

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1027

Introduced by Wickersham, 49

Read first time January 11, 2002

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to the School Employees Retirement Act; to
2 amend sections 79-902 and 79-933.06, Revised Statutes
3 Supplement, 2001; to change provisions relating to
4 termination of employment; to harmonize provisions; and
5 to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-902, Revised Statutes Supplement,
2 2001, 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
8 together with regular interest thereon, compounded monthly,
9 quarterly, 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,
26 vacation days, holidays, and any other leave days for which the
27 employee is paid regular wages as part of the employee's agreement
28 with the employer. Creditable service does not include lump-sum

1 payments to the employee upon termination of employment or
2 retirement in lieu of accrued benefits for such days, eligibility
3 and vesting credit, nor service years for which member
4 contributions are withdrawn and not repaid. Creditable service
5 also does not include service rendered by a member for which the
6 retirement board determines that the member was paid less in
7 compensation than the minimum wage as provided in the Wage and Hour
8 Act or service which the board determines was rendered with the
9 intent to defraud the retirement system;

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

13 (7) Employer means the State of Nebraska or any
14 subdivision thereof or agency of the state or subdivision
15 authorized by law to hire school employees or to pay their
16 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) Junior school employee means a school employee who
25 has not arrived at his or her twenty-first birthday anniversary on
26 August 15 preceding;

27 (11) School employee means a contributing member who
28 acquires five hundred sixteen hours or more of service in a fiscal

1 year and thereby earns one-half year of service credit. A
2 contributing member who acquires one thousand thirty-two hours or
3 more of service in a fiscal year shall earn one year of service
4 credit. For purposes of this section, contributing member means
5 the following persons who receive compensation from a public
6 school: (a) Regular employees hired upon a full-time basis which
7 contemplates a workweek of not less than thirty hours; (b) regular
8 part-time employees hired for not less than sixty hours per month;
9 and (c) school employees having retired pursuant to the School
10 Employees Retirement Act who subsequently provide compensated
11 service on a regular basis in any capacity. Substitute school
12 employees shall not be considered school employees;

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

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

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

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

6 (16) Retirement system means the School Retirement System
7 of the State of Nebraska;

8 (17) Required deposit means the deduction from a member's
9 compensation as provided for in section 79-958 which shall be
10 deposited in the School Retirement Fund;

11 (18) School year means one fiscal year which includes not
12 less than one thousand thirty-two instructional hours or, in the
13 case of service in the State of Nebraska prior to July 1, 1945, not
14 less than seventy-five percent of the then legal school year;

15 (19) Senior school employee means a school employee who
16 has arrived at his or her twenty-first birthday anniversary on
17 August 15 preceding;

18 (20) Service means employment as a school employee and
19 shall not be deemed interrupted by (a) termination at the end of
20 the school year of the contract of employment of an employee in a
21 public school if the employee enters into a contract of employment
22 in any public school, except a school in a Class V school district,
23 for the following school year, (b) temporary or seasonal suspension
24 of service that does not terminate the employee's employment, (c)
25 leave of absence authorized by the employer for a period not
26 exceeding twelve months, (d) leave of absence because of
27 disability, or (e) military service when properly authorized by the
28 retirement board. Service does not include any period of

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

3 (21) 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
6 monthly payments shall be payable at the end of each calendar month
7 during the life of a retired member. The first payment shall
8 include all amounts accrued since the effective date of the award
9 of annuity. The last payment shall be at the end of the calendar
10 month in which such member dies or in accordance with the payment
11 option chosen by the member;

12 (22) 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 (23) State deposit means the deposit by the state in the
16 retirement system on behalf of any member;

17 (24) State school official means the Commissioner of
18 Education and his or her professional staff;

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

22 (26) Emeritus member means a person (a) who has entered
23 retirement under the provisions of the act, including those persons
24 who have retired since July 1, 1945, under any other regularly
25 established retirement or pension system as contemplated by section
26 79-916, (b) who has thereafter been reemployed in any capacity by a
27 public school, a Class V school district, or a school under the
28 control and management of the Board of Trustees of the Nebraska

