

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 446

FINAL READING

Introduced by Nordquist, 7.

Read first time January 20, 2015

Committee: Nebraska Retirement Systems

1 A BILL FOR AN ACT relating to school employees retirement; to amend
2 sections 79-902, 79-904.01, 79-934, 79-978, and 79-9,100, Reissue
3 Revised Statutes of Nebraska; to redefine compensation; to change
4 provisions relating to calculation of final compensation for
5 purposes of formula annuities; to prohibit refund of certain
6 contributions as prescribed; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-902, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

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

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

19 (5) Creditable service means prior service for which credit is
20 granted under sections 79-926 to 79-929, service credit purchased under
21 sections 79-933.03 to 79-933.06 and 79-933.08, and all service rendered
22 while a contributing member of the retirement system. Creditable service
23 includes working days, sick days, vacation days, holidays, and any other
24 leave days for which the employee is paid regular wages as part of the
25 employee's agreement with the employer. Creditable service does not
26 include lump-sum payments to the employee upon termination or retirement
27 in lieu of accrued benefits for such days, eligibility and vesting
28 credit, nor service years for which member contributions are withdrawn
29 and not repaid. Creditable service also does not include service rendered
30 by a member for which the retirement board determines that the member was
31 paid less in compensation than the minimum wage as provided in the Wage

1 and Hour Act or service which the board determines was rendered with the
2 intent to defraud the retirement system;

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

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

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

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

15 (10) School employee means a contributing member who earns service
16 credit pursuant to section 79-927. For purposes of this section,
17 contributing member means the following persons who receive compensation
18 from a public school: (a) Regular employees; (b) regular employees having
19 retired pursuant to the School Employees Retirement Act who subsequently
20 provide compensated service on a regular basis in any capacity; and (c)
21 regular employees hired by a public school on an ongoing basis to assume
22 the duties of other regular employees who are temporarily absent.
23 Substitute employees, temporary employees, and employees who have not
24 attained the age of eighteen years shall not be considered school
25 employees;

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

28 (12) Public school means any and all schools offering instruction in
29 elementary or high school grades, as defined in section 79-101, which
30 schools are supported by public funds and are wholly under the control
31 and management of the State of Nebraska or any subdivision thereof,

1 including (a) schools or other entities established, maintained, and
2 controlled by the school boards of local school districts, except Class V
3 school districts, (b) any educational service unit, and (c) any other
4 educational institution wholly supported by public funds, except schools
5 under the control and management of the Board of Trustees of the Nebraska
6 State Colleges, the Board of Regents of the University of Nebraska, or
7 the community college boards of governors for any community college
8 areas;

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

12 (14) Retirement board or board means the Public Employees Retirement
13 Board;

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

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

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

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

1 authorized by the retirement board. Service does not include any period
2 of disability for which disability retirement benefits are received under
3 sections 79-951 to 79-953;

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

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

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

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

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

23 (24) Emeritus member means a person (a) who has entered retirement
24 under the provisions of the act, including those persons who have retired
25 since July 1, 1945, under any other regularly established retirement or
26 pension system as contemplated by section 79-916, (b) who has thereafter
27 been reemployed in any capacity by a public school, a Class V school
28 district, or a school under the control and management of the Board of
29 Trustees of the Nebraska State Colleges, the Board of Regents of the
30 University of Nebraska, or a community college board of governors or has
31 become a state school official or county school official subsequent to

1 such retirement, and (c) who has applied to the board for emeritus
2 membership in the retirement system. The school district or agency shall
3 certify to the retirement board on forms prescribed by the retirement
4 board that the annuitant was reemployed, rendered a service, and was paid
5 by the district or agency for such services;

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

16 (26) Retirement date means (a) if the member has terminated
17 employment, the first day of the month following the date upon which a
18 member's request for retirement is received on a retirement application
19 provided by the retirement system or (b) if the member has filed a
20 retirement application but has not yet terminated employment, the first
21 day of the month following the date on which the member terminates
22 employment. An application may be filed no more than one hundred twenty
23 days prior to the effective date of the member's initial benefit;

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

30 (28) Retirement application means the form approved and provided by
31 the retirement system for acceptance of a member's request for either

1 regular or disability retirement;

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

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

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

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

12 (B) If a member has such compensation for less than thirty-six
13 months, the sum of the member's total compensation in all months divided
14 by the total number of months of his or her creditable service therefor;
15 and

16 (ii) For an employee who became a member on or after July 1, 2013:

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

20 (B) If a member has such compensation for less than sixty months,
21 the sum of the member's total compensation in all months divided by the
22 total number of months of his or her creditable service therefor.

