

CORRECTED COPY

LEGISLATIVE BILL 107

Approved by the Governor February 15, 1993

Introduced by Horgan, 4

AN ACT relating to retirement; to amend sections 79-1034 and 79-1036, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1043, 79-1045, 79-1046, 79-1047 to 79-1049, 79-1049.06, and 79-1056.06, Revised Statutes Supplement, 1992; to change provisions relating to school employee retirement systems for Class V school districts; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 79-1032, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1032. For purposes of sections 79-1032 to 79-1060, unless the context otherwise requires:

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

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

(3) Trustee shall mean a trustee provided for in section 79-1034;

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

(5) Member shall mean any employee included in the membership of the retirement system or any former employee who has made contributions to the system and has not received a refund;

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

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

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

(9) Prior service shall mean service rendered prior to

September 1, 1951, for which credit is allowed under section 79-1044, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-1043, 79-1045, 79-1049.02, 79-1049.03, and 79-1049.05;

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

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

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

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

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

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

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

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

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

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

(20) Actuarial tables shall mean:

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

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

rate of five and seventy-five hundredths percent compounded annually;

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

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

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

(24) Primary beneficiary shall mean the person or persons entitled to receive or receiving a benefit by reason of the death of a member; and

(25) Secondary beneficiary shall mean the person or persons entitled to receive or receiving a benefit by reason of the death of all primary beneficiaries prior to the death of the member. If no primary beneficiary survives the member, secondary beneficiaries shall be treated in the same manner as primary beneficiaries.

Sec. 2. That section 79-1034, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1034. The general administration of the retirement system is hereby vested in the board of education. The board shall appoint, by a majority of all its members, nine trustees to serve as executive officers to administer sections 79-1032 to 79-1060. Such board of trustees shall consist of (1) the superintendent of schools, as ex officio trustee, (2) three members of the system, two of whom shall be from the ~~certified~~ certificated staff, and one of whom shall be from the classified staff, (3) three members of the board, and (4) two trustees who shall be business persons qualified in financial affairs, not members of the system. The first trustees will take office as of the effective date of the system and the terms of office shall begin as of that date. The trustees shall serve without compensation, but they shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177, ~~for state employees~~. A trustee shall serve until a successor qualifies, except that trustees who are members of the retirement system or members of the school board shall be disqualified as trustees immediately upon ceasing to be a member of the system or of the school board. Each trustee shall be entitled to one vote on the board of trustees and five trustees shall constitute a quorum for the transaction of any business. The trustees who are appointed from the board and the membership shall be appointed for each fiscal year. The two trustees who are not members of the board or of the system shall be appointed for three fiscal years each.

Sec. 3. That section 79-1036, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

79-1036. The trustees shall hold regular meetings annually and such special meetings at such times as may be deemed necessary. All meetings of the trustees shall be open to the public, ~~and be held in the office of the board of education.~~ They shall keep a record of all the proceedings of such meetings. The trustees shall, subject to the approval of the board of education, invest all cash income not required for current payments in securities of the type provided in section 79-1051 and so reinvest the proceeds from the sale or redemption of investments. They shall supervise the financial affairs of the system and recommend, to the board of education, any changes in the administration of the system essential to the actuarial requirements of the fund. They shall ascertain, ~~during the month of July of~~ each year, the estimated amount of money to be raised by taxation to cover payments during the ensuing fiscal year on account of prior service and recommend to the board of education the rate of tax to be levied.

Sec. 4. That section 79-1043, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1043. (1) Any member who is eligible for reemployment pursuant to 38 U.S.C. 2021 to 2026, as amended, or is eligible for reemployment under sections 55-160 to 55-163 may pay to the system, as the trustees may direct within three years from the date of his or her return from active military service, 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, plus regular interest thereon from the date such regular deductions would have been made to the date of repayment. If such payment is made, the board shall pay simultaneously to the system a like amount, ~~whereupon~~ and the member shall be entitled to credit for membership service for the period for which contributions have been made. 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 ~~such time as~~ 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 deposits to be paid as the trustees may direct within three years of the termination of his or her leave of absence. Creditable service may be purchased only in one-half-year increments, starting with the most recent year's salary. 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. 5. That section 79-1045, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1045. In the event that any employee becomes a member without prior service credit, prior service credit for a period of not to exceed ten years may be acquired by furnishing satisfactory proof that the employee has been employed for such period of time by a school district or by a Nebraska educational service unit and by the payment by the member of the total amount which he or she would have contributed to the system had he or she been a member of the system during such period, together with regular interest thereon, such contribution to be based on the most recent years' salary the employee earned in another school district or Nebraska educational service unit if the salary is verified by the other school district or Nebraska educational service unit or, if not, on his or her current annual salary at the time he or she becomes a member and payable in total for the period of time, not exceeding ten years, for which such member requests such prior service credit, and by the payment into the fund by the school district of an equivalent amount. These amounts may be paid as the trustees may direct over a period of not to exceed two years from date of membership. Interest on delayed payments shall be at the rate of regular interest. Creditable service may be purchased only in one-half-year increments.

