

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 155**

Introduced by Lynch, 13

Read first time January 8, 1999

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to the Class V School Employees Retirement Act;  
2 to amend section 79-9,105, Reissue Revised Statutes of  
3 Nebraska, and sections 79-9,100, 79-9,104, and 79-9,113,  
4 Revised Statutes Supplement, 1998; to change provisions  
5 relating to the monthly formula retirement annuity,  
6 qualified domestic relations order payments, disability  
7 benefits, and school district contributions; to provide  
8 duties; to harmonize provisions; and to repeal the  
9 original sections.  
10 Be it enacted by the people of the State of Nebraska,

1                   Section 1.           Section 79-9,100, Revised Statutes  
2 Supplement, 1998, is amended to read:

3                   79-9,100. In lieu of the retirement annuity provided by  
4 section 79-999 or 79-9,113, any member who becomes eligible to  
5 receive a retirement annuity after February 20, 1982, under the  
6 Class V School Employees Retirement Act shall receive a formula  
7 retirement annuity based on final average compensation, except that  
8 if the monthly formula retirement annuity based on final average  
9 compensation is less than the monthly retirement annuity specified  
10 in section 79-999 or 79-9,113, accrued to the date of retirement or  
11 August 31, 1983, whichever first occurs, the member shall receive  
12 the monthly retirement annuity specified in section 79-999 or  
13 79-9,113 accrued to the date of retirement or August 31, 1983,  
14 whichever first occurs.

15                   The monthly formula retirement annuity based on final  
16 average compensation shall be determined by multiplying the number  
17 of years of creditable service for which such member would  
18 otherwise receive the retirement annuity provided by section 79-999  
19 or 79-9,113 by one and one-half percent of his or her final average  
20 compensation. For retirements after June 15, 1989, and before  
21 April 18, 1992, the applicable percentage shall be one and  
22 sixty-five hundredths percent of his or her final average  
23 compensation. For retirements on or after April 18, 1992, and  
24 before June 7, 1995, the applicable percentage shall be one and  
25 seventy-hundredths percent of his or her final average  
26 compensation. For retirements on or after June 7, 1995, and before  
27 March 4, 1998, the applicable percentage shall be one and  
28 eighty-hundredths percent of his or her final average compensation.

1 For retirements on or after March 4, 1998, and before the effective  
2 date of the first increase in the applicable percentage declared by  
3 the board pursuant to this section, the applicable percentage shall  
4 be one and eighty-five hundredths percent of his or her final  
5 average compensation. Beginning September 1, 1999, the actuary  
6 shall make an annual valuation of the assets and liabilities of the  
7 system. If the annual valuation made by the actuary, as approved  
8 by the trustees, indicates that the system has sufficient actuarial  
9 surplus to provide for an increase in the applicable percentage,  
10 the board may, in its discretion, declare by resolution that each  
11 retirement effective on or after January 1 following the date of  
12 the board's resolution shall be computed using the increased  
13 applicable percentage. Any decision or determination by the board  
14 (a) to declare or not declare an increased percentage, or (b) as to  
15 whether the annual valuation indicates a sufficient actuarial  
16 surplus to provide for an increased percentage shall be made in the  
17 sole, absolute, and final discretion of the board and shall not be  
18 subject to challenge by any member. In no event shall the  
19 Legislature be constrained or limited in amending the system or  
20 increasing the benefits of members under the system, nor shall the  
21 board or trustees be constrained from supporting any such change to  
22 the system, notwithstanding the effect of any such change upon the  
23 actuarial surplus of the system and the ability of the board to  
24 declare future increased percentages.

25 Final average compensation shall be determined by  
26 dividing the member's total compensation for the three fiscal years  
27 in which such compensation was the highest by thirty-six.