23 (b) Payments under the Retirement Incentive Plan pursuant to section
24 79-855 and Staff Development Assistance pursuant to section 79-856 shall
25 not be included in the determination of final average compensation;

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

28 (32) Current benefit means the initial benefit increased by all
29 adjustments made pursuant to the School Employees Retirement Act;

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

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

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

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

30 (c) Compensation in excess of the limitations set forth in section
31 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01

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

6 ~~(d)(i) For purposes of section 79-934, in the determination of~~
7 ~~compensation for members on or after July 1, 2005, that part of a~~
8 ~~member's compensation for the plan year which exceeds the member's~~
9 ~~compensation with the same employer for the preceding plan year by more~~
10 ~~than seven percent of the compensation base during the sixty months~~
11 ~~preceding the member's retirement shall be excluded unless (A) the member~~
12 ~~experienced a substantial change in employment position, (B) as verified~~
13 ~~by the school board, the excess compensation above seven percent occurred~~
14 ~~as the result of a collective bargaining agreement between the employer~~
15 ~~and a recognized collective bargaining unit or category of school~~
16 ~~employee, and the percentage increase in compensation above seven percent~~
17 ~~shall not be excluded for employees outside of a collective bargaining~~
18 ~~unit or within the same category of school employee, or (C) the excess~~
19 ~~compensation occurred as the result of a districtwide permanent benefit~~
20 ~~change made by the employer for a category of school employee in~~
21 ~~accordance with subdivision (35)(a)(iv) of this section.~~

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

23 ~~(A) Category of school employee means either all employees of the~~
24 ~~employer who are administrators or certificated teachers, or all~~
25 ~~employees of the employer who are not administrators or certificated~~
26 ~~teachers, or both;~~

27 ~~(B) Compensation base means (I) for current members, employed with~~
28 ~~the same employer, the member's compensation for the plan year ending~~
29 ~~June 30, 2005, or (II) for members newly hired or hired by a separate~~
30 ~~employer on or after July 1, 2005, the member's compensation for the~~
31 ~~first full plan year following the member's date of hiring. Thereafter,~~

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

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

8 ~~(e)(i) For purposes of section 79-934, in the determination of~~
9 ~~compensation for members whose retirement date is on or after July 1,~~
10 ~~2012, until July 1, 2013, that part of a member's compensation for the~~
11 ~~plan year which exceeds the member's compensation with the same employer~~
12 ~~for the preceding plan year by more than nine percent of the compensation~~
13 ~~base shall be excluded.~~

14 ~~(ii) For purposes of subdivision (35)(e) of this section,~~
15 ~~compensation base means (A) for current members employed with the same~~
16 ~~employer, the member's compensation for the plan year ending June 30,~~
17 ~~2012, or (B) for members newly hired or hired by a separate employer on~~
18 ~~or after July 1, 2012, the member's compensation for the first full plan~~
19 ~~year following the member's date of hiring.~~

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

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

30 ~~(A) Capping period means the five plan years preceding the later of~~
31 ~~(I) such member's retirement date or (II) such member's final~~

1 ~~compensation date; and~~

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

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

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

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

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

23 A member shall not be deemed to have terminated employment if the
24 board determines that a claimed termination was not a bona fide
25 separation from service with the employer or that a member was
26 compensated for a full contractual period when the member terminated
27 prior to the end date of the contract;

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

1 (38) Substitute employee means a person hired by a public school as
2 a temporary employee to assume the duties of regular employees due to a
3 temporary absence of any regular employees. Substitute employee does not
4 mean a person hired as a regular employee on an ongoing basis to assume
5 the duties of other regular employees who are temporarily absent;

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

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

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

23 (42) Relinquished creditable service means, with respect to a member
24 who has withdrawn his or her accumulated contributions under section
25 79-955, the total amount of creditable service which such member has
26 given up as a result of his or her election not to remain a member of the
27 retirement system.

