

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 34**

Introduced by Kolterman, 24.

Read first time January 10, 2019

Committee: Nebraska Retirement Systems

1 A BILL FOR AN ACT relating to retirement; to amend sections 23-2320,  
2 84-1321.01, and 84-1322, Reissue Revised Statutes of Nebraska, and  
3 sections 23-2308.01, 23-2319.01, and 84-1309.02, Revised Statutes  
4 Cumulative Supplement, 2018; to eliminate provisions relating to  
5 benefits payable after the filing of a grievance or appeal and  
6 change provisions relating to employee reinstatement under the  
7 County Employees Retirement Act and State Employees Retirement Act;  
8 to harmonize provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-2308.01, Revised Statutes Cumulative  
2 Supplement, 2018, is amended to read:

3 23-2308.01 (1) It is the intent of the Legislature that, in order to  
4 improve the competitiveness of the retirement plan for county employees,  
5 a cash balance benefit shall be added to the County Employees Retirement  
6 Act on and after January 1, 2003. Each member who is employed and  
7 participating in the retirement system prior to January 1, 2003, may  
8 either elect to continue participation in the defined contribution  
9 benefit as provided in the act prior to January 1, 2003, or elect to  
10 participate in the cash balance benefit as set forth in this section. An  
11 active member shall make a one-time election beginning September 1, 2012,  
12 through October 31, 2012, in order to participate in the cash balance  
13 benefit. If no such election is made, the member shall be treated as  
14 though he or she elected to continue participating in the defined  
15 contribution benefit as provided in the act prior to January 1, 2003.  
16 Members who elect to participate in the cash balance benefit beginning  
17 September 1, 2012, through October 31, 2012, shall commence participation  
18 in the cash balance benefit on January 2, 2013. Any member who made the  
19 election prior to April 7, 2012, does not have to make another election  
20 of the cash balance benefit beginning September 1, 2012, through October  
21 31, 2012.

22 (2) For a member employed and participating in the retirement system  
23 beginning on and after January 1, 2003, or a member employed and  
24 participating in the retirement system on January 1, 2003, who, prior to  
25 April 7, 2012, or beginning September 1, 2012, through October 31, 2012,  
26 elects to convert his or her employee and employer accounts to the cash  
27 balance benefit:

28 (a) ~~The Except as provided in subdivision (2)(b) of section~~  
29 ~~23-2319.01,~~ the employee cash balance account within the County Employees  
30 Retirement Fund shall, at any time, be equal to the following:

31 (i) The initial employee account balance, if any, transferred from

1 the defined contribution plan account described in section 23-2309; plus  
2 (ii) Employee contribution credits deposited in accordance with  
3 section 23-2307; plus  
4 (iii) Interest credits credited in accordance with subdivision (20)  
5 of section 23-2301; plus  
6 (iv) Dividend amounts credited in accordance with subdivision (4)(c)  
7 of section 23-2317; and  
8 (b) The employer cash balance account shall, at any time, be equal  
9 to the following:  
10 (i) The initial employer account balance, if any, transferred from  
11 the defined contribution plan account described in section 23-2310; plus  
12 (ii) Employer contribution credits deposited in accordance with  
13 section 23-2308; plus  
14 (iii) Interest credits credited in accordance with subdivision (20)  
15 of section 23-2301; plus  
16 (iv) Dividend amounts credited in accordance with subdivision (4)(c)  
17 of section 23-2317.  
18 (3) In order to carry out the provisions of this section, the board  
19 may enter into administrative services agreements for accounting or  
20 record-keeping services. No agreement shall be entered into unless the  
21 board determines that it will result in administrative economy and will  
22 be in the best interests of the counties and their participating  
23 employees. The board may develop a schedule for the allocation of the  
24 administrative services agreements costs for accounting or record-keeping  
25 services and may assess the costs so that each member pays a reasonable  
26 fee as determined by the board.  
27 Sec. 2. Section 23-2319.01, Revised Statutes Cumulative Supplement,  
28 2018, is amended to read:  
29 23-2319.01 (1) For a member who has terminated employment and is not  
30 vested, the balance of the member's employer account or employer cash  
31 balance account shall be forfeited. The forfeited account shall be