28 For retirements before June 7, 1995, if the annuity

1 begins prior to the sixty-second birthday of the member and the  
2 member has not completed thirty-five or more years of creditable  
3 service, the annuity at the date it begins shall be the actuarial  
4 equivalent of the annuity deferred to the sixty-second birthday of  
5 the member. If the annuity begins prior to the sixty-second  
6 birthday of the member and the member has completed thirty-five or  
7 more years of creditable service, the annuity shall not be reduced.  
8 For retirements on or after June 7, 1995, any retirement annuity  
9 which begins prior to the sixty-second birthday of the member shall  
10 be reduced by twenty-five hundredths percent for each month or  
11 partial month between the date the annuity begins and the member's  
12 sixty-second birthday. If the annuity begins at a time when:

13 (1) The sum of the member's attained age and creditable  
14 service is eighty-five or more, the annuity shall not be reduced;

15 (2) The sum of the member's attained age and creditable  
16 service totals eighty-four, the annuity shall not be reduced by an  
17 amount greater than three percent of the unreduced annuity;

18 (3) The sum of the member's attained age and creditable  
19 service totals eighty-three, the annuity shall not be reduced by an  
20 amount greater than six percent of the unreduced annuity; and

21 (4) The sum of the member's attained age and creditable  
22 service totals eighty-two, the annuity shall not be reduced by an  
23 amount greater than nine percent of the unreduced annuity.

24 For purposes of this section, a member's creditable  
25 service and attained age shall be measured in one-half-year  
26 increments.

27 The normal form of the formula retirement annuity based  
28 on final average compensation shall be an annuity payable monthly

1 during the remainder of the member's life with the provision that  
2 in the event of his or her death before sixty monthly payments have  
3 been made the monthly payments will be continued to his or her  
4 estate or to the beneficiary he or she has designated until a total  
5 of sixty monthly payments have been made. A member may elect to  
6 receive, in lieu of the normal form of annuity, an actuarially  
7 equivalent annuity in any optional form provided by section  
8 79-9,101.

9 Any member receiving a formula retirement annuity based  
10 on final average compensation shall also receive the service  
11 annuity to be paid by the State of Nebraska as provided in sections  
12 79-933 to 79-935 and 79-951.

13 Sec. 2. Section 79-9,104, Revised Statutes Supplement,  
14 1998, is amended to read:

15 79-9,104. (1) All annuities and other benefits payable  
16 under the Class V School Employees Retirement Act and all  
17 accumulated credits of members of the retirement system shall not  
18 be assignable or subject to execution, garnishment, or attachment  
19 except to the extent that such annuity or benefit is subject to a  
20 qualified domestic relations order as such term is defined in and  
21 which meets the requirements of section 414(p) of the Internal  
22 Revenue Code. Payments under such a qualified domestic relations  
23 order shall be made only after the administrator of the retirement  
24 system receives written notice of such order and such additional  
25 information and documentation as the administrator may require.

26 (2) The In lieu of the assignment of a member's future  
27 annuity or benefit to the member's spouse or former spouse, the  
28 retirement system shall permit the spouse or former spouse of a

1 member to receive, pursuant to a qualified domestic relations  
 2 order, a single sum payment of ~~the actuarial equivalent value of~~  
 3 ~~the interest assigned to such spouse under a qualified domestic~~  
 4 ~~relations order~~ a specified percentage of the member's accumulated  
 5 contributions on the condition that upon the payment of such amount  
 6 the spouse or former spouse shall have no further interest in the  
 7 retirement system or in the remaining benefit of the member under  
 8 the retirement system.

9           (3) A member's interest and benefits under the retirement  
 10 system shall be reduced, either at termination of employment,  
 11 retirement, disability, or death, by the actuarial value of the  
 12 benefit assigned or paid to the member's spouse, former spouse, or  
 13 other dependents under a qualified domestic relations order, as  
 14 determined by the plan actuary on the basis of the actuarial  
 15 assumptions then recommended by the actuary pursuant to section  
 16 79-984.

