased only in one-half-year increments, starting with the most recent year's salary.

(2) Under such rules and regulations as the board may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the school board or board of education of the

school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for any or all time he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member pays into the system an amount equal to the sum of the deductions from his or her salary for the portion of the leave for which creditable service is desired, any contribution which the school district would have been required to make for the portion of the leave for which creditable service is desired had he or she continued to receive salary at the level received immediately prior to the leave of absence, and regular interest on these combined payments from the date such deductions would have been made to the date of repayment, with such amounts to be paid as the trustees may direct through direct payments to the system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of the termination of his or her leave of absence. Interest on any delayed payment shall be at the rate of regular interest. Creditable service may be purchased only in one-half-year increments, starting with the most recent year's salary, and if payments are made on an installment basis, creditable service will be credited only as payment has been made to the system to purchase each additional one-half-year increment. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must return to employment with the Class V school district within one year after termination of the leave of absence.

Sec. 27. Section 79-1501, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(4) County school official ~~shall mean~~ means 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~~ means 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~~ includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service ~~shall does~~ 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~~ means the annuity paid to a person upon retirement for disability under section 79-1524;

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

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

(9) Regular interest ~~shall mean~~ means 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~~ means 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~~ means a senior school employee who was employed within the State of Nebraska on September 1, 1945;

(12) School employee ~~shall mean~~ means 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 means 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 means 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 means 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 Board of Trustees of the Nebraska state colleges 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 means qualifying for and accepting a school or disability retirement allowance granted under the act;

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

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

(18) Required deposit shall mean means 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 means one fiscal year which shall include includes 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 means a school employee who has arrived at his or her twenty-first birthday anniversary on August 15 preceding;

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

(22) School retirement allowance shall mean means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-1520 to 79-1522.02, 79-1522.04, and 79-1522.05. 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 means 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 means the deposit by the state in the retirement system on behalf of any member;

(25) State school official shall mean means 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 means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(27) Emeritus member shall mean means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-1512, (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 means the life insurance companies and trust companies designated as the underwriter or trustee of the retirement system;

(29) Actuarial equivalent shall mean means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 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 except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the prior June 30, rounded to the next lower quarter percent;

(30) Retirement date shall mean means 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 means 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 means the form approved by the retirement system for acceptance of a member's request for either regular or disability retirement; and

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

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

Sec. 28. Section 79-1501.01, Revised Statutes Supplement, 1995, is amended to read:

79-1501.01. Sections 79-1501 to 79-1567 and sections 31 and 32 of this act shall be known and may be cited as the School Employees Retirement Act.

Sec. 29. Section 79-1503, Revised Statutes Supplement, 1995, 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. 30. Section 79-1515, Reissue Revised Statutes of Nebraska, is amended to read:

79-1515. (1) Under such rules and regulations as the retirement board adopts and promulgates, each person who was a school employee at any time prior to the establishment of the retirement system and who becomes a member of the retirement system shall, within two years after becoming a member, file a detailed statement of all service as a school employee rendered by him or her prior to the date of establishment of the retirement system. In order to qualify for prior service credit toward a service annuity, a school employee, unless temporarily out of service for further professional

education, for service in the armed forces, or for temporary disability, must have completed four years of service on a part-time or full-time basis during the five calendar years immediately preceding July 1, 1945, or have completed eighteen years out of the last twenty-five years prior to July 1, 1945, full time or part time, and two years out of the five years immediately preceding July 1, 1945, full time or part time, or such school employee must complete, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, four years of service within the five calendar years immediately following July 1, 1945. In order to qualify for prior service credit toward a service annuity, a school employee who becomes a member of the School Retirement System of the State of Nebraska on or before September 30, 1951, or from July 1, 1945, to the date of becoming a member shall have been continuously employed in a public school in Nebraska operating under any other regularly established retirement or pension system.

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

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

(4) Retirement benefits for persons who have retired prior to April 18, 1992, shall not be affected by changes made to this section which become effective on such date.

Sec. 31. (1) For purposes of this section and section 32 of this act:

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

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

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified trust described in section 401(a) of the code, and (iv) an annuity plan described in section 403(a) of the code. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means only subdivisions (i)(c)(i) and (ii) of this section; and

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

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

(3) The board shall adopt and promulgate rules and regulations for

direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Sec. 32. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to sections 79-1514 and 79-1522 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such sections and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

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

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

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

Sec. 33. Sections 81-2014 to 81-2036, sections 39 and 40 of this act, and this section shall be known and may be cited as the Nebraska State Patrol Retirement Act.

