

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1042**

Introduced by Nordquist, 7.

Read first time January 22, 2014

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to retirement; to amend sections 79-902 and  
2 79-921, Revised Statutes Supplement, 2013; to define a  
3 term; to provide for repayments upon rejoining the school  
4 employees retirement system; to repeal the original  
5 sections; and to declare an emergency.

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

1                   Section 1. Section 79-902, Revised Statutes Supplement,  
2 2013, is amended to read:

3                   79-902 For purposes of the School Employees Retirement  
4 Act, unless the context otherwise requires:

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

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

12                  (3) Member means any person who has an account in the  
13 School Retirement Fund;

14                  (4) County school official means (a) until July 1, 2000,  
15 the county superintendent or district superintendent and any person  
16 serving in his or her office who is required by law to have a  
17 teacher's certificate and (b) on or after July 1, 2000, the county  
18 superintendent, county school administrator, or district  
19 superintendent and any person serving in his or her office who is  
20 required by law to have a teacher's certificate;

21                  (5) Creditable service means prior service for which  
22 credit is granted under sections 79-926 to 79-929, service credit  
23 purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and  
24 all service rendered while a contributing member of the retirement  
25 system. Creditable service includes working days, sick days, vacation

1      days, holidays, and any other leave days for which the employee is  
2      paid regular wages as part of the employee's agreement with the  
3      employer. Creditable service does not include lump-sum payments to  
4      the employee upon termination or retirement in lieu of accrued  
5      benefits for such days, eligibility and vesting credit, nor service  
6      years for which member contributions are withdrawn and not repaid.  
7      Creditable service also does not include service rendered by a member  
8      for which the retirement board determines that the member was paid  
9      less in compensation than the minimum wage as provided in the Wage  
10     and Hour Act or service which the board determines was rendered with  
11     the intent to defraud the retirement system;

12                (6) Disability retirement allowance means the annuity  
13     paid to a person upon retirement for disability under section 79-952;

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

17                (8) Fiscal year means any year beginning July 1 and  
18     ending June 30 next following;

19                (9) Regular interest means interest fixed at a rate equal  
20     to the daily treasury yield curve for one-year treasury securities,  
21     as published by the Secretary of the Treasury of the United States,  
22     that applies on July 1 of each year, which may be credited monthly,  
23     quarterly, semiannually, or annually as the board may direct;

24                (10) School employee means a contributing member who  
25     earns service credit pursuant to section 79-927. For purposes of this

1 section, contributing member means the following persons who receive  
2 compensation from a public school: (a) Regular employees; (b) regular  
3 employees having retired pursuant to the School Employees Retirement  
4 Act who subsequently provide compensated service on a regular basis  
5 in any capacity; and (c) regular employees hired by a public school  
6 on an ongoing basis to assume the duties of other regular employees  
7 who are temporarily absent. Substitute employees, temporary  
8 employees, and employees who have not attained the age of eighteen  
9 years shall not be considered school employees;

10 (11) Prior service means service rendered as a school  
11 employee in the public schools of the State of Nebraska prior to July  
12 1, 1945;

13 (12) Public school means any and all schools offering  
14 instruction in elementary or high school grades, as defined in  
15 section 79-101, which schools are supported by public funds and are  
16 wholly under the control and management of the State of Nebraska or  
17 any subdivision thereof, including (a) schools or other entities  
18 established, maintained, and controlled by the school boards of local  
19 school districts, except Class V school districts, (b) any  
20 educational service unit, and (c) any other educational institution  
21 wholly supported by public funds, except schools under the control  
22 and management of the Board of Trustees of the Nebraska State  
23 Colleges, the Board of Regents of the University of Nebraska, or the  
24 community college boards of governors for any community college  
25 areas;

(13) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

4 (14) Retirement board or board means the Public Employees  
5 Retirement Board;

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

(17) School year means one fiscal year which includes not less than one thousand 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;

1      disability retirement benefits are received under sections 79-951 to  
2      79-953;