17           Sec. 3. Section 79-9,105, Reissue Revised Statutes of  
 18 Nebraska, is amended to read:

19           79-9,105. (1) Any member with five or more years of  
 20 creditable service, excluding years of prior service acquired  
 21 pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, who  
 22 becomes totally disabled for further performance of duty on or  
 23 after the effective date of this act may be ~~retired~~ approved for  
 24 deferred disability retirement by the board. In the case of such  
 25 deferred disability retirement, the ~~amount of annuity payable to~~  
 26 ~~the member shall be the annuity earned to date of disability~~  
 27 ~~retirement member~~, during the period specified in subsection (3) of  
 28 this section, shall be credited with creditable service for each

1 year or portion thereof, to be determined in accordance with board  
2 policies governing creditable service, that the member defers  
3 retirement, up to a maximum of thirty-five years of total  
4 creditable service, including creditable service accrued before the  
5 member became totally disabled. The member approved for deferred  
6 disability retirement may at any time of the member's choosing  
7 request the deferral to end and retirement annuity payments to  
8 begin. The retirement annuity of such member shall be based on the  
9 total number of years of the member's creditable service, including  
10 the years credited to the member during his or her total disability  
11 under this section, and the member's final average salary as of the  
12 date that the member became totally disabled and as adjusted from  
13 such date by a percentage equal to the cumulative percentage  
14 cost-of-living adjustments that were made or declared for annuities  
15 in pay status pursuant to section 79-9,103 after the date of the  
16 board's approval for deferred disability retirement and before the  
17 cessation of the accrual of additional creditable service pursuant  
18 to subsection (3) of this section. Except as provided in  
19 subsection (4) of this section, the retirement annuity so  
20 determined for the member shall be payable to the member without  
21 reduction due to any early commencement of benefits, except that  
22 ~~payments for disability~~ the retirement annuity shall be reduced by  
23 the amount of any periodic payments to such employee as workers'  
24 compensation benefits. Additional creditable service acquired  
25 through deferred disability retirement shall apply to the service  
26 requirements specified in section 79-9,106. The board shall  
27 consider a member to be totally disabled when it has received an  
28 application by the member and a statement by at least two licensed

1 and practicing physicians designated by the board certifying that  
2 the member is totally and presumably permanently disabled and  
3 unable to perform his or her duties as a consequence thereof.

4       (2) Notwithstanding the provisions of subsection (1) of  
5 this section, the payment of the retirement annuity of a member may  
6 not be deferred later than the member's required beginning date as  
7 defined in section 401(a)(9) of the Internal Revenue Code. If the  
8 payment of a disabled member's retirement annuity is required to  
9 commence before the member has elected to end his or her deferred  
10 disability retirement, the amount of benefit that would have  
11 accrued pursuant to subsection (1) of this section in the fiscal  
12 year of the member's required beginning date, and in each  
13 subsequent fiscal year through the year of the member's election to  
14 end the deferred disability retirement period, shall be reduced,  
15 but not below zero, by the actuarial equivalent of the payments  
16 which were paid to the member during such fiscal years and after  
17 the member's beginning date. The retirement annuity of any member  
18 that commences before the end of the member's deferred disability  
19 retirement shall be adjusted as of each September 1 pursuant to the  
20 requirements of this subsection.

21       (3) The disability benefit referred to accrual of  
22 creditable service and any adjustment of final average salary  
23 provided in subsection (1) of this section shall begin to accrue  
24 from the first day of the month following the date of the first of  
25 the two examinations by which the member is determined by the board  
26 to be totally disabled, shall be payable during the time continue  
27 only so long as the member does not receive any wages or  
28 compensation for services, and shall continue until the time either

1 of the following events first occurs: (a) When disability ceases,  
2 or (b) when the normal retirement date is attained end at the  
3 earlier of (a) the time total disability ceases as determined by  
4 the board or (b) the date the member elects to end the deferred  
5 disability retirement and begin to receive his or her retirement  
6 annuity. The board may require periodic proof of disability but  
7 not more frequently than semiannually. Any member whose disability  
8 benefits cease because of such member having reached the normal  
9 retirement date shall upon such date be entitled to the retirement  
10 allowance without reduction for amounts paid on account of  
11 disability but without credit for service during the period of  
12 disability.