Sec. 34. Section 81-2014, Revised Statutes Supplement, 1995, is amended to read:

81-2014. For purposes of sections 81-2014 to 81-2036 the Nebraska State Patrol Retirement Act:

(1) Actuarial equivalent shall mean means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 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. An interest rate of seven percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

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

(3) (3)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

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

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

Sec. 35. Section 81-2019, Revised Statutes Supplement, 1995, 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 the Nebraska State Patrol Retirement Act, 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 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 the act.

Sec. 36. Section 81-2024, Reissue Revised Statutes of Nebraska, is amended to read:

81-2024. The system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General, who shall also be the legal advisor for the system.

Sec. 37. Section 81-2026, Reissue Revised Statutes of Nebraska, is amended to read:

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 twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of 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 the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate. 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.

Sec. 38. Section 81-2034, Reissue Revised Statutes of Nebraska, is amended to read:

81-2034. (1) Any member of the Nebraska State Patrol who, while a member of the Nebraska State Patrol, entered into and served or shall enter into and serve in the armed forces of the United States during a declared emergency, as defined and prescribed under such rules and regulations as the board may adopt, and who, within six months after honorable discharge or honorable separation from active duty, returned or returns to the service of the state and again becomes a member of the Nebraska State Patrol shall be credited, in determining benefits due such member from the State Patrol Retirement Fund, for all the time actually served in the armed forces as if such person had been in the service of the Nebraska State Patrol throughout such declared emergency service in the armed forces.

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

Sec. 39. (1) For purposes of this section and section 40 of this act:

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

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

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an

individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified trust described in section 401(a) of the code, and (iv) an annuity plan described in section 403(a) of the code. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means only subdivisions (1)(c)(i) and (ii) of this section; and

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

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

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

Sec. 40. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 81-2031 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

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

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

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

Sec. 41. Section 84-1301, Reissue Revised Statutes of Nebraska, is amended to read:

84-1301. For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1) Employee shall mean any employee of the State Board of Agriculture who is a member of the state retirement plan on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employees shall not include (a) judges as defined in section 24-701; (b) members of the Nebraska State Patrol; (c) employees of the University of Nebraska; (d) employees of the state colleges; (e) employees of community colleges; (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources; (g) the Commissioner of Labor employed prior to July 1, 1984; (h) employees of the State Board of Agriculture who are not members of the state retirement plan on July 1, 1982; (i) the Nebraska National Guard air and army technicians; (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-1565 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system; or (k) employees of the Coordinating

Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of such retirement system;

(2) Part-time employee shall mean an employee who works less than one-half of the regularly scheduled hours;

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

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

(5) Retirement system shall mean the State Employees Retirement System of the State of Nebraska;

(6) Required contribution shall mean the deduction to be made from the compensation of employees as provided in section 84-1308;

(7) 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 but shall not include any period of disability for which disability retirement benefits are received under the provisions of section 84-1317;

(8) 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;

(9) Prior service shall mean service before January 1, 1964;

(10) Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323-01;

(11) Primary carrier shall mean the life insurance company or trust company designated as the administrator of the group annuity contract;

(12) State department shall mean any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the State Employees Retirement Act, the employees and officers of which are not already covered by a retirement plan;

(13) 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 to be of long-continued and indefinite duration;

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

(15) Regular interest shall mean the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on its investments;

(16) Fund shall mean the State Employees Retirement Fund created by section 84-1309;

(17) 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

(18) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the fund;

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

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

(2) Date of disability means the date on which a member is

determined to be disabled by the board;

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

(4) Employee means any employee of the State Board of Agriculture who is a member of the state retirement plan on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement plan on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-1565 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (k) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(5) Fund means the State Employees Retirement Fund created by section 84-1309;

(6) Group annuity contract means the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323.01;

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

(8) Until January 1, 1997, investment manager means the state investment officer or one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the fund;

(9) Part-time employee means an employee who works less than one-half of the regularly scheduled hours;

(10) Primary carrier means the life insurance company or trust company designated as the administrator of the group annuity contract;

(11) Prior service means service before January 1, 1964;

(12) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on its investments;

(13) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(14) Retirement means qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

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

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

(17) Service means the actual total length of employment as an employee and includes leave of absence because of disability or military

service when properly authorized by the retirement board but does not include any period of disability for which disability retirement benefits are received under the provisions of section 84-1317;

(18) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan; and

(19) Straight life annuity means 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.

Sec. 42. Section 84-1305, Revised Statutes Supplement, 1995, 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. 43. Section 84-1309.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1309.01. Any change in the type of investment of money in the State Employees Retirement Fund by the state investment officer shall be subject to approval by the Public Employees Retirement Board. If the investment of such money is with a primary carrier, the state investment officer may specify any payment procedures which he or she deems advisable. For purposes of this section, primary carrier shall include insurance companies, annuity companies, variable annuity companies, and trust companies. The board shall provide benefit liability information and other assistance to the Nebraska Investment Council for the establishment of policy portfolio objectives for the investing and reinvesting of the assets of the retirement system. The board shall verify that the investments of the assets of the retirement system by the council and the state investment officer are invested and reinvested for the exclusive purposes of providing benefits to members and members' beneficiaries and that the assets of the retirement system are not invested with the sole or primary investment objective of economic development or social purposes or objectives. Such verification shall be included in the joint analysis of the investment return pursuant to section 84-1503.