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

30 79-904.01 (1) If the board determines that the retirement system has
31 previously received contributions or distributed benefits which for any

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

10 (2) If the board determines that termination of employment has not
11 occurred and a retirement benefit has been paid to a member of the
12 retirement system pursuant to section 79-933, such member shall repay the
13 benefit to the retirement system.

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

24 (4) The board shall not refund contributions made on compensation in
25 excess of the limitations imposed by subdivision (35) of section 79-902
26 or subsection (7) of section 79-934.

27 Sec. 3. Section 79-934, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 79-934 (1) In lieu of the school retirement allowance provided by
30 section 79-933, any member who is not an employee of a Class V school
31 district and who becomes eligible to make application for and receive a

1 school retirement allowance under section 79-931 may receive a formula
2 annuity retirement allowance if it is greater than the school retirement
3 allowance provided by section 79-933.

4 (2) Subject to the other provisions of this section, the monthly
5 formula annuity in the normal form shall be determined by multiplying the
6 number of years of creditable service for which such member would
7 otherwise receive the service annuity provided by section 79-933 by (a)
8 one and one-quarter percent of his or her final average compensation for
9 a member who has acquired the equivalent of one-half year of service or
10 more as a public school employee under the retirement system following
11 August 24, 1975, (b) one and one-half percent of his or her final average
12 compensation for a member who has acquired the equivalent of one-half
13 year of service or more as a public school employee under the retirement
14 system following July 17, 1982, (c) one and sixty-five hundredths percent
15 of his or her final average compensation for a member who has acquired
16 the equivalent of one-half year of service or more as a public school
17 employee under the retirement system following July 1, 1984, (d) one and
18 seventy-three hundredths percent of his or her final average compensation
19 for a member actively employed as a public school employee under the
20 retirement system or under contract with an employer on or after June 5,
21 1993, (e) one and eight-tenths percent of his or her final average
22 compensation for a member who has acquired the equivalent of one-half
23 year of service or more as a public school employee under the retirement
24 system following July 1, 1995, and was employed as a public school
25 employee under the retirement system or under contract with an employer
26 on or after April 10, 1996, (f) one and nine-tenths percent of his or her
27 final average compensation for a member who has acquired the equivalent
28 of one-half year of service or more as a public school employee under the
29 retirement system following July 1, 1998, and was employed as a public
30 school employee under the retirement system or under contract with an
31 employer on or after April 29, 1999, or (g) two percent of his or her

1 final average compensation for a member who has acquired the equivalent
2 of one-half year of service or more as a public school employee under the
3 retirement system following July 1, 2000, who was employed as a public
4 school employee under the retirement system or under contract with an
5 employer on or after May 2, 2001, and who has not retired prior to May 2,
6 2001. Subdivision (2)(f) of this section shall not apply to a member who
7 is retired prior to April 29, 1999. Subdivision (2)(g) of this section
8 shall not apply to a member who is retired prior to May 2, 2001.

9 (3) If the annuity begins on or after the sixty-fifth birthday of a
10 member, the annuity shall not be reduced. If the annuity begins prior to
11 the sixty-fifth birthday of the member and the member has completed
12 thirty or more years of creditable service and is at least sixty years of
13 age, the annuity shall not be reduced. If the annuity begins prior to the
14 sixtieth birthday of the member and the member has completed thirty-five
15 or more years of creditable service, the annuity shall be actuarially
16 reduced on the basis of age sixty-five. If the annuity begins on or after
17 the sixtieth birthday of the member and the member has completed at least
18 a total of five years of (a) creditable service plus (b) eligibility and
19 vesting credit but less than thirty years of creditable service, the
20 annuity shall be reduced by three percent for each year by which the
21 member's age is less than the age at which the member's age plus years of
22 creditable service would have totaled ninety or three percent for each
23 year after the member's sixtieth birthday and prior to his or her sixty-
24 fifth birthday, whichever provides the greater annuity.