Sec. 6. That section 79-1046, Revised Statutes Supplement, 1992, be amended to read as follows:

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

(1) A joint and survivorship annuity which shall continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose attained age at the time of such election is fifty-five years or more;

(2) A joint and survivorship annuity which shall continue after the death of the member so that seventy-five percent of the amount of the member's monthly benefit under this option shall be paid monthly

to the (a) member's spouse until his or her death or (b) other designated beneficiary whose age at the time of such election is fifty-five years or more until his or her death;

(3) An annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before one hundred twenty monthly payments have been made the monthly payments will be continued ~~to his or her estate or to the beneficiary he or she has designated~~ as provided in this section until a total of one hundred twenty monthly payments have been made; or

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

Each of these actuarially equivalent annuities, except for the form provided in subdivision (3) of this section, shall continue for a minimum of sixty months.

The amount of each monthly payment shall be the amount specified in the form elected by the member.

Whether the member elects the normal form or one of the optional forms of the formula retirement annuity, if ~~the member and his or her spouse or other designated beneficiary both die before sixty~~ the specified ~~monthly payments have been made, the remaining number of the sixty specified payments shall be paid to the estate of the spouse or other designated beneficiary unless he or she predeceased the member, in which case the remaining payments shall be made to the member's estate individual or individuals designated in writing, on forms prescribed by the system, by the last surviving of the member or the member's designated beneficiary and, if no such designation is made, to the estate of the last surviving of the member or the member's designated beneficiary.~~

Sec. 7. That section 79-1047, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1047. (1) Upon the death of a member who has not yet retired and who has twenty years or more of creditable service, the member's primary beneficiary shall receive a survivorship annuity in accordance with subdivision (1) of section 79-1046 if the primary beneficiary is (a) the member's spouse or (b) one other designated person whose attained age at the time of the member's death is fifty-five years or more. The amount of such actuarially equivalent annuity shall be ~~the actuarial equivalent, calculated~~ calculated using the attained ages of the member and the beneficiary, ~~of~~ and be based on the annuity earned to the date of the member's death without reduction due to any early commencement of benefits. Within sixty days from the date of the member's death, if the

member has not previously filed with the administrator of the retirement system a form requiring that only the survivorship annuity be paid, the beneficiary may request to receive in a lump sum an amount equal to the member's accumulated contributions. If prior to the member's death, the member files with the administrator of the retirement system a form requiring that the beneficiary receive a lump-sum settlement in lieu of the survivorship annuity, the beneficiary shall receive, in lieu of the survivorship annuity, a lump-sum settlement in an amount equal to the member's accumulated contributions notwithstanding any other provision of this section.

(2) Upon the death of a member who has not yet retired and who has less than twenty years of creditable service or upon the death of a member who has not yet retired and who has twenty years or more of creditable service but whose beneficiary does not meet the criteria in subsection (1) of this section, the member's beneficiary or, if no beneficiary has been named, the member's estate shall receive in a lump sum an amount equal to the member's accumulated contributions.

Sec. 8. That section 79-1048, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1048. (1) Any member with five or more years of creditable service, excluding years of prior service acquired pursuant to section 79-1043, 79-1045, 79-1049.02, 79-1049.03, or 79-1049.05, who becomes totally disabled for further performance of duty may be retired by the board. In the case of such retirement, the amount of annuity payable to the member shall be the annuity earned to date of disability retirement without reduction due to any early commencement of benefits, except that payments for disability shall be reduced by the amount of any periodical payments to such employee as workers' compensation benefits. ~~If the annuity begins prior to the sixty-second birthday of the member, the annuity shall not be actuarially reduced to the equivalent of the annuity deferred to the sixty-second birthday of the member, except that reductions for workers' compensation benefits shall be made as specified in this section.~~ The board shall consider a member to be totally disabled when it has received an application by the member and a statement by at least two licensed and practicing physicians designated by the board certifying that the member is totally and presumably permanently disabled and unable to perform his or her duties as a consequence thereof.

(2) The disability benefit, referred to in subsection (1) of this section, shall begin to accrue from the first day of the month following the date of the first of the two examinations by which the member is determined to be totally disabled, shall be payable during the time the member does not receive any wages or compensation for services, and shall continue until the time any one either of the following events first occurs: (a) When disability ceases; or (b) when the normal retirement date; ~~or (c) the member has been found to be engaged in gainful employment from which he or she has received more than one hundred dollars per month is attained.~~ The board may require periodical proof of disability, ~~and unemployment or permissible employment~~ but not more

frequently than semiannually. Any member whose disability benefits cease because of such member having reached the normal retirement date shall upon such date be entitled to the retirement allowance without reduction for amounts paid on account of disability but without credit for service during the period of disability.

