

## LEGISLATIVE BILL 31

Approved by the Governor May 01, 2019

Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 79-978.01 and 84-1503, Revised Statutes Cumulative Supplement, 2018; to provide for a work plan relating to a transfer of management of Class V school employees retirement systems established under the Class V School Employees Retirement Act to the Public Employees Retirement Board as prescribed; to require a report; to create a fund; to provide duties for the Public Employees Retirement Board; to provide for reimbursement for expenses incurred in completing such work plan; to harmonize provisions; to provide for severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 79-978.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

79-978.01 Sections 79-978 to 79-9,118 and sections 2 to 5 of this act shall be known and may be cited as the Class V School Employees Retirement Act.

Sec. 2. It is the intent of the Legislature that the Public Employees Retirement Board develop a work plan, recommendations, cost estimates, and cost comparisons regarding the transfer of management of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, to the Public Employees Retirement Board.

Sec. 3. (1)(a) The Public Employees Retirement Board, in consultation with stakeholders including, but not limited to, the Nebraska Retirement Systems Committee of the Legislature and the board of trustees and employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, shall develop a work plan for the transfer of management and actuarial services of any such Class V school employees retirement system to the Public Employees Retirement Board.

(b) The work plan shall include, but not be limited to, a detailed analysis and recommendations regarding (i) management, administration, actuarial service, information technology, computer infrastructure, accounting, and member data and record transfer; (ii) necessary statutory changes to achieve the transfer of management and actuarial services; (iii) staff training and assessment of staffing needs; (iv) educational and communication plans to fully inform all system stakeholders and affected governmental entities regarding management changes; (v) sufficient timeframes for an orderly transition and implementation of management and actuarial changes; (vi) cost estimates associated with the tasks necessary to carry out the management transition; and (vii) a comparison of the current annual cost to administer any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, with an estimate of the annual cost for the Public Employees Retirement Board to administer such system after a management transfer occurs.

(c) The employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, shall provide all records, documents, data, or other information to the Public Employees Retirement Board within thirty calendar days after receiving a written request from the director of the Nebraska Public Employees Retirement Systems, or from the director's representative on behalf of the Public Employees Retirement Board, for such records, documents, data, or other information.

(d) The Public Employees Retirement Board shall electronically report the work plan, including any recommendations, cost estimates, and cost comparisons, to the Clerk of the Legislature no later than June 30, 2020.

(2) For purposes of this section, management does not include:

(a) A merger or consolidation of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, with the School Employees Retirement System of the State of Nebraska or any other retirement system administered by the Public Employees Retirement Board; or

(b) An assumption of any of the liability for any such Class V school employees retirement system by the State of Nebraska, the Public Employees Retirement Board, or the Nebraska Public Employees Retirement Systems.

(3) The Public Employees Retirement Board may quarterly bill the employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, for all work performed by the Public Employees Retirement Board for services and related expenses in completion of the work plan described in this section. Such employer shall remit payment as provided in section 4 of this act within forty-five calendar days after receipt of each bill.

Sec. 4. (1) The Class V School Employees Retirement System Management

Work Plan Fund is created. The purpose of the fund is to transfer funds as specified in this section. The fund shall consist of the amounts transferred from the employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, for all work performed by the Public Employees Retirement Board for services and related expenses in completion of the work described in section 3 of this act. The fund shall be administered by the Nebraska Public Employees Retirement Systems. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, shall remit the payment described in subsection (3) of section 3 of this act to the State Treasurer for credit to the Class V School Employees Retirement System Management Work Plan Fund for all work performed by the Public Employees Retirement Board for services and related expenses in completion of the work plan.

Sec. 5. The administrator and board of trustees of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, may quarterly bill the employer of such Class V school employees retirement system for all work performed and expenses incurred by the administrator, staff, and any consultants of the Class V school employees retirement system in response to requests for records, documents, data, or other information from the Nebraska Public Employees Retirement Systems or the Public Employees Retirement Board in completion of the work plan described in section 3 of this act. Such employer shall remit payment within forty-five calendar days after receipt of each quarterly bill to such Class V school employees retirement system.