25 (4) For retirements on or after March 4, 1998, if the annuity begins
26 at a time when the sum of the member's attained age and creditable
27 service totals eighty-five and the member is at least fifty-five years of
28 age, the annuity shall not be reduced. This subsection shall only apply
29 to a member who has acquired the equivalent of one-half year of service
30 or more as a public school employee under the retirement system following
31 July 1, 1997, and who was a school employee on or after March 4, 1998.

1 This subsection shall not apply to a member who is retired prior to March
2 4, 1998.

3 (5) Except as provided in section 42-1107, the normal form of the
4 formula annuity shall be an annuity payable monthly during the remainder
5 of the member's life with the provision that in the event of his or her
6 death before sixty monthly payments have been made the monthly payments
7 will be continued to his or her estate or to the beneficiary he or she
8 has designated until sixty monthly payments have been made. Except as
9 provided in section 42-1107, a member may elect to receive in lieu of the
10 normal form of annuity an actuarially equivalent annuity in any optional
11 form provided by section 79-938.

12 (6) All formula annuities shall be paid from the School Retirement
13 Fund.

14 (7)(a)(i) For purposes of this section, in the determination of
15 compensation for members on or after July 1, 2005, that part of a
16 member's compensation for the plan year which exceeds the member's
17 compensation with the same employer for the preceding plan year by more
18 than seven percent of the compensation base during the sixty months
19 preceding the member's retirement shall be excluded unless (A) the member
20 experienced a substantial change in employment position, (B) as verified
21 by the school board, the excess compensation above seven percent occurred
22 as the result of a collective-bargaining agreement between the employer
23 and a recognized collective-bargaining unit or category of school
24 employee, and the percentage increase in compensation above seven percent
25 shall not be excluded for employees outside of a collective-bargaining
26 unit or within the same category of school employee, or (C) the excess
27 compensation occurred as the result of a districtwide permanent benefit
28 change made by the employer for a category of school employee in
29 accordance with subdivision (35)(a)(iv) of section 79-902.

30 (ii) For purposes of subdivision (7)(a) of this section:

31 (A) Category of school employee means either all employees of the

1 employer who are administrators or certificated teachers, or all
2 employees of the employer who are not administrators or certificated
3 teachers, or both;

4 (B) Compensation base means (I) for current members, employed with
5 the same employer, the member's compensation for the plan year ending
6 June 30, 2005, or (II) for members newly hired or hired by a separate
7 employer on or after July 1, 2005, the member's compensation for the
8 first full plan year following the member's date of hiring. Thereafter,
9 the member's compensation base shall be increased each plan year by the
10 lesser of seven percent of the member's preceding plan year's
11 compensation base or the member's actual annual compensation increase
12 during the preceding plan year; and

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

16 (b)(i) In the determination of compensation for members whose
17 retirement date is on or after July 1, 2012, through June 30, 2013, that
18 part of a member's compensation for the plan year which exceeds the
19 member's compensation with the same employer for the preceding plan year
20 by more than nine percent of the compensation base shall be excluded.

21 (ii) For purposes of subdivision (7)(b) of this section,
22 compensation base means (A) for current members employed with the same
23 employer, the member's compensation for the plan year ending June 30,
24 2012, or (B) for members newly hired or hired by a separate employer on
25 or after July 1, 2012, the member's compensation for the first full plan
26 year following the member's date of hiring.

27 (c)(i) In the determination of compensation for members whose
28 retirement date is on or after July 1, 2013, that part of a member's
29 compensation for the plan year which exceeds the member's compensation
30 for the preceding plan year by more than eight percent during the capping
31 period shall be excluded. Such member's compensation for the first plan

1 year of the capping period shall be compared to the member's compensation
2 received for the plan year immediately preceding the capping period.