3                         (19) School retirement allowance means the total of the  
4      savings annuity and the service annuity or formula annuity paid a  
5      person who has retired under sections 79-931 to 79-935. The monthly  
6      payments shall be payable at the end of each calendar month during  
7      the life of a retired member. The first payment shall include all  
8      amounts accrued since the effective date of the award of annuity. The  
9      last payment shall be at the end of the calendar month in which such  
10     member dies or in accordance with the payment option chosen by the  
11     member;

12                         (20) Service annuity means payments for life, made in  
13     equal monthly installments, derived from appropriations made by the  
14     State of Nebraska to the retirement system;

15                         (21) State deposit means the deposit by the state in the  
16     retirement system on behalf of any member;

17                         (22) State school official means the Commissioner of  
18     Education and his or her professional staff who are required by law  
19     or by the State Department of Education to hold a certificate as such  
20     term is defined in section 79-807;

21                         (23) Savings annuity means payments for life, made in  
22     equal monthly payments, derived from the accumulated contributions of  
23     a member;

24                         (24) Emeritus member means a person (a) who has entered  
25     retirement under the provisions of the act, including those persons

1 who have retired since July 1, 1945, under any other regularly  
2 established retirement or pension system as contemplated by section  
3 79-916, (b) who has thereafter been reemployed in any capacity by a  
4 public school, a Class V school district, or a school under the  
5 control and management of the Board of Trustees of the Nebraska State  
6 Colleges, the Board of Regents of the University of Nebraska, or a  
7 community college board of governors or has become a state school  
8 official or county school official subsequent to such retirement, and  
9 (c) who has applied to the board for emeritus membership in the  
10 retirement system. The school district or agency shall certify to the  
11 retirement board on forms prescribed by the retirement board that the  
12 annuitant was reemployed, rendered a service, and was paid by the  
13 district or agency for such services;

14 (25) Actuarial equivalent means the equality in value of  
15 the aggregate amounts expected to be received under different forms  
16 of payment. The determinations shall be based on the 1994 Group  
17 Annuity Mortality Table reflecting sex-distinct factors blended using  
18 twenty-five percent of the male table and seventy-five percent of the  
19 female table. An interest rate of eight percent per annum shall be  
20 reflected in making these determinations except when a lump-sum  
21 settlement is made to an estate. If the lump-sum settlement is made  
22 to an estate, the interest rate will be determined by the Moody's  
23 Triple A Bond Index as of the prior June 30, rounded to the next  
24 lower quarter percent;

25 (26) Retirement date means (a) if the member has

1       terminated employment, the first day of the month following the date  
2       upon which a member's request for retirement is received on a  
3       retirement application provided by the retirement system or (b) if  
4       the member has filed a retirement application but has not yet  
5       terminated employment, the first day of the month following the date  
6       on which the member terminates employment. An application may be  
7       filed no more than one hundred twenty days prior to the effective  
8       date of the member's initial benefit;

9                     (27) Disability retirement date means the first day of  
10      the month following the date upon which a member's request for  
11      disability retirement is received on a retirement application  
12      provided by the retirement system if the member has terminated  
13      employment in the school system and has complied with sections 79-951  
14      to 79-954 as such sections refer to disability retirement;

15                   (28) Retirement application means the form approved and  
16      provided by the retirement system for acceptance of a member's  
17      request for either regular or disability retirement;

18                   (29) Eligibility and vesting credit means credit for  
19      years, or a fraction of a year, of participation in a Nebraska  
20      government plan for purposes of determining eligibility for benefits  
21      under the School Employees Retirement Act. Such credit shall not be  
22      included as years of creditable service in the benefit calculation;

23                   (30)(a) Final average compensation means:

24                   (i) Except as provided in subdivision (ii) of this  
25      subdivision:

(A) The sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six; or

(A) The sum of the member's total compensation during the five twelve-month periods of service as a school employee in which such compensation was the greatest divided by sixty; or