1 credited to the County Employees Retirement Fund and shall first be used  
2 to meet the expense charges incurred by the retirement board in  
3 connection with administering the retirement system, which charges shall  
4 be credited to the County Employees Defined Contribution Retirement  
5 Expense Fund, if the member participated in the defined contribution  
6 option, or to the County Employees Cash Balance Retirement Expense Fund,  
7 if the member participated in the cash balance option, and the remainder,  
8 if any, shall then be used to restore employer accounts or employer cash  
9 balance accounts. Except as provided in subsection (3) of section  
10 23-2310.04 and subdivision (4)(c) of section 23-2317, no forfeited  
11 amounts shall be applied to increase the benefits any member would  
12 otherwise receive under the County Employees Retirement Act.

13 ~~(2) (2)(a)~~ If a member ceases to be an employee due to the  
14 termination of his or her employment by the county and a grievance or  
15 other appeal of the termination is filed, transactions involving  
16 forfeiture of his or her employer account or employer cash balance  
17 account and, ~~except as provided in subdivision (b) of this subsection,~~  
18 transactions for payment of benefits under sections 23-2315 and 23-2319  
19 shall be suspended pending the final outcome of the grievance or other  
20 appeal.

21 ~~(b) If a member elects to receive benefits payable under sections~~  
22 ~~23-2315 and 23-2319 after a grievance or appeal is filed, the member may~~  
23 ~~receive an amount up to the balance of his or her employee account or~~  
24 ~~member cash balance account or twenty-five thousand dollars payable from~~  
25 ~~the employee account or member cash balance account, whichever is less.~~

26 (3) The County Employer Retirement Expense Fund is created. The fund  
27 shall be administered by the Public Employees Retirement Board. Prior to  
28 July 1, 2012, the County Employer Retirement Expense Fund shall be used  
29 to meet expenses of the retirement system whether such expenses are  
30 incurred in administering the member's employer account or in  
31 administering the member's employer cash balance account when the funds

1 available in the County Employees Defined Contribution Retirement Expense  
2 Fund or County Employees Cash Balance Retirement Expense Fund make such  
3 use reasonably necessary. The County Employer Retirement Expense Fund  
4 shall consist of any reduction in a county contribution which would  
5 otherwise be required to fund future service retirement benefits or to  
6 restore employer accounts or employer cash balance accounts referred to  
7 in subsection (1) of this section. On July 1, 2012, or as soon as  
8 practicable thereafter, any money in the County Employer Retirement  
9 Expense Fund shall be transferred by the State Treasurer to the County  
10 Employees Retirement Fund and credited to the cash balance benefit  
11 established in section 23-2308.01.

12 (4) Prior to July 1, 2012, expenses incurred as a result of a county  
13 depositing amounts into the County Employer Retirement Expense Fund shall  
14 be deducted prior to any additional expenses being allocated. Any  
15 remaining amount shall be allocated in accordance with subsection (3) of  
16 this section. Any money in the County Employer Retirement Expense Fund  
17 available for investment shall be invested by the state investment  
18 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
19 State Funds Investment Act.

20 Sec. 3. Section 23-2320, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 23-2320 (1) Except as otherwise provided in this section, a member  
23 of the retirement system who has a five-year break in service shall upon  
24 reemployment be considered a new employee with respect to the County  
25 Employees Retirement Act and shall not receive credit for service prior  
26 to his or her reemployment date.

27 (2)(a) A member who ceases to be an employee before becoming  
28 eligible for retirement under section 23-2315 and again becomes a  
29 permanent full-time or permanent part-time county employee prior to  
30 having a five-year break in service shall immediately be reenrolled in  
31 the retirement system and resume making contributions. For purposes of

1 vesting employer contributions made prior to and after the reentry into  
2 the retirement system under subsection (3) of section 23-2319, years of  
3 participation include years of participation prior to such employee's  
4 original termination. For a member who is not vested and has received a  
5 termination benefit pursuant to section 23-2319, the years of  
6 participation prior to such employee's original termination shall be  
7 limited in a ratio equal to the amount that the member repays divided by  
8 the termination benefit withdrawn pursuant to section 23-2319.