3 (ii) For purposes of subdivision (7)(c) of this section:

4 (A) Capping period means the five plan years preceding the later of
5 (I) such member's retirement date or (II) such member's final
6 compensation date; and

7 (B) Final compensation date means the later of (I) the date on which
8 a retiring member's final compensation is actually paid or (II) if a
9 retiring member's final compensation is paid in advance as a lump sum,
10 the date on which such final compensation would have been paid to the
11 member in the absence of such advance payment.

12 Sec. 4. Section 79-978, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 79-978 For purposes of the Class V School Employees Retirement Act,
15 unless the context otherwise requires:

16 (1) Retirement system or system means the School Employees'
17 Retirement System of (corporate name of the school district as described
18 in section 79-405) as provided for by the act;

19 (2) Board means the board of education of the school district;

20 (3) Trustee means a trustee provided for in section 79-980;

21 (4) Employee means the following enumerated persons receiving
22 compensation from the school district: (a) Regular teachers and
23 administrators employed on a written contract basis; and (b) regular
24 employees, not included in subdivision (4)(a) of this section, hired upon
25 a full-time basis, which basis shall contemplate a workweek of not less
26 than thirty hours;

27 (5) Member means any employee included in the membership of the
28 retirement system or any former employee who has made contributions to
29 the system and has not received a refund;

30 (6) Annuitant means any member receiving an allowance;

31 (7) Beneficiary means any person entitled to receive or receiving a

1 benefit by reason of the death of a member;

2 (8) Membership service means service on or after September 1, 1951,
3 as an employee of the school district and a member of the system for
4 which compensation is paid by the school district. Credit for more than
5 one year of membership service shall not be allowed for service rendered
6 in any fiscal year. Beginning September 1, 2005, a member shall be
7 credited with a year of membership service for each fiscal year in which
8 the member performs one thousand or more hours of compensated service as
9 an employee of the school district. An hour of compensated service shall
10 include any hour for which the member is compensated by the school
11 district during periods where no service is performed due to vacation or
12 approved leave. If a member performs less than one thousand hours of
13 compensated service during a fiscal year, one-tenth of a year of
14 membership service shall be credited for each one hundred hours of
15 compensated service by the member in such fiscal year. In determining a
16 member's total membership service, all periods of membership service,
17 including fractional years of membership service in one-tenth-year
18 increments, shall be aggregated;

19 (9) Prior service means service rendered prior to September 1, 1951,
20 for which credit is allowed under section 79-999, service rendered by
21 retired employees receiving benefits under preexisting systems, and
22 service for which credit is allowed under sections 79-990, 79-991,
23 79-994, 79-995, and 79-997;

24 (10) Creditable service means the sum of the membership service and
25 the prior service, measured in one-tenth-year increments;

26 (11)(a) Compensation means gross wages or salaries payable to the
27 member during a fiscal year and includes (i) overtime pay, (ii) member
28 contributions to the retirement system that are picked up under section
29 414(h) of the Internal Revenue Code, as defined in section 49-801.01,
30 (iii) retroactive salary payments paid pursuant to court order,
31 arbitration, or litigation and grievance settlements, and (iv) amounts

1 contributed by the member to plans under sections 125, 403(b), and 457 of
2 the Internal Revenue Code, as defined in section 49-801.01, or any other
3 section of the code which defers or excludes such amounts from income.
4 ~~salary or wages payable by the school district before reduction for~~
5 ~~contributions picked up under section 414(h) of the Internal Revenue~~
6 ~~Code, elective contributions made pursuant to section 125 or 403(b) of~~
7 ~~the code, or amounts not currently includible in income by reason of~~
8 ~~section 132(f)(4) of the code, subject to the applicable limitations of~~
9 ~~section 401(a)(17) of the code;~~

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

20 (c) Compensation in excess of the limitations set forth in section
21 401(a)(17) of the Internal Revenue Code, as defined in section 49-801.01,
22 shall be disregarded;

23 (12) Military service means service in the uniformed services as
24 defined in 38 U.S.C. 4301 et seq., as such provision existed on March 27,
25 1997;

26 (13) Accumulated contributions means the sum of amounts contributed
27 by a member of the system together with regular interest credited
28 thereon;