13 (4) The payment of any retirement annuity to a disabled  
14 member which begins to be paid under this section (a) before the  
15 member's sixty-second birthday or (b) at a time when the sum of the  
16 member's attained age and creditable service is eighty-five or  
17 more, shall be suspended if the board determines at any time before  
18 the member's sixty-second birthday that the member's total  
19 disability has ceased. Payment of the retirement annuity of such  
20 member as determined under this section shall recommence at the  
21 member's early retirement date or normal retirement date but shall  
22 be subject to reduction at such time as specified in section  
23 79-9,100.

24 Sec. 4. Section 79-9,113, Revised Statutes Supplement,  
25 1998, is amended to read:

26 79-9,113. (1) If, at any future time, a majority of the  
27 eligible members of the retirement system votes to be included  
28 under an agreement providing old age and survivors insurance under

1 the Social Security Act of the United States, the contributions to  
2 be made by the member and the school district for membership  
3 service, from and after the effective date of the agreement with  
4 respect to services performed subsequent to December 31, 1954,  
5 shall each be reduced from five to three percent but not less than  
6 three percent of the member's salary per annum, and the credits for  
7 membership service under this system, as provided in section  
8 79-999, shall thereafter be reduced from one and one-half percent  
9 to nine-tenths of one percent and not less than nine-tenths of one  
10 percent of salary or wage earned by the member during each fiscal  
11 year, and from one and sixty-five hundredths percent to one percent  
12 and not less than one percent of salary or wage earned by the  
13 member during each fiscal year and from two percent to one and  
14 two-tenths percent of salary or wage earned by the member during  
15 each fiscal year, and from two and four-tenths percent to one and  
16 forty-four hundredths percent of salary or wage earned by the  
17 member during each fiscal year, except that after September 1,  
18 1963, and prior to September 1, 1969, all employees of the school  
19 district shall contribute an amount equal to the membership  
20 contribution which shall be two and three-fourths percent of salary  
21 covered by old age and survivors insurance, and five percent above  
22 that amount. Commencing September 1, 1969, all employees of the  
23 school district shall contribute an amount equal to the membership  
24 contribution which shall be two and three-fourths percent of the  
25 first seven thousand eight hundred dollars of salary or wages  
26 earned each fiscal year and five percent of salary or wages earned  
27 above that amount in the same fiscal year. Commencing September 1,  
28 1976, all employees of the school district shall contribute an

1 amount equal to the membership contribution which shall be two and  
2 nine-tenths percent of the first seven thousand eight hundred  
3 dollars of salary or wages earned each fiscal year and five and  
4 twenty-five hundredths percent of salary or wages earned above that  
5 amount in the same fiscal year. Commencing on September 1, 1982,  
6 all employees of the school district shall contribute an amount  
7 equal to the membership contribution which shall be four and  
8 nine-tenths percent of the compensation earned in each fiscal year.  
9 Commencing September 1, 1989, all employees of the school district  
10 shall contribute an amount equal to the membership contribution  
11 which shall be five and eight-tenths percent of the compensation  
12 earned in each fiscal year. Commencing September 1, 1995, all  
13 employees of the school district shall contribute an amount equal  
14 to the membership contribution which shall be six and three-tenths  
15 percent of the compensation earned in each fiscal year. The  
16 contributions by the school district in any fiscal year beginning  
17 on or after September 1, 1999, shall be the greater of (a) one  
18 hundred percent of the contributions by the employees for such  
19 fiscal year or (b) such amount as may be necessary to maintain the  
20 solvency of the system, as determined annually by the board upon  
21 recommendation of the actuary and the trustees. The employee's  
22 contribution shall be made in the form of a monthly deduction from  
23 compensation as provided in subsection (2) of this section. Every  
24 employee who is a member of the system shall be deemed to consent  
25 and agree to such deductions and shall receipt in full for  
26 compensation, and payment to such employee of compensation less  
27 such deduction shall constitute a full and complete discharge of  
28 all claims and demands whatsoever for services rendered by such