9 (b) The reemployed member may repay the value of, or a portion of  
10 the value of, the termination benefit withdrawn pursuant to section  
11 23-2319. A reemployed member who elects to repay all or a portion of the  
12 value of the termination benefit withdrawn pursuant to section 23-2319  
13 shall repay the actual earnings on such value. Repayment of the  
14 termination benefit shall commence within three years of reemployment and  
15 shall be completed within five years of reemployment or prior to  
16 termination of employment, whichever occurs first, through (i) direct  
17 payments to the retirement system, (ii) installment payments made  
18 pursuant to a binding irrevocable payroll deduction authorization made by  
19 the member, (iii) an eligible rollover distribution as provided under the  
20 Internal Revenue Code, or (iv) a direct rollover distribution made in  
21 accordance with section 401(a)(31) of the Internal Revenue Code.

22 (c) The value of the member's forfeited employer account or employer  
23 cash balance account, as of the date of forfeiture, shall be restored in  
24 a ratio equal to the amount of the benefit that the member has repaid  
25 divided by the termination benefit received. The employer account or  
26 employer cash balance account shall be restored first out of the current  
27 forfeiture amounts and then by additional employer contributions.

28 (3) For a member who retired pursuant to section 23-2315 and becomes  
29 a permanent full-time employee or permanent part-time employee with a  
30 county under the County Employees Retirement Act more than one hundred  
31 twenty days after his or her retirement date, the member shall continue

1 receiving retirement benefits. Such a retired member or a retired member  
2 who received a lump-sum distribution of his or her benefit shall be  
3 considered a new employee as of the date of reemployment and shall not  
4 receive credit for any service prior to the member's retirement for  
5 purposes of the act.

6 (4) A member who is reinstated as an employee pursuant to a  
7 grievance or appeal of his or her termination by the county shall be a  
8 member upon reemployment and shall not be considered to have a break in  
9 service for such period of time that the grievance or appeal was pending.  
10 ~~Following reinstatement, the member shall repay the value of the amount~~  
11 ~~received from his or her employee account or member cash balance account~~  
12 ~~under subdivision (2)(b) of section 23-2319.01.~~

13 Sec. 4. Section 84-1309.02, Revised Statutes Cumulative Supplement,  
14 2018, is amended to read:

15 84-1309.02 (1) It is the intent of the Legislature that, in order to  
16 improve the competitiveness of the retirement plan for state employees, a  
17 cash balance benefit shall be added to the State Employees Retirement Act  
18 on and after January 1, 2003. Each member who is employed and  
19 participating in the retirement system prior to January 1, 2003, may  
20 either elect to continue participation in the defined contribution  
21 benefit as provided in the act prior to January 1, 2003, or elect to  
22 participate in the cash balance benefit as set forth in this section. An  
23 active member shall make a one-time election beginning September 1, 2012,  
24 through October 31, 2012, in order to participate in the cash balance  
25 benefit. If no such election is made, the member shall be treated as  
26 though he or she elected to continue participating in the defined  
27 contribution benefit as provided in the act prior to January 1, 2003.  
28 Members who elect to participate in the cash balance benefit beginning  
29 September 1, 2012, through October 31, 2012, shall commence participation  
30 in the cash balance benefit on January 2, 2013. Any member who made the  
31 election prior to April 7, 2012, does not have to make another election

1 of the cash balance benefit beginning September 1, 2012, through October  
2 31, 2012.