29 (14) Regular interest means interest (a) on the total contributions
30 of the member prior to the close of the last preceding fiscal year, (b)
31 compounded annually, and (c) at rates to be determined annually by the

1 board, which shall have the sole, absolute, and final discretionary
2 authority to make such determination, except that the rate for any given
3 year in no event shall exceed the actual percentage of net earnings of
4 the system during the last preceding fiscal year;

5 (15) Retirement date means the date of retirement of a member for
6 service or disability as fixed by the board;

7 (16) Normal retirement date means the end of the month during which
8 the member attains age sixty-five and has completed at least five years
9 of membership service;

10 (17) Early retirement date means that month and year selected by a
11 member having at least ten years of creditable service which includes a
12 minimum of five years of membership service and who has attained age
13 fifty-five;

14 (18) Retirement allowance means the total annual retirement benefit
15 payable to a member for service or disability;

16 (19) Annuity means annual payments, for both prior service and
17 membership service, for life as provided in the Class V School Employees
18 Retirement Act;

19 (20) Actuarial tables means:

20 (a) For determining the actuarial equivalent of any annuities other
21 than joint and survivorship annuities, a unisex mortality table using
22 twenty-five percent of the male mortality and seventy-five percent of the
23 female mortality from the 1994 Group Annuity Mortality Table with a One
24 Year Setback and using an interest rate of eight percent compounded
25 annually; and

26 (b) For joint and survivorship annuities, a unisex retiree mortality
27 table using sixty-five percent of the male mortality and thirty-five
28 percent of the female mortality from the 1994 Group Annuity Mortality
29 Table with a One Year Setback and using an interest rate of eight percent
30 compounded annually and a unisex joint annuitant mortality table using
31 thirty-five percent of the male mortality and sixty-five percent of the

1 female mortality from the 1994 Group Annuity Mortality Table with a One
2 Year Setback and using an interest rate of eight percent compounded
3 annually;

4 (21) Actuarial equivalent means the equality in value of the
5 retirement allowance for early retirement or the retirement allowance for
6 an optional form of annuity, or both, with the normal form of the annuity
7 to be paid, as determined by the application of the appropriate actuarial
8 table, except that use of such actuarial tables shall not effect a
9 reduction in benefits accrued prior to September 1, 1985, as determined
10 by the actuarial tables in use prior to such date;

11 (22) Fiscal year means the period beginning September 1 in any year
12 and ending on August 31 of the next succeeding year;

13 (23) Primary beneficiary means the person or persons entitled to
14 receive or receiving a benefit by reason of the death of a member; and

15 (24) Secondary beneficiary means the person or persons entitled to
16 receive or receiving a benefit by reason of the death of all primary
17 beneficiaries prior to the death of the member. If no primary beneficiary
18 survives the member, secondary beneficiaries shall be treated in the same
19 manner as primary beneficiaries.

20 Sec. 5. Section 79-9,100, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 79-9,100 (1) In lieu of the retirement annuity provided by section
23 79-999 or 79-9,113, any member who becomes eligible to receive a
24 retirement annuity after February 20, 1982, under the Class V School
25 Employees Retirement Act shall receive a formula retirement annuity based
26 on final average compensation, except that if the monthly formula
27 retirement annuity based on final average compensation is less than the
28 monthly retirement annuity specified in section 79-999 or 79-9,113,
29 accrued to the date of retirement or August 31, 1983, whichever first
30 occurs, the member shall receive the monthly retirement annuity specified
31 in section 79-999 or 79-9,113 accrued to the date of retirement or August

1 31, 1983, whichever first occurs.