Sec. 44. Section 84-1310.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1310.01. (1) On or after January 1, 1985 1997, 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 stable return account and which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts; and

(b) An account which shall be known as an equities An equities account and which shall be invested by or under the direction of the state investment officer in common stocks- domestic equities;

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

(d) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of domestic common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

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

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

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 ten 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 for restrictions on transfers to or from the stable return account pursuant to rule or regulation. ~~that a member's investment in a stable return account shall not be transferred.~~ The board shall establish provisions adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

~~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 the 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. 45. Section 84-1311, Reissue Revised Statutes of Nebraska, is amended to read:

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 any gains on investments and reduced by any losses on investments, any expense charges made under the provisions of the guaranteed investment contract or other investments, and by any expense charges incurred by the board in connection with administering the retirement 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) On and after January 1, 1997, the state investment officer shall invest the employer account, and upon maturity, the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Sec. 46. Section 84-1316, Reissue Revised Statutes of Nebraska, is amended to read:

84-1316. The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General, who shall also be the legal adviser for the system.

Sec. 47. Section 84-1325, Reissue Revised Statutes of Nebraska, is amended to read:

84-1325. (1) 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 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.

(2) Under such rules and regulations as the retirement board adopts and promulgates, any employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this subsection, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

Sec. 48. (1) For purposes of this section and section 49 of this act:

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

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

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified trust described in section 401(a) of the code, and (iv) an annuity plan described in section 403(a) of the code. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means only subdivisions (i)(c)(i) and (ii) of this section; and

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

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

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

Sec. 49. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 84-1325 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

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

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

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

Sec. 50. Section 84-1331, Revised Statutes Supplement, 1995, is amended to read:

84-1331. Sections 84-1301 to 84-1331 and sections 48 and 49 of this act shall be known and may be cited as the State Employees Retirement Act.

Sec. 51. Section 84-1501, Reissue Revised Statutes of Nebraska, is amended to read:

84-1501. The Public Employees Retirement Board is hereby established. Such board shall consist of seven appointed members and the state investment officer as a nonvoting, ex officio member. Three of the appointed members shall be participants in the retirement systems administered by the board, one member of the appointed members shall be a participant in such retirement systems who has retired, and three of the appointed members shall not be employees of the State of Nebraska or any of its political subdivisions. Appointments to such board shall be made by the Governor subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska. ~~The members serving on August 25, 1989; shall serve for the remainder of their three-year terms; and the The three appointed members who are not employees of the State of Nebraska or any of its political subdivisions shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. The members serving on the operative date of this section shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective. All members appointed on and after such date January 1, 1997, shall serve for terms of five years or until a successor has been appointed and qualified. The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Members The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.~~

Sec. 52. Section 84-1503, Revised Statutes Supplement, 1995, is amended to read:

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 Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems; and sections 24-701 to 24-714 and 81-2014 to 81-2036;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The director shall be qualified by training and have at least five years of experience in the administration of a qualified public or private employee retirement plan. To hire a director to administer the systems under direction of the board. The director shall not be a member of the board. Salaries The salary of the director and his or her employees shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law; and

(d) to administer the deferred compensation program authorized in section 84-1504; and

(e) To hire an attorney, admitted to the Nebraska State Bar Association, to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection.

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

(a) Until January 1, 1997, and with 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, such person is under a duty to use such skills;

(b) ~~Until January 1, 1997, and with~~ 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 obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to three years. An actuary under contract for the State of Nebraska 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, except that up to seventy-five thousand dollars may be transferred in FY1993-94 to assist in completing the study authorized in Legislative Resolution 328, Ninety-second Legislature, Second Session, 1992;

~~(i) To adopt rules and regulations to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which shall include, but not be limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers; and~~

~~(j) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 1997, and every four years thereafter. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. The written audit report shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee and shall be presented to the committee at a public hearing.~~

(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. The 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. By March 1 of each year, the analysis shall be presented to the Nebraska Retirement Systems Committee.

(4) By March 1 of each year, the board shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee at a public hearing. The plan shall include, but not be limited to, the board's funding policy, member education and informational programs, the director's duties and the limits on his or her authority, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

Sec. 53. (1) The appointed members of the Public Employees Retirement Board shall have the responsibility for the administration of the retirement systems pursuant to subdivision (1)(a) of section 84-1503, shall be deemed fiduciaries with respect to the administration of the retirement systems, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section. The nonvoting, ex officio member of the board shall not be deemed a fiduciary.