1 employee during the period covered by such payment except as to  
2 benefits provided under the Class V School Employees Retirement  
3 Act. After September 1, 1963, and prior to September 1, 1969, all  
4 employees shall be credited with a membership service annuity which  
5 shall be nine-tenths of one percent of salary or wage covered by  
6 old age and survivors insurance and one and one-half percent of  
7 salary or wages above that amount, except that those employees who  
8 retire on or after August 31, 1969, shall be credited with a  
9 membership service annuity which shall be one percent of salary or  
10 wages covered by old age and survivors insurance and one and  
11 sixty-five hundredths percent of salary or wages above that amount  
12 for service performed after September 1, 1963, and prior to  
13 September 1, 1969. Commencing September 1, 1969, all employees  
14 shall be credited with a membership service annuity which shall be  
15 one percent of the first seven thousand eight hundred dollars of  
16 salary or wages earned by the employee during each fiscal year and  
17 one and sixty-five hundredths percent of salary or wages earned  
18 above that amount in the same fiscal year, except that all  
19 employees retiring on or after August 31, 1976, shall be credited  
20 with a membership service annuity which shall be one and forty-four  
21 hundredths percent of the first seven thousand eight hundred  
22 dollars of salary or wages earned by the employee during such  
23 fiscal year and two and four-tenths percent of salary or wages  
24 earned above that amount in the same fiscal year and the retirement  
25 annuities of employees who have not retired prior to September 1,  
26 1963, and who elected under the provisions of section 79-988 as  
27 such section existed immediately prior to February 20, 1982, not to  
28 become members of the system shall not be less than they would have

1 been had they remained under any preexisting system to date of  
2 retirement. Members of this system having the service  
3 qualifications of members of the School Retirement System of the  
4 State of Nebraska, as provided by section 79-926, shall receive the  
5 state service annuity provided by sections 79-933 to 79-935 and  
6 79-951.

7 (2) The school district shall pick up the employee  
8 contributions required by this section for all compensation paid on  
9 or after January 1, 1985, and the contributions so picked up shall  
10 be treated as employer contributions in determining federal tax  
11 treatment under the Internal Revenue Code, except that the school  
12 district shall continue to withhold federal income taxes based upon  
13 these contributions until the Internal Revenue Service or the  
14 federal courts rule that, pursuant to section 414(h) of the  
15 Internal Revenue Code, these contributions shall not be included as  
16 gross income of the employee until such time as they are  
17 distributed or made available. The school district shall pay these  
18 employee contributions from the same source of funds which is used  
19 in paying earnings to the employee. The school district shall pick  
20 up these contributions by a salary deduction either through a  
21 reduction in the cash salary of the employee or a combination of a  
22 reduction in salary and offset against a future salary increase.  
23 Beginning September 1, 1995, the school district shall also pick up  
24 any contributions required by sections 79-990, 79-991, and 79-992  
25 which are made under an irrevocable payroll deduction authorization  
26 between the member and the school district, and the contributions  
27 so picked up shall be treated as employer contributions in  
28 determining federal tax treatment under the Internal Revenue Code,

1 except that the school district shall continue to withhold federal  
2 and state income taxes based upon these contributions until the  
3 Internal Revenue Service rules that, pursuant to section 414(h) of  
4 the Internal Revenue Code, these contributions shall not be  
5 included as gross income of the employee until such time as they  
6 are distributed from the system. Employee contributions picked up  
7 shall be treated for all purposes of the Class V School Employees  
8 Retirement Act in the same manner and to the extent as employee  
9 contributions made prior to the date picked up.

10           Sec. 5.     Original section 79-9,105, Reissue Revised  
11 Statutes of Nebraska, and sections 79-9,100, 79-9,104, and  
12 79-9,113, Revised Statutes Supplement, 1998, are repealed.