2 (2) The monthly formula retirement annuity based on final average
3 compensation shall be determined by multiplying the number of years of
4 creditable service for which such member would otherwise receive the
5 retirement annuity provided by section 79-999 or 79-9,113 by one and one-
6 half percent of his or her final average compensation. For retirements
7 after June 15, 1989, and before April 18, 1992, the applicable percentage
8 shall be one and sixty-five hundredths percent of his or her final
9 average compensation. For retirements on or after April 18, 1992, and
10 before June 7, 1995, the applicable percentage shall be one and seventy-
11 hundredths percent of his or her final average compensation. For
12 retirements on or after June 7, 1995, and before March 4, 1998, the
13 applicable percentage shall be one and eighty-hundredths percent of his
14 or her final average compensation. For retirements on or after March 4,
15 1998, and before March 22, 2000, the applicable percentage shall be one
16 and eighty-five hundredths percent of his or her final average
17 compensation. For retirements on or after March 22, 2000, the applicable
18 percentage shall be two percent of his or her final average compensation.

19 (3) Final average compensation shall be determined:

20 (a) Except as provided in subdivision (3)(b) of this section, by
21 dividing the member's total compensation for the three fiscal years in
22 which such compensation was the highest by thirty-six; and

23 (b) For an employee who became a member on or after July 1, 2013, by
24 dividing the member's total compensation for the five fiscal years in
25 which such compensation was the highest by sixty.

26 (4)(a) In the determination of compensation for members whose
27 retirement date is on or after July 1, 2016, that part of a member's
28 compensation for the plan year which exceeds the member's compensation
29 for the preceding plan year by more than eight percent during the capping
30 period shall be excluded. If the compensation for the preceding plan year
31 was reduced as a result of unpaid absence from work, the compensation

1 used in the capping calculation will be the greater of (i) the annualized
2 compensation for the preceding year as if it had been fully received or
3 (ii) the most recent preceding plan year in which the member had no
4 unpaid absence from work. Such member's compensation for the first plan
5 year of the capping period shall be compared to the member's compensation
6 received for the plan year immediately preceding the capping period. If
7 the first plan year of the capping period is the member's first year of
8 membership service, these capping provisions shall not be applied to that
9 first plan year.

10 (b) For purposes of this subsection:

11 (i) Capping period means the five plan years preceding the later of
12 (A) such member's retirement date or (B) such member's final compensation
13 date; and

14 (ii) Final compensation date means the later of (A) the date on
15 which a retiring member's final compensation is actually paid or (B) if a
16 retiring member's final compensation is paid in advance as a lump sum,
17 the date on which such final compensation would have been paid to the
18 member in the absence of such advance payment.

19 (5 4) For retirements before June 7, 1995, if the annuity begins
20 prior to the sixty-second birthday of the member and the member has not
21 completed thirty-five or more years of creditable service, the annuity at
22 the date it begins shall be the actuarial equivalent of the annuity
23 deferred to the sixty-second birthday of the member. If the annuity
24 begins prior to the sixty-second birthday of the member and the member
25 has completed thirty-five or more years of creditable service, the
26 annuity shall not be reduced. For retirements on or after June 7, 1995,
27 any retirement annuity which begins prior to the sixty-second birthday of
28 the member shall be reduced by twenty-five hundredths percent for each
29 month or partial month between the date the annuity begins and the
30 member's sixty-second birthday. If the annuity begins at a time when:

31 (a) The sum of the member's attained age and creditable service is

1 eighty-five or more, the annuity shall not be reduced;

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

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

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

11 (6 ~~5~~) For purposes of this section, a member's creditable service
12 and attained age shall be measured in one-half-year increments.

13 (7 ~~6~~) The normal form of the formula retirement annuity based on
14 final average compensation shall be an annuity payable monthly during the
15 remainder of the member's life with the provision that in the event of
16 his or her death before sixty monthly payments have been made the monthly
17 payments will be continued to his or her estate or to the beneficiary he
18 or she has designated until a total of sixty monthly payments have been
19 made. A member may elect to receive, in lieu of the normal form of
20 annuity, an actuarially equivalent annuity in any optional form provided
21 by section 79-9,101.

22 (8 ~~7~~) Any member receiving a formula retirement annuity based on
23 final average compensation shall also receive the service annuity to be
24 paid by the State of Nebraska as provided in sections 79-933 to 79-935
25 and 79-951.

26 Sec. 6. Original sections 79-902, 79-904.01, 79-934, 79-978, and
27 79-9,100, Reissue Revised Statutes of Nebraska, are repealed.