(2) As fiduciaries, the appointed members of the board shall discharge their duties with respect to the retirement systems solely in the interests of the members and beneficiaries of the retirement systems for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law. The appointed members of the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Sec. 54. The director of the Nebraska Public Employees Retirement Systems shall employ qualified personnel as may be required to carry out the duties and responsibilities required under sections 84-1501 to 84-1513. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. The director shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties.

Sec. 55. Section 84-1504, Reissue Revised Statutes of Nebraska, is amended to read:

84-1504. (1) The Public Employees Retirement Board, on behalf of the state, may contract with any state employee, including a person under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges, to defer a portion of such employee's income compensation.

(2) The income compensation to be deferred shall not exceed the total compensation to be received by the employee or independent contractor from the employer or exceed the limits established by the Internal Revenue Service for such a plan.

(3) The board state investment officer may invest the income compensation to be deferred under an agreement in the following categories of investment or insurance:

- (a) Annuities;
- (b) Mutual funds;
- (c) Bank savings accounts or savings and loan associations;
- (d) Trust companies qualified to act as fiduciaries in this state;

or

(e) An organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska.

(4) The deferred compensation program shall serve in addition to but not be a part of any existing retirement or pension system provided for state employees or any other benefit program.

(5) Any income compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(6) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such employee or independent contractor.

(7) The state, the board, the state investment officer, or the agency shall not be responsible for any investment results entered into by the

employee or independent contractor in the deferred compensation agreement.

(8) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

Sec. 56. Section 84-1505, Reissue Revised Statutes of Nebraska, is amended to read:

84-1505. The Public Employees Retirement Board shall act as custodian for investment contracts purchased in the name of the State of Nebraska under the terms of sections 84-1504 to 84-1506. The board shall receive all rights and incidents of ownership of such investment contracts. The employee shall have no interest in any investment contract or the proceeds thereof. All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall remain solely the property and rights of the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan.

Sec. 57. Section 84-1506, Reissue Revised Statutes of Nebraska, is amended to read:

84-1506. (1) Under the first method of disbursement mentioned in section 84-1508, the Public Employees Retirement Board shall receive payments or benefits of any investment contracts purchased under sections 84-1504 to 84-1506. The deferred compensation plan, any amount shall not be available to the participant or beneficiary prior to (a) the calendar year in which the participant attains age seventy and one-half years, (b) when the participant is separated from service with the state, or (c) when the participant has an unforeseeable emergency as determined by the Public Employees Retirement Board. The deferred compensation plan shall meet the minimum distribution requirements of section 457 of the Internal Revenue Code. Distribution shall be made as provided in subsection (2) of this section or sections 84-1509 and 84-1510.

(2) For amounts under the deferred compensation plan which are not provided for under an administrative services agreement pursuant to section 84-1509, payments and benefits shall be deposited in the Deferred Compensation Fund which is hereby created. The State Treasurer shall make payments to the employees from the Deferred Compensation Fund.

Sec. 58. Section 84-1509, Reissue Revised Statutes of Nebraska, is amended to read:

84-1509. Under the second method of disbursement mentioned in section 84-1508, the Public Employees Retirement Board may enter into an administrative services agreement with an organization authorized to conduct business in Nebraska and to administer public employee deferred compensation retirement plans. No such agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

Sec. 59. Sections 4, 5, 44, 45, and 60 of this act become operative on January 1, 1997. The other sections of this act become operative on their effective date.

Sec. 60. Original sections 84-1310.01 and 84-1311, Reissue Revised Statutes of Nebraska, and sections 23-2309.01 and 23-2310, Revised Statutes Supplement, 1994, are repealed.

Sec. 61. Original sections 23-2314, 24-701, 24-704, 24-710.03, 72-1238, 72-1240, 72-1242, 79-1501, 79-1515, 81-2024, 81-2026, 81-2034, 84-1301, 84-1309.01, 84-1316, 84-1325, 84-1501, 84-1504 to 84-1506, and 84-1509, Reissue Revised Statutes of Nebraska, sections 2-1608, 72-1237, 72-1239, 72-1243, and 72-1260, Revised Statutes Supplement, 1994, and sections 23-2301, 23-2305, 23-2331, 79-1043, 79-1501.01, 79-1503, 81-2014, 81-2019, 84-1305, 84-1331, and 84-1503, Revised Statutes Supplement, 1995, are repealed.

Sec. 62. The following sections are outright repealed: Sections 79-1505, 84-1306, and 84-1508, Reissue Revised Statutes of Nebraska.