3 (2) For a member employed and participating in the retirement system  
4 beginning on and after January 1, 2003, or a member employed and  
5 participating in the retirement system on January 1, 2003, who, prior to  
6 April 7, 2012, or beginning September 1, 2012, through October 31, 2012,  
7 elects to convert his or her employee and employer accounts to the cash  
8 balance benefit:

9 (a) ~~The Except as provided in subdivision (2)(b) of section~~  
10 ~~84-1321.01,~~ the employee cash balance account within the State Employees  
11 Retirement Fund shall, at any time, be equal to the following:

12 (i) The initial employee account balance, if any, transferred from  
13 the defined contribution plan account described in section 84-1310; plus

14 (ii) Employee contribution credits deposited in accordance with  
15 section 84-1308; plus

16 (iii) Interest credits credited in accordance with subdivision (19)  
17 of section 84-1301; plus

18 (iv) Dividend amounts credited in accordance with subdivision (4)(c)  
19 of section 84-1319; and

20 (b) The employer cash balance account shall, at any time, be equal  
21 to the following:

22 (i) The initial employer account balance, if any, transferred from  
23 the defined contribution plan account described in section 84-1311; plus

24 (ii) Employer contribution credits deposited in accordance with  
25 section 84-1309; plus

26 (iii) Interest credits credited in accordance with subdivision (19)  
27 of section 84-1301; plus

28 (iv) Dividend amounts credited in accordance with subdivision (4)(c)  
29 of section 84-1319.

30 (3) In order to carry out the provisions of this section, the board  
31 may enter into administrative services agreements for accounting or

1 record-keeping services. No agreement shall be entered into unless the  
2 board determines that it will result in administrative economy and will  
3 be in the best interests of the state and its participating employees.  
4 The board may develop a schedule for the allocation of the administrative  
5 services agreements costs for accounting or record-keeping services and  
6 may assess the costs so that each member pays a reasonable fee as  
7 determined by the board.

8 Sec. 5. Section 84-1321.01, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 84-1321.01 (1) For a member who has terminated employment and is not  
11 vested, the balance of the member's employer account or employer cash  
12 balance account shall be forfeited. The forfeited account shall be  
13 credited to the State Employees Retirement Fund and shall first be used  
14 to meet the expense charges incurred by the retirement board in  
15 connection with administering the retirement system, which charges shall  
16 be credited to the State Employees Defined Contribution Retirement  
17 Expense Fund, if the member participated in the defined contribution  
18 option, or to the State Employees Cash Balance Retirement Expense Fund,  
19 if the member participated in the cash balance option, and the remainder,  
20 if any, shall then be used to restore employer accounts or employer cash  
21 balance accounts. Except as provided in subsection (3) of section 84-1314  
22 and subdivision (4)(c) of section 84-1319, no forfeited amounts shall be  
23 applied to increase the benefits any member would otherwise receive under  
24 the State Employees Retirement Act.

25 ~~(2) (2)(a)~~ If a member ceases to be an employee due to the  
26 termination of his or her employment by the state and a grievance or  
27 other appeal of the termination is filed, transactions involving  
28 forfeiture of his or her employer account or employer cash balance  
29 account and, ~~except as provided in subdivision (b) of this subsection,~~  
30 transactions for payment of benefits under sections 84-1317 and 84-1321  
31 shall be suspended pending the final outcome of the grievance or other

1 appeal.

2 ~~(b) If a member elects to receive benefits payable under sections~~  
3 ~~84-1317 and 84-1321 after a grievance or appeal is filed, the member may~~  
4 ~~receive an amount up to the balance of his or her employee account or~~  
5 ~~member cash balance account or twenty five thousand dollars payable from~~  
6 ~~the employee account or member cash balance account, whichever is less.~~

7 (3) The State Employer Retirement Expense Fund is created. The fund  
8 shall be administered by the Public Employees Retirement Board. Prior to  
9 July 1, 2012, the fund shall be used to meet expenses of the State  
10 Employees Retirement System of the State of Nebraska whether such  
11 expenses are incurred in administering the member's employer account or  
12 in administering the member's employer cash balance account when the  
13 funds available in the State Employees Defined Contribution Retirement  
14 Expense Fund or State Employees Cash Balance Retirement Expense Fund make  
15 such use reasonably necessary. On July 1, 2012, or as soon as practicable  
16 thereafter, any money in the State Employer Retirement Expense Fund shall  
17 be transferred by the State Treasurer to the State Employees Retirement  
18 Fund and credited to the cash balance benefit established in section  
19 84-1309.02.