(31) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(33) Initial benefit means the retirement benefit calculated at the time of retirement;

24 (b) Compensation does not include (i) fraudulently  
25 obtained amounts as determined by the retirement board, (ii) amounts

1 for unused sick leave or unused vacation leave converted to cash  
2 payments, (iii) insurance premiums converted into cash payments, (iv)  
3 reimbursement for expenses incurred, (v) fringe benefits, (vi) per  
4 diems paid as expenses, (vii) bonuses for services not actually  
5 rendered, including, but not limited to, early retirement  
6 inducements, cash awards, and severance pay, or (viii) beginning on  
7 September 4, 2005, employer contributions made for the purposes of  
8 separation payments made at retirement and early retirement  
9 inducements as provided for in section 79-514.

10 (c) Compensation in excess of the limitations set forth  
11 in section 401(a)(17) of the Internal Revenue Code as defined in  
12 section 49-801.01 shall be disregarded. For an employee who was a  
13 member of the retirement system before the first plan year beginning  
14 after December 31, 1995, the limitation on compensation shall not be  
15 less than the amount which was allowed to be taken into account under  
16 the retirement system as in effect on July 1, 1993.

17 (d)(i) For purposes of section 79-934, in the  
18 determination of compensation for members on or after July 1, 2005,  
19 that part of a member's compensation for the plan year which exceeds  
20 the member's compensation with the same employer for the preceding  
21 plan year by more than seven percent of the compensation base during  
22 the sixty months preceding the member's retirement shall be excluded  
23 unless (A) the member experienced a substantial change in employment  
24 position, (B) as verified by the school board, the excess  
25 compensation above seven percent occurred as the result of a

1     collective-bargaining agreement between the employer and a recognized  
2     collective-bargaining unit or category of school employee, and the  
3     percentage increase in compensation above seven percent shall not be  
4     excluded for employees outside of a collective-bargaining unit or  
5     within the same category of school employee, or (C) the excess  
6     compensation occurred as the result of a districtwide permanent  
7     benefit change made by the employer for a category of school employee  
8     in accordance with subdivision (35)(a)(iv) of this section.

9                 (ii) For purposes of subdivision (35)(d) of this section:

10                 (A) Category of school employee means either all  
11     employees of the employer who are administrators or certificated  
12     teachers, or all employees of the employer who are not administrators  
13     or certificated teachers, or both;

14                 (B) Compensation base means (I) for current members,  
15     employed with the same employer, the member's compensation for the  
16     plan year ending June 30, 2005, or (II) for members newly hired or  
17     hired by a separate employer on or after July 1, 2005, the member's  
18     compensation for the first full plan year following the member's date  
19     of hiring. Thereafter, the member's compensation base shall be  
20     increased each plan year by the lesser of seven percent of the  
21     member's preceding plan year's compensation base or the member's  
22     actual annual compensation increase during the preceding plan year;  
23     and

24                 (C) Recognized collective-bargaining unit means a group  
25     of employees similarly situated with a similar community of interest

1        appropriate for bargaining recognized as such by a school board.

2                (e)(i) For purposes of section 79-934, in the  
3 determination of compensation for members whose retirement date is on  
4 or after July 1, 2012, until July 1, 2013, that part of a member's  
5 compensation for the plan year which exceeds the member's  
6 compensation with the same employer for the preceding plan year by  
7 more than nine percent of the compensation base shall be excluded.

8                (ii) For purposes of subdivision (35)(e) of this section,  
9 compensation base means (A) for current members employed with the  
10 same employer, the member's compensation for the plan year ending  
11 June 30, 2012, or (B) for members newly hired or hired by a separate  
12 employer on or after July 1, 2012, the member's compensation for the  
13 first full plan year following the member's date of hiring.