Sec. 9. That section 79-1049, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1049. A member who has five years or more of creditable service, excluding years of prior service acquired pursuant to section 79-1043, 79-1045, 79-1049.02, 79-1049.03, or 79-1049.05, and who severs his or her employment may elect to leave his or her contributions in the system, in which event he or she shall receive a retirement allowance at normal retirement age based on the annuity earned to the date of such severance. Such member may elect to receive a retirement allowance at early retirement age if such member retires at an early retirement date. Such annuity shall be adjusted in accordance with section 79-1044.01. Upon the severance of employment, except on account of retirement, a member shall be entitled to receive refunds as follows: (1) An amount equal to the accumulated contributions to the system by the member; and (2) any contributions made to a previously existing system which were refundable under the terms of that system. Any member receiving a refund of contributions shall thereby forfeit and relinquish all accrued rights in the retirement system including all accumulated creditable service, except that if any member who has withdrawn his or her contributions as provided in this section reenters the service of the district and again becomes a member of the system, he or she may restore any or all money previously received by him or her as a refund, including the regular interest for the period of his or her absence from the district's service, and he or she shall then again receive credit for that portion of service which ~~he or she forfeited by the acceptance of such refund~~ the restored money represents. Such restoration may be made as the trustees may direct over a period of not to exceed two years from the date of reemployment. Interest on delayed payments 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.

Sec. 10. That section 79-1049.06, Revised Statutes Supplement, 1992, be amended to read as follows:

79-1049.06. The system may accept cash rollover contributions from a member who is making payments for additional service credits pursuant to section 79-1043, 79-1045, or 79-1049 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such sections and:

(1) The contributions represent all or any portion of the member's interest in a plan of a former employer which is qualified under section 401(a) of the United States Internal Revenue Code and such interest may be transferred to the system as a qualifying rollover contribution under the United States Internal Revenue Code; or

(2) The contributions represent the interest of a member

from an individual retirement account or individual retirement annuity, the entire amount of which is attributable to a qualified total distribution as defined in the United States Internal Revenue Code from a source described in subdivision (1) of this section and thus qualified as a tax-free rollover amount, and the interest is transferred to the system within sixty days from the date of distribution of the individual retirement account or individual retirement annuity.

Cash transferred to the system as a rollover contribution shall be deposited as a commingled asset of the system and shall not be separately accounted for or invested for the member's benefit. Rollover contributions made by any member shall be treated as qualifying payments under section 79-1043, 79-1045, or 79-1049 and as employee contributions for all other purposes of this section and sections 79-1032 to 79-1060 except in determining federal and state tax treatment of distributions from the system.

The system, the board, the trustees, and their respective members, officers, and employees shall have no responsibility or liability with respect to the federal and state income tax consequences of any transfer made to the system pursuant to this section, and the trustees may require as a condition to the system's acceptance of any rollover contribution satisfactory evidence that the proposed transfer is a qualifying rollover contribution under the United States Internal Revenue Code and reasonable releases or indemnifications from the member against any and all liabilities which may in any way be connected with such transfer.

Effective January 1, 1993, any member who is to receive an eligible rollover distribution, as defined in the United States Internal Revenue Code, from the system may, in accordance with such rules, regulations, and limitations as may be established by the board of trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the United States Internal Revenue Code. Any such election shall be made in the form and within the time periods established by the board of trustees.

All distributions from the system shall be subject to all withholdings required by federal or state tax laws.

Sec. 11. That section 79-1056.06, Revised Statutes Supplement, 1992, be amended to read as follows:

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

in section 79-1056 pursuant to Laws 1983, LB 488. If a joint and survivor annuity was elected, the increase shall be actuarially adjusted so that the joint and survivor annuity remains the actuarial equivalent of the life annuity otherwise payable.

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

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

(4) In addition to the cost-of-living adjustment provided in subsections (1), (2), and (3) of this section, any annuity paid on or after September 1, 1992, pursuant to sections 79-1032 to 79-1060 or pursuant to the provisions of the retirement system established in Chapter 79, article 10, in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1991, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increase shall not exceed (a) three percent for annuities first paid ~~on or after September~~ October 1, 1990, (b) six percent for annuities first paid ~~on or after September~~ October 1, 1989, but on or before September October 1, 1990, or (c) nine percent for all other annuities.

Sec. 12. That original sections 79-1034 and 79-1036, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1043, 79-1045, 79-1046, 79-1047 to 79-1049, 79-1049.06, and 79-1056.06, Revised Statutes Supplement, 1992, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.