

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 329

Introduced by Stuhr, 24

Read first time January 11, 2005

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to retirement; to amend sections 79-514 and
2 79-902, Reissue Revised Statutes of Nebraska; to
3 authorize certain contributions related to school plans;
4 to redefine a term; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-514, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-514. (1) The school board or board of education of
4 any school district has the authority to (a) purchase retirement
5 annuity contracts for any or all of its employees from any
6 insurance company licensed to do business in the State of Nebraska,
7 may (b) enter into contracts with its employees providing for the
8 purchase by it of such retirement annuity contracts, ~~or may~~ (c)
9 provide for the purchase by it of such retirement annuity contracts
10 in the general contract of employment with any or all of its
11 employees, or (d) for the purposes of separation payments made at
12 retirement and early retirement inducements, make contributions
13 picked up under section 414(h) of the Internal Revenue Code to
14 plans under section 401(a) or 403(a) of the code and make
15 contributions to plans under section 403(b) of the code.

16 (2) Nothing in this section nor any other provision of
17 Chapter 79 shall be construed to authorize a school board or board
18 of education of any school district to offer a separate plan
19 classified as a qualified plan under section 401(a) of the Internal
20 Revenue Code unless specifically listed in this section.

21 (3) When necessary in connection with the purchase of
22 retirement annuity contracts, any such employee may execute an
23 order authorizing the withholding of necessary amounts from any
24 wages or salary payable to the employee and such order and
25 revocation thereof shall be executed in the manner and form
26 required by section 44-1609.

27 Sec. 2. Section 79-902, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 79-902. For purposes of the School Employees Retirement
2 Act, unless the context otherwise requires:

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

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

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

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

19 (5) Creditable service means prior service for which
20 credit is granted under sections 79-926 to 79-929, service credit
21 purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and
22 all service rendered while a contributing member of the retirement
23 system. Creditable service includes working days, sick days,
24 vacation days, holidays, and any other leave days for which the
25 employee is paid regular wages as part of the employee's agreement
26 with the employer. Creditable service does not include lump-sum
27 payments to the employee upon termination or retirement in lieu of
28 accrued benefits for such days, eligibility and vesting credit, nor

1 service years for which member contributions are withdrawn and not
2 repaid. Creditable service also does not include service rendered
3 by a member for which the retirement board determines that the
4 member was paid less in compensation than the minimum wage as
5 provided in the Wage and Hour Act or service which the board
6 determines was rendered with the intent to defraud the retirement
7 system;

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

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

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

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

22 (10) School employee means a contributing member who
23 earns service credit pursuant to section 79-927. For purposes of
24 this section, contributing member means the following persons who
25 receive compensation from a public school: (a) Regular employees;
26 (b) regular employees having retired pursuant to the School
27 Employees Retirement Act who subsequently provide compensated
28 service on a regular basis in any capacity; and (c) regular

1 employees hired by a public school on an ongoing basis to assume
2 the duties of other regular employees who are temporarily absent.
3 Substitute employees shall not be considered school employees;

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

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

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

23 (14) Retirement board or board means the Public Employees
24 Retirement Board;

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

27 (16) Required deposit means the deduction from a member's
28 compensation as provided for in section 79-958 which shall be

1 deposited in the School Retirement Fund;

2 (17) School year means one fiscal year which includes not
3 less than one thousand instructional hours or, in the case of
4 service in the State of Nebraska prior to July 1, 1945, not less
5 than seventy-five percent of the then legal school year;

6 (18) Service means employment as a school employee and
7 shall not be deemed interrupted by (a) termination at the end of
8 the school year of the contract of employment of an employee in a
9 public school if the employee enters into a contract of employment
10 in any public school, except a school in a Class V school district,
11 for the following school year, (b) temporary or seasonal suspension
12 of service that does not terminate the employee's employment, (c)
13 leave of absence authorized by the employer for a period not
14 exceeding twelve months, (d) leave of absence because of
15 disability, or (e) military service when properly authorized by the
16 retirement board. Service does not include any period of
17 disability for which disability retirement benefits are received
18 under sections 79-951 to 79-953;

19 (19) School retirement allowance means the total of the
20 savings annuity and the service annuity or formula annuity paid a
21 person who has retired under sections 79-931 to 79-935. The
22 monthly payments shall be payable at the end of each calendar month
23 during the life of a retired member. The first payment shall
24 include all amounts accrued since the effective date of the award
25 of annuity. The last payment shall be at the end of the calendar
26 month in which such member dies or in accordance with the payment
27 option chosen by the member;

28 (20) Service annuity means payments for life, made in

1 equal monthly installments, derived from appropriations made by the
2 State of Nebraska to the retirement system;

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

5 (22) State school official means the Commissioner of
6 Education and his or her professional staff;

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

10 (24) Emeritus member means a person (a) who has entered
11 retirement under the provisions of the act, including those persons
12 who have retired since July 1, 1945, under any other regularly
13 established retirement or pension system as contemplated by section
14 79-916, (b) who has thereafter been reemployed in any capacity by a
15 public school, a Class V school district, or a school under the
16 control and management of the Board of Trustees of the Nebraska
17 State Colleges, the Board of Regents of the University of Nebraska,
18 or a community college board of governors or has become a state
19 school official or county school official subsequent to such
20 retirement, and (c) who has applied to the board for emeritus
21 membership in the retirement system. The school district or agency
22 shall certify to the retirement board on forms prescribed by the
23 retirement board that the annuitant was reemployed, rendered a
24 service, and was paid by the district or agency for such services;

25 (25) Actuarial equivalent means the equality in value of
26 the aggregate amounts expected to be received under different forms
27 of payment. The determinations shall be based on the 1994 Group
28 Annuity Mortality Table reflecting sex-distinct factors blended

1 using twenty-five percent of the male table and seventy-five
2 percent of the female table. An interest rate of eight percent per
3 annum shall be reflected in making these determinations except when
4 a lump-sum settlement is made to an estate. If the lump-sum
5 settlement is made to an estate, the interest rate will be
6 determined by the Moody's Triple A Bond Index as of the prior June
7 30, rounded to the next lower quarter percent;

8 (26) Retirement date means (a) if the member has
9 terminated employment, the first day of the month following the
10 date upon which a member's request for retirement is received on a
11 retirement application provided by the retirement system or (b) if
12 the member has filed an application but has not yet terminated
13 employment, the first day of the month following the date on which
14 the member terminates employment. An application may be filed no
15 more than ninety days prior to the effective date of the member's
16 initial benefit;

17 (27) Disability retirement date means the first day of
18 the month following the date upon which a member's request for
19 disability retirement is received on a retirement application
20 provided by the retirement system if the member has terminated
21 employment in the school system and has complied with sections
22 79-951 to 79-954 as such sections refer to disability retirement;

23 (28) Retirement application means the form approved by
24 the retirement system for acceptance of a member's request for
25 either regular or disability retirement;

26 (29) Eligibility and vesting credit means credit for
27 years, or a fraction of a year, of participation in a Nebraska
28 government plan for purposes of determining eligibility for

1 benefits under the School Employees Retirement Act. Such credit
2 shall not be included as years of creditable service in the benefit
3 calculation;

4 (30) (a) Final average compensation means the sum of the
5 member's total compensation during the three twelve-month periods
6 of service as a school employee in which such compensation was the
7 greatest divided by thirty-six.

8 (b) If a member has such compensation for less than
9 thirty-six months, his or her final average compensation shall be
10 determined by dividing his or her total compensation in all months
11 by the total number of months of his or her creditable service
12 therefor.

13 (c) Payments under the Retirement Incentive Plan pursuant
14 to section 79-855 and Staff Development Assistance pursuant to
15 section 79-856 shall not be included in the determination of final
16 average compensation;

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

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

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

26 (34) Surviving spouse means (a) the spouse married to the
27 member on the date of the member's death or (b) the spouse or
28 former spouse of the member if survivorship rights are provided

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

10 (35) (a) Compensation means gross wages or salaries
11 payable to the member for personal services performed during the
12 plan year. Compensation does not include amounts which the
13 retirement board determines were fraudulently obtained,
14 compensation for unused sick leave or unused vacation leave
15 converted to cash payments, insurance premiums converted into cash
16 payments, reimbursement for expenses incurred, fringe benefits, ~~or~~
17 bonuses for services not actually rendered, including, but not
18 limited to, early retirement inducements, cash awards, and
19 severance pay, except for retroactive salary payments paid pursuant
20 to court order, arbitration, or litigation and grievance
21 settlements, or employer contributions made for the purposes of
22 separation payments made at retirement and early retirement
23 inducements as provided for in section 79-514. Compensation
24 includes overtime pay, member retirement contributions, and amounts
25 contributed by the member to plans under sections 125, 403(b), and
26 457 of the Internal Revenue Code as defined in section 49-801.01 or
27 any other section of the code which defers or excludes such amounts
28 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 (c)(i) In the determination of compensation for members
10 on or after July 1, 2002, that part of a member's compensation for
11 the fiscal year which exceeds the member's compensation with the
12 same employer for the preceding fiscal year by more than ten
13 percent shall be excluded unless (A) the member experienced a
14 substantial change in employment position or (B) the excess
15 compensation occurred as the result of a collective-bargaining
16 agreement between the employer and a recognized
17 collective-bargaining unit or category of school employee.

18 (ii) For purposes of this subdivision, (A) category of
19 school employee means either all certificated employees of the
20 employer or all noncertificated employees of the employer or both
21 and (B) recognized collective-bargaining unit means a group of
22 employees similarly situated with a similar community of interest
23 appropriate for bargaining recognized as such by a school board;

24 (36) Termination of employment occurs on the date on
25 which the member experiences a bona fide separation from service of
26 employment with the member's current employer, the date of which
27 separation is determined by the employer. The employer shall
28 notify the board of the date on which such a termination has

1 occurred. Termination of employment does not include ceasing
2 employment if the member subsequently provides service on a regular
3 basis in any capacity for any school district other than a Class V
4 school district within one hundred eighty calendar days after
5 ceasing employment or if the board determines that a purported
6 termination was not a bona fide separation from service with the
7 employer;

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

12 (38) Substitute employee means a person hired by a public
13 school as a temporary employee on an intermittent basis to assume
14 the duties of regular employees due to the temporary absence of the
15 regular employees. Substitute employee does not mean a person
16 hired as a regular employee on an ongoing basis to assume the
17 duties of other regular employees who are temporarily absent;

18 (39) Participation means qualifying for and making
19 required deposits to the retirement system during the course of a
20 plan year;

21 (40) Regular employee means an employee hired by a public
22 school or under contract in a regular full-time or part-time
23 position who works a full-time or part-time schedule on an ongoing
24 basis for fifteen or more hours per week; and

25 (41) Temporary employee means an employee hired by a
26 public school who is not a regular employee.

27 Sec. 3. Original sections 79-514 and 79-902, Reissue
28 Revised Statutes of Nebraska, are repealed.