1 State Colleges, the Board of Regents of the University of Nebraska,
2 or a community college board of governors or has become a state
3 school official or county school official subsequent to such
4 retirement, and (c) who has applied to the board for emeritus
5 membership in the retirement system. The school district or agency
6 shall certify to the retirement board on forms prescribed by the
7 retirement board that the annuitant was reemployed, rendered a
8 service, and was paid by the district or agency for such services;

9 (27) Actuarial equivalent means the equality in value of
10 the aggregate amounts expected to be received under different forms
11 of payment. The determinations shall be based on the 1971 Group
12 Annuity Mortality Table reflecting sex-distinct factors blended
13 using twenty-five percent of the male table and seventy-five
14 percent of the female table. An interest rate of seven percent per
15 annum shall be reflected in making these determinations except when
16 a lump-sum settlement is made to an estate. If the lump-sum
17 settlement is made to an estate, the interest rate will be
18 determined by the Moody's Triple A Bond Index as of the prior June
19 30, rounded to the next lower quarter percent;

20 (28) Retirement date means the first day of the month
21 following the date upon which a member's request for retirement is
22 received on a retirement application provided by the retirement
23 system if the member has terminated employment in the school
24 system. An application may be filed no more than ninety days in
25 advance of the date on which a member terminates employment in the
26 school system;

27 (29) Disability retirement date means the first day of
28 the month following the date upon which a member's request for

1 disability retirement is received on a retirement application
2 provided by the retirement system if the member has terminated
3 employment in the school system and has complied with sections
4 79-951 to 79-954 as such sections refer to disability retirement;

5 (30) Retirement application means the form approved by
6 the retirement system for acceptance of a member's request for
7 either regular or disability retirement;

8 (31) Eligibility and vesting credit means credit for
9 years, or a fraction of a year, of participation in a Nebraska
10 government plan for purposes of determining eligibility for
11 benefits under the School Employees Retirement Act. Such credit
12 shall not be included as years of creditable service in the benefit
13 calculation;

14 (32) (a) Final average compensation means (i) for
15 full-time employees, the member's total compensation subject to
16 required deposits for the three fiscal years in which such
17 compensation was the highest divided by thirty-six and (ii) for
18 part-time employees, the member's total adjusted compensation
19 subject to required deposits for the three fiscal years in which
20 such adjusted compensation was the highest divided by thirty-six.

21 (b) In the determination of final average compensation
22 for members who retire on or after May 26, 1999, that part of a
23 member's compensation for the fiscal year which exceeds the
24 member's compensation with the same employer for the preceding
25 fiscal year by more than ten percent shall be excluded unless (i)
26 the member experienced a substantial change in employment position
27 or (ii) the excess compensation occurred as the result of a
28 collective-bargaining agreement between the employer and a

1 recognized collective-bargaining unit or category of school
2 employee.

3 (c) For purposes of this subdivision, (i) category of
4 school employee means either all certificated employees of the
5 employer or all noncertificated employees of the employer or both
6 and (ii) recognized collective bargaining unit means a group of
7 employees similarly situated with a similar community of interest
8 appropriate for bargaining recognized as such by a school board.

9 (d) If a member has such compensation for less than three
10 such fiscal years, his or her final average compensation shall be
11 determined by dividing his or her total compensation in all such
12 years by the total number of months of his or her creditable
13 service therefor. Adjusted compensation for any year shall be
14 equal to actual pay times the ratio of one to the actual credited
15 service for such year.

16 (e) Payments under the Retirement Incentive Plan pursuant
17 to section 79-855 and Staff Development Assistance pursuant to
18 section 79-856 shall not be included in the determination of final
19 average compensation;

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

22 (34) Current benefit means (a) until July 1, 2000, the
23 initial benefit increased by all adjustments made pursuant to
24 section 79-947.02 and (b) on or after July 1, 2000, the initial
25 benefit increased by all adjustments made pursuant to the School
26 Employees Retirement Act;

27 (35) Initial benefit means the retirement benefit
28 calculated at the time of retirement;

1 (36) Surviving spouse means (a) the spouse married to the
2 member on the date of the member's death or (b) the spouse or
3 former spouse of the member if survivorship rights are provided
4 under a qualified domestic relations order filed with the board
5 pursuant to the Spousal Pension Rights Act. The spouse or former
6 spouse shall supersede the spouse married to the member on the date
7 of the member's death as provided under a qualified domestic
8 relations order. If the benefits payable to the spouse or former
9 spouse under a qualified domestic relations order are less than the
10 value of benefits entitled to the surviving spouse, the spouse
11 married to the member on the date of the member's death shall be
12 the surviving spouse for the balance of the benefits;

13 (37) (a) Compensation means gross wages or salaries
14 payable to the member for personal services performed during the
15 plan year. Compensation does not include amounts which the
16 retirement board determines were fraudulently obtained,
17 compensation for unused sick leave or unused vacation leave
18 converted to cash payments, insurance premiums converted into cash
19 payments, reimbursement for expenses incurred, fringe benefits, or
20 bonuses for services not actually rendered, including, but not
21 limited to, early retirement inducements, cash awards, and
22 severance pay, except for retroactive salary payments paid pursuant
23 to court order, arbitration, or litigation and grievance
24 settlements. Compensation includes overtime pay, member retirement
25 contributions, and amounts contributed by the member to plans under
26 sections 125, 403(b), and 457 of the Internal Revenue Code as
27 defined in section 49-801.01 or any other section of the code which
28 defers or excludes such amounts from income.

1 (b) Compensation in excess of the limitations set forth
2 in section 401(a)(17) of the Internal Revenue Code as defined in
3 section 49-801.01 shall be disregarded. For an employee who was a
4 member of the retirement system before the first plan year
5 beginning after December 31, 1995, the limitation on compensation
6 shall not be less than the amount which was allowed to be taken
7 into account under the retirement system as in effect on July 1,
8 1993;

9 (38) Termination of employment occurs on the date on
10 which the ~~members'~~ member experiences a bona fide separation from
11 service of employment with the member's current employer,
12 ~~determines that the member's employer-employee relationship with~~
13 ~~the employer is dissolved~~ the date of which separation is
14 determined by the employer. The employer shall notify the board
15 within two weeks after the date such a termination ~~is deemed to~~
16 ~~have~~ has occurred. Termination of employment does not include
17 ceasing employment ~~at the end of the school year~~ if the member
18 subsequently provides ~~compensated~~ service on a regular basis in any
19 capacity for any school district other than a Class V school
20 district within one hundred eighty calendar days after ceasing
21 employment or if the board determines that a purported termination
22 was not a bona fide separation from service with the employer;

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

27 (40) Substitute school employee means a person hired by a
28 public school on an intermittent basis to assume the duties of

1 regular school employees due to the temporary absence of the
2 regular school employees.

3 Sec. 2. Section 79-933.06, Revised Statutes Supplement,
4 2001, is amended to read:

5 79-933.06. (1) Any contributing member may purchase
6 service credit for time he or she was on a leave of absence
7 authorized by the school board or board of education of the school
8 district by which he or she was employed at the time of such leave
9 of absence or pursuant to any contractual agreement entered into by
10 such school district. Such credit shall increase the benefits
11 provided by the retirement system and shall be included in
12 creditable service when determining eligibility for death,
13 disability, termination of employment, and retirement benefits.
14 The amount to be paid by the member for such service credit shall
15 equal the actuarial cost to the School Retirement System of the
16 State of Nebraska for allowing such additional service credit to
17 the employee. Payment shall be completed within five years after
18 such member's election to purchase service credit or prior to
19 termination of employment, whichever occurs first, and may be made
20 through direct payment, installment payments, or an irrevocable
21 payroll deduction authorization.

22 (2) Leave of absence shall be construed to include, but
23 not be limited to, sabbaticals, maternity leave, exchange teaching
24 programs, full-time leave as an elected official of a professional
25 association or collective-bargaining unit, or leave of absence to
26 pursue further education or study. Such leave shall not exceed
27 four years in length, and in order to receive credit for the leave
28 of absence the member must return to employment with a school

1 district, other than a Class V school district, in the state within
2 one year after termination of the leave of absence.

3 (3) Compensation for the period of service purchased
4 shall not be included in determining the member's final average
5 compensation.

6 Sec. 3. Original sections 79-902 and 79-933.06, Revised
7 Statutes Supplement, 2001, are repealed.