20 (4) Prior to July 1, 2012, the director of the Nebraska Public  
21 Employees Retirement Systems shall certify to the Accounting  
22 Administrator of the Department of Administrative Services when  
23 accumulated employer account forfeiture funds are available to reduce the  
24 state contribution which would otherwise be required to fund future  
25 service retirement benefits or to restore employer accounts or employer  
26 cash balance accounts referred to in subsection (1) of this section.  
27 Following such certification, the Accounting Administrator shall transfer  
28 the amount reduced from the state contribution from the Imprest Payroll  
29 Distributive Fund to the State Employer Retirement Expense Fund. Expenses  
30 incurred as a result of the state depositing amounts into the State  
31 Employer Retirement Expense Fund shall be deducted prior to any

1 additional expenses being allocated. Any remaining amount shall be  
2 allocated in accordance with subsection (3) of this section. Any money in  
3 the State Employer Retirement Expense Fund available for investment shall  
4 be invested by the state investment officer pursuant to the Nebraska  
5 Capital Expansion Act and the Nebraska State Funds Investment Act.

6 Sec. 6. Section 84-1322, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 84-1322 (1) Except as otherwise provided in this section, a member  
9 of the retirement system who has a five-year break in service shall upon  
10 reemployment be considered a new employee with respect to the State  
11 Employees Retirement Act and shall not receive credit for service prior  
12 to his or her reemployment date.

13 (2)(a) A member who ceases to be an employee before becoming  
14 eligible for retirement under section 84-1317 and again becomes a  
15 permanent full-time or permanent part-time state employee prior to having  
16 a five-year break in service shall immediately be reenrolled in the  
17 retirement system and resume making contributions. For purposes of  
18 vesting employer contributions made prior to and after reentry into the  
19 retirement system under subsection (3) of section 84-1321, years of  
20 participation include years of participation prior to such employee's  
21 original termination. For a member who is not vested and has received a  
22 termination benefit pursuant to section 84-1321, the years of  
23 participation prior to such employee's original termination shall be  
24 limited in a ratio equal to the amount that the member repays divided by  
25 the termination benefit withdrawn pursuant to section 84-1321. This  
26 subsection shall apply whether or not the person was a state employee on  
27 April 20, 1986, or July 17, 1986.

28 (b) The reemployed member may repay the value of, or a portion of  
29 the value of, the termination benefit withdrawn pursuant to section  
30 84-1321. A reemployed member who elects to repay all or a portion of the  
31 value of the termination benefit withdrawn pursuant to section 84-1321

1 shall repay the actual earnings on such value. Repayment of the  
2 termination benefit shall commence within three years after reemployment  
3 and shall be completed within five years after reemployment or prior to  
4 termination of employment, whichever occurs first, through (i) direct  
5 payments to the retirement system, (ii) installment payments made  
6 pursuant to a binding irrevocable payroll deduction authorization made by  
7 the member, (iii) an eligible rollover distribution as provided under the  
8 Internal Revenue Code, or (iv) a direct rollover distribution made in  
9 accordance with section 401(a)(31) of the Internal Revenue Code.

10 (c) The value of the member's forfeited employer account or employer  
11 cash balance account, as of the date of forfeiture, shall be restored in  
12 a ratio equal to the amount of the benefit that the member has repaid  
13 divided by the termination benefit received. The employer account or  
14 employer cash balance account shall be restored first out of the current  
15 forfeiture amounts and then by additional employer contributions.

16 (3) For a member who retired pursuant to section 84-1317 and becomes  
17 a permanent full-time employee or permanent part-time employee with the  
18 state more than one hundred twenty days after his or her retirement date,  
19 the member shall continue receiving retirement benefits. Such a retired  
20 member or a retired member who received a lump-sum distribution of his or  
21 her benefit shall be considered a new employee as of the date of  
22 reemployment and shall not receive credit for any service prior to the  