Sec. 6. Section 84-1503, Revised Statutes Cumulative Supplement, 2018, 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;

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

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

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

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

(f) To hire an internal auditor to perform the duties described in section 84-1503.04 who meets the minimum standards as described in section 84-304.03;

(g) To adopt and implement procedures for reporting information by employers, as well as testing and monitoring procedures in order to verify the accuracy of such information. The information necessary to determine membership shall be provided by the employer. The board may adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision. Nothing in this subdivision shall be construed to require the board to conduct onsite audits of political subdivisions for compliance with statutes, rules, and regulations governing the retirement systems listed in subdivision (1)(a) of this section regarding membership and contributions; and

(h) To prescribe and furnish forms for the public retirement system plan reports required to be filed pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987 through December 31, 2017.

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

(a) To determine, based on information provided by the employer, the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations, as the board may deem necessary, for the management of the board;

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

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in

the administration and development of the retirement systems, including, but not limited to, preparation of an annual actuarial valuation report of each of the defined benefit and cash balance plans administered by the board. Such annual valuation reports shall be presented by the actuary to the Nebraska Retirement Systems Committee of the Legislature at a public hearing or hearings. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board, the Nebraska Retirement Systems Committee of the Legislature, and the Legislative Fiscal Analyst upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once every three years, unless the board determines that such a process would not be cost effective under the circumstances and that the actuarial services performed have been satisfactory, in which case the contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to three additional years. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries and meet the academy's qualification standards to render a statement of actuarial opinion;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall occur beginning on or after July 1, 2005, and at intervals of not less than five years and not more than fifteen years and shall be in such amounts as the Legislature shall direct;

(g) To adopt and promulgate rules and regulations, as the board may deem necessary, to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which includes, but is not limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 2020, and from time to time thereafter at the request of the Nebraska Retirement Systems Committee of the Legislature, to be completed not more than every four years but not less than every ten years. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. A copy of the compliance audit shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee of the Legislature and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations, as the board may deem necessary, for the adjustment of contributions or benefits, which includes, but is not limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; (iii) establishing materiality and de minimus amounts for agency transactions, adjustments, and inactive account closures; and (iv) notice provided to all affected persons. Following an adjustment, a timely notice shall be sent that describes the adjustment and the process for disputing an adjustment to contributions or benefits;

(j) To make a thorough investigation through the director or the director's designee, of any overpayment of a benefit, when in the judgment of the director such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts; and

(k) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service; and section 401(a) of the Internal Revenue Code by meeting the requirements of section 414(d) of the Internal Revenue Code relating to the establishment of retirement plans for governmental employees of a state or political subdivision thereof. The board may adopt and promulgate rules and regulations necessary or

appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) By March 31 of each year, the board shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the board's funding policy, the administrative costs and other fees associated with each fund and plan overseen by the board, member education and informational programs, the director's duties and limitations, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

(4)(a) Beginning in 2016, and at least every four years thereafter in even-numbered years or at the request of the Nebraska Retirement Systems Committee of the Legislature, the board shall obtain an experience study. Within thirty business days after presentation of the experience study to the board, the actuary shall present the study to the Nebraska Retirement Systems Committee at a public hearing. If the board does not adopt all of the recommendations in the experience study, the board shall provide a written explanation of its decision to the Nebraska Retirement Systems Committee and the Governor. The explanation shall be delivered within ten business days after formal action by the board to not adopt one or more of the recommendations.

(b) The director shall provide an electronic copy of the first draft and a final draft of the experience study and annual valuation reports to the Nebraska Retirement Systems Committee and the Governor when the director receives the drafts from the actuary. The drafts shall be deemed confidential information. The draft copies obtained by the Nebraska Retirement Systems Committee and the Governor pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09.

(c) For purposes of this subsection, business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. A business day shall not include a Saturday or a Sunday or a day during which the Nebraska Public Employees Retirement Systems office is closed.

(5) It shall be the duty of the board to direct the State Treasurer to transfer funds, as an expense of the retirement system provided for under the Class V School Employees Retirement Act, to and from the Class V Retirement System Payment Processing Fund and the Class V School Employees Retirement Fund for the benefit of a retirement system provided for under the Class V School Employees Retirement Act to implement the provisions of section 79-986. The agency for the administration of this provision and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems.

(6) Pursuant to section 3 of this act, it shall be the duty of the board to carry out the work plan, file the report, and contract with, bill, and receive payment from the employer of any Class V school employees retirement system established under the Class V School Employees Retirement Act and which existed on January 1, 2019, for all services performed in the conduct, completion, and report of such work plan regarding the transfer of management of any such Class V school employees retirement system.

Sec. 7. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 8. Original sections 79-978.01 and 84-1503, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.