14                (f)(i) Notwithstanding any other provision of this  
15 section, for purposes of section 79-934, in the determination of  
16 compensation for members whose retirement date is on or after July 1,  
17 2013, that part of a member's compensation for the plan year which  
18 exceeds the member's compensation for the preceding plan year by more  
19 than eight percent during the capping period shall be excluded. Such  
20 member's compensation for the first plan year of the capping period  
21 shall be compared to the member's compensation received for the plan  
22 year immediately preceding the capping period.

23                (ii) For purposes of subdivision (35)(f) of this section:

24                        (A) Capping period means the five plan years preceding  
25 the later of (I) such member's retirement date or (II) such member's

1 final compensation date; and

2 (B) Final compensation date means the later of (I) the  
3 date on which a retiring member's final compensation is actually paid  
4 or (II) if a retiring member's final compensation is paid in advance  
5 as a lump sum, the date on which such final compensation would have  
6 been paid to the member in the absence of such advance payment;

7 (36) Termination of employment occurs on the date on  
8 which the member experiences a bona fide separation from service of  
9 employment with the member's employer, the date of which separation  
10 is determined by the end of the member's contractual agreement or, if  
11 there is no contract or only partial fulfillment of a contract, by  
12 the employer. A member shall not be deemed to have terminated  
13 employment if the member subsequently provides service to any  
14 employer participating in the retirement system provided for in the  
15 School Employees Retirement Act within one hundred eighty days after  
16 ceasing employment unless such service:

17 (a) Is bona fide unpaid voluntary service or substitute  
18 service, provided on an intermittent basis; or

19 (b) Is as provided in subsection (2) of section 79-920.

20 Nothing in this subdivision precludes an employer from  
21 adopting a policy which limits or denies employees who have  
22 terminated employment from providing voluntary or substitute service  
23 within one hundred eighty days after termination.

24 A member shall not be deemed to have terminated  
25 employment if the board determines that a claimed termination was not

1       a bona fide separation from service with the employer or that a  
2       member was compensated for a full contractual period when the member  
3       terminated prior to the end date of the contract;

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

8                     (38) Substitute employee means a person hired by a public  
9       school as a temporary employee to assume the duties of regular  
10      employees due to a temporary absence of any regular employees.  
11      Substitute employee does not mean a person hired as a regular  
12      employee on an ongoing basis to assume the duties of other regular  
13      employees who are temporarily absent;

14                    (39) Participation means qualifying for and making  
15      required deposits to the retirement system during the course of a  
16      plan year;

17                   (40) Regular employee means an employee hired by a public  
18      school or under contract in a regular full-time or part-time position  
19      who works a full-time or part-time schedule on an ongoing basis for  
20      twenty or more hours per week. An employee hired as described in this  
21      subdivision to provide service for less than twenty hours or more per  
22      but who provides service for an average of twenty hours or more per  
23      week in each calendar month of any three calendar months of a plan  
24      year shall, beginning with the next full payroll period, commence  
25      contributions and shall be deemed a regular employee for all future

1 employment with the same employer; and

2 (41) Temporary employee means an employee hired by a  
3 public school who is not a regular employee and who is hired to  
4 provide service for a limited period of time to accomplish a specific  
5 purpose or task. When such specific purpose or task is complete, the  
6 employment of such temporary employee shall terminate and in no case  
7 shall the temporary employment period exceed one year in duration;  
8 and .

9 (42) Relinquished creditable service means, with respect  
10 to a member who has withdrawn his or her accumulated contributions  
11 under section 79-955, the total amount of creditable service which  
12 such member has given up as a result of his or her election not to  
13 remain a member of the retirement system.

14 Sec. 2. Section 79-921, Revised Statutes Supplement,  
15 2013, is amended to read:

16 79-921 (1) The membership of any person in the retirement  
17 system shall cease only if he or she (a) withdraws his or her  
18 accumulated contributions under section 79-955, (b) retires on a  
19 school or formula or disability retirement allowance, or (c) dies.

20 (2) The employer shall notify the board of the date upon  
21 which a termination has occurred. It is the responsibility of the  
22 employer that is involved in the termination of employment to notify  
23 the board of such change in employment and provide the board with  
24 such information as the board deems necessary.

25 ~~(3) The retirement board shall reinstate to membership,~~

1       with the same status as when such membership ceased, a school  
2       employee who has withdrawn his or her accumulated contributions under  
3       the following conditions:

4                 (a) If he or she again becomes an employee and if (3) A  
5       person who has withdrawn his or her accumulated contributions under  
6       section 79-955 shall be reinstated to membership in the retirement  
7       system if such person again becomes a school employee. The date of  
8       such membership shall relate back to the beginning of his or her  
9       original membership only if the school employee has repaid all  
10      amounts required in accordance with subdivision (4)(b) of this  
11      section. In all other circumstances, the school employee shall re-  
12      enter the system as a new member, effective as of the date he or she  
13      again becomes a school employee.

14                 (4)(a) With respect to any member who has previously  
15       withdrawn accumulated contributions under section 79-955 and files an  
16       application prior to XXX X, XXX, with the retirement board for the  
17       restoration of his or her relinquished creditable service under this  
18       section, the following shall apply:

19                 (i) If such employee chooses within three years after  
20       rejoining the system to repay, within five years after the date on  
21       which he or she rejoins the retirement system or prior to termination  
22       of employment, whichever is first, to the retirement board part or  
23       all of the amount he or she has withdrawn plus interest which would  
24       have accrued on that amount under the retirement system; or

25                 (ii) If, more than three years after again becoming

1    ~~an employee and rejoining the system a school employee but prior to~~  
2    termination of employment, he or she chooses to repay part or all of  
3    the amount he or she has withdrawn, plus an amount equal to the  
4    actuarial assumed rate of return for the period repaid. Payment must  
5    be completed within five years after electing to repay or prior to  
6    termination, whichever is earlier.

7                 ~~(4) Prior creditable service shall be restored in~~  
8                 ~~proportion to the amounts repaid. A member's prior creditable service~~  
9                 ~~shall be fully restored only if the member has repaid all accumulated~~  
10          ~~withdrawals in accordance with either subdivision (3)(a) or (3)(b) of~~  
11          ~~this section, as applicable. Repayment may be made through direct~~  
12          ~~payment, installment payments, or an irrevocable payroll deduction~~  
13          ~~authorization. If the school employee chooses not to repay such~~  
14          ~~withdrawals with interest, the school employee shall enter the system~~  
15          ~~as a new member with no prior rights.~~

16                 (b) With respect to any person who has previously  
17          withdrawn accumulated contributions under section 79-955 and files an  
18          application on or after XXX X, XXX, with the retirement board for the  
19          restoration of his or her relinquished creditable service under this  
20          section, the following shall apply:

21                 (i) Such school employee may purchase creditable service  
22          in a quantity not to exceed his or her relinquished creditable  
23          service. The amount to be paid by the school employee for such  
24          creditable service shall be equal to the actuarial cost to the  
25          retirement system for restoration of such relinquished creditable

1       service to the school employee; and  
2               (ii) Payment must be completed within five years after  
3       the date of the school employee's application to purchase such  
4       relinquished creditable service or prior to termination, whichever is  
5       earlier. A school employee who repays the full actuarial cost of all  
6       of his or her relinquished creditable service shall be restored to  
7       the same status for the years of service for which repayment is made  
8       as he or she had prior to the withdrawal of the accumulated  
9       contributions.

10               (5) Relinquished creditable service shall be restored in  
11       proportion to the amounts paid by the school employee. A school  
12       employee's prior creditable service shall be fully restored only if  
13       the school employee has repaid all amounts required in accordance  
14       with subsection (3) of this section. Payment may be made through  
15       direct payment, installment payments, or an irrevocable payroll  
16       deduction authorization.

17               Sec. 3. Original sections 79-902 and 79-921, Revised  
18       Statutes Supplement, 2013, are repealed.

19               Sec. 4. Since an emergency exists, this act takes effect  
20       when passed and approved according to law.