

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 486

Introduced by Louden, 49; Heidemann, 1; Karpisek, 32; Mello, 5;
Nordquist, 7; Pankonin, 2.

Read first time January 18, 2011

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to the School Employees Retirement Act; to amend
2 section 79-904.01, Reissue Revised Statutes of Nebraska,
3 and section 79-902, Revised Statutes Cumulative
4 Supplement, 2010; to redefine compensation; to prohibit
5 the refund of certain contributions; and to repeal the
6 original sections.

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

1 Section 1. Section 79-902, Revised Statutes Cumulative
2 Supplement, 2010, 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 and temporary
8 employees shall not be considered school employees;

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

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

25 (13) Retirement means qualifying for and accepting a

1 school or disability retirement allowance granted under the School
2 Employees Retirement Act;

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

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

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

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

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

1 79-953;

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

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

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

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

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

23 (24) Emeritus member means a person (a) who has entered
24 retirement under the provisions of the act, including those persons
25 who have retired since July 1, 1945, under any other regularly

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

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

24 (26) Retirement date means (a) if the member has
25 terminated employment, the first day of the month following the date

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

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

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

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

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

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

5 (c) Payments under the Retirement Incentive Plan pursuant
6 to section 79-855 and Staff Development Assistance pursuant to
7 section 79-856 shall not be included in the determination of final
8 average compensation;

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

11 (32) Current benefit means (a) until July 1, 2000, the
12 initial benefit increased by all adjustments made pursuant to section
13 79-947.02 and (b) on or after July 1, 2000, the initial benefit
14 increased by all adjustments made pursuant to the School Employees
15 Retirement Act;

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

18 (34) Surviving spouse means (a) the spouse married to the
19 member on the date of the member's death or (b) the spouse or former
20 spouse of the member if survivorship rights are provided under a
21 qualified domestic relations order filed with the board pursuant to
22 the Spousal Pension Rights Act. The spouse or former spouse shall
23 supersede the spouse married to the member on the date of the
24 member's death as provided under a qualified domestic relations
25 order. If the benefits payable to the spouse or former spouse under a

1 qualified domestic relations order are less than the value of
2 benefits entitled to the surviving spouse, the spouse married to the
3 member on the date of the member's death shall be the surviving
4 spouse for the balance of the benefits;

5 (35)(a) Compensation means gross wages or salaries
6 payable to the member for personal services performed during the plan
7 year and includes (i) overtime pay, (ii) member retirement
8 contributions, (iii) retroactive salary payments paid pursuant to
9 court order, arbitration, or litigation and grievance settlements,
10 and (iv) amounts contributed by the member to plans under sections
11 125, 403(b), and 457 of the Internal Revenue Code as defined in
12 section 49-801.01 or any other section of the code which defers or
13 excludes such amounts from income.

14 (b) Compensation does not include (i) fraudulently
15 obtained amounts as determined by the retirement board, (ii) amounts
16 for unused sick leave or unused vacation leave converted to cash
17 payments, (iii) insurance premiums converted into cash payments, (iv)
18 reimbursement for expenses incurred, (v) fringe benefits, (vi)
19 bonuses for services not actually rendered, including, but not
20 limited to, early retirement inducements, cash awards, and severance
21 pay, or (vii) beginning on September 4, 2005, employer contributions
22 made for the purposes of separation payments made at retirement and
23 early retirement inducements as provided for in section 79-514.

24 (c) Compensation in excess of the limitations set forth
25 in section 401(a)(17) of the Internal Revenue Code as defined in

1 section 49-801.01 shall be disregarded. For an employee who was a
2 member of the retirement system before the first plan year beginning
3 after December 31, 1995, the limitation on compensation shall not be
4 less than the amount which was allowed to be taken into account under
5 the retirement system as in effect on July 1, 1993.

6 ~~(d)(i) In the determination of compensation for members~~
7 ~~on or after July 1, 2002, through June 30, 2005, that part of a~~
8 ~~member's compensation for the fiscal year which exceeds the member's~~
9 ~~compensation with the same employer for the preceding fiscal year by~~
10 ~~more than ten percent shall be excluded unless (A) the member~~
11 ~~experienced a substantial change in employment position or (B) the~~
12 ~~excess compensation occurred as the result of a collective bargaining~~
13 ~~agreement between the employer and a recognized collective bargaining~~
14 ~~unit or category of school employee.~~

15 ~~(ii) For purposes of this subdivision:~~

16 ~~(A) Category of school employee means either all~~
17 ~~employees of the employer who are administrators or certificated~~
18 ~~teachers, or all employees of the employer who are not administrators~~
19 ~~or certificated teachers, or both; and~~

20 ~~(B) Recognized collective bargaining unit means a group~~
21 ~~of employees similarly situated with a similar community of interest~~
22 ~~appropriate for bargaining recognized as such by a school board.~~

23 ~~(e)(i) In (d)(i) For purposes of section 79-934, in the~~
24 ~~determination of compensation for members on or after July 1, 2005,~~
25 ~~that part of a member's compensation for the plan year which exceeds~~

1 the member's compensation with the same employer for the preceding
2 plan year by more than seven percent of the compensation base during
3 the sixty months preceding the member's retirement shall be excluded
4 unless (A) the member experienced a substantial change in employment
5 position, (B) as verified by the school board, the excess
6 compensation above seven percent occurred as the result of a
7 collective-bargaining agreement between the employer and a recognized
8 collective-bargaining unit or category of school employee, and the
9 percentage increase in compensation above seven percent shall not be
10 excluded for employees outside of a collective-bargaining unit or
11 within the same category of school employee, or (C) the excess
12 compensation occurred as the result of a districtwide permanent
13 benefit change made by the employer for a category of school employee
14 in accordance with subdivision (35)(a)(iv) of this section.

15 (ii) For purposes of this subdivision:

16 (A) Category of school employee means either all
17 employees of the employer who are administrators or certificated
18 teachers, or all employees of the employer who are not administrators
19 or certificated teachers, or both;

20 (B) Compensation base means (I) for current members
21 employed with the same employer, the member's compensation for the
22 plan year ending June 30, 2005, or (II) for members newly hired or
23 hired by a separate employer on or after July 1, 2005, the member's
24 compensation for the first full plan year following the member's date
25 of hiring. Thereafter, the member's compensation base shall be

1 increased each plan year by the lesser of seven percent of the
2 member's preceding plan year's compensation base or the member's
3 actual annual compensation increase during the preceding plan year;
4 and

5 (C) Recognized collective-bargaining unit means a group
6 of employees similarly situated with a similar community of interest
7 appropriate for bargaining recognized as such by a school board. +

8 (e)(i) In the determination of compensation for members
9 on or after July 1, 2012, that part of a member's compensation for
10 the plan year which exceeds the member's compensation with the same
11 employer for the preceding plan year by more than nine percent of the
12 compensation base during the sixty months preceding the member's
13 retirement shall be excluded.

14 (ii) For purposes of this subdivision:

15 (A) Category of school employee means either all
16 employees of the employer who are administrators or certificated
17 teachers, or all employees of the employer who are not administrators
18 or certificated teachers, or both; and

19 (B) Compensation base means (I) for current members
20 employed with the same employer, the member's compensation for the
21 plan year ending June 30, 2012, or (II) for members newly hired or
22 hired by a separate employer on or after July 1, 2012, the member's
23 compensation for the first full plan year following the member's date
24 of hiring. Thereafter, the member's compensation base shall be
25 increased each plan year by the lesser of nine percent of the

1 member's preceding plan year's compensation base or the member's
2 actual annual compensation increase during the preceding plan year;

3 (36) Termination of employment occurs on the date on
4 which the member experiences a bona fide separation from service of
5 employment with the member's current employer, the date of which
6 separation is determined by the employer. The employer shall notify
7 the board of the date on which such a termination has occurred. A
8 member shall not be deemed to have terminated employment if the
9 member subsequently provides service to any employer participating in
10 the retirement system provided for in the School Employees Retirement
11 Act within one hundred eighty calendar days after ceasing employment
12 unless such service:

13 (a) Is voluntary or substitute service provided on an
14 intermittent basis; or

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

16 A member shall not be deemed to have terminated
17 employment if the board determines that a purported termination was
18 not a bona fide separation from service with the employer;

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

23 (38) Substitute employee means a person hired by a public
24 school as a temporary employee to assume the duties of regular
25 employees due to the temporary absence of the regular employees.

1 Substitute employee does not mean a person hired as a regular
2 employee on an ongoing basis to assume the duties of other regular
3 employees who are temporarily absent;

4 (39) Participation means qualifying for and making
5 required deposits to the retirement system during the course of a
6 plan year;

7 (40) Regular employee means an employee hired by a public
8 school or under contract in a regular full-time or part-time position
9 who works a full-time or part-time schedule on an ongoing basis for
10 fifteen or more hours per week. An employee hired as described in
11 this subdivision to provide service for less than fifteen hours per
12 week but who provides service for an average of fifteen hours or more
13 per week in each calendar month of any three calendar months of a
14 plan year shall immediately commence contributions and shall be
15 deemed a regular employee; and

16 (41) Temporary employee means an employee hired by a
17 public school who is not a regular employee and who is hired to
18 provide service for a limited period of time to accomplish a specific
19 purpose or task. When such specific purpose or task is complete, the
20 employment of such temporary employee shall terminate and in no case
21 shall the temporary employment period exceed one year in duration.

22 Sec. 2. Section 79-904.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 79-904.01 (1) If the board determines that the retirement
25 system has previously received contributions or distributed benefits

1 which for any reason are not in accordance with the statutory
2 provisions of the School Employees Retirement Act, the board shall
3 refund contributions, require additional contributions, adjust
4 benefits, or require repayment of benefits paid. In the event of an
5 overpayment of a benefit, the board may, in addition to other
6 remedies, offset future benefit payments by the amount of the prior
7 overpayment, together with regular interest thereon. In the event of
8 an underpayment of a benefit, the board shall immediately make
9 payment equal to the deficit amount plus regular interest.

10 (2) The board shall adopt and promulgate rules and
11 regulations implementing this section, which shall include, but not
12 be limited to, the following: (a) The procedures for refunding
13 contributions, adjusting future contributions or benefit payments,
14 and requiring additional contributions or repayment of benefits; (b)
15 the process for a member, member's beneficiary, employee, or employer
16 to dispute an adjustment of contributions or benefits; and (c) notice
17 provided to all affected persons. All notices shall be sent prior to
18 an adjustment and shall describe the process for disputing an
19 adjustment of contributions or benefits.

20 (3) The board shall not refund contributions made on
21 compensation in excess of the limitations imposed by subdivision (35)
22 (d)(i) of section 79-902.

23 Sec. 3. Original section 79-904.01, Reissue Revised
24 Statutes of Nebraska, and section 79-902, Revised Statutes Cumulative
25 Supplement, 2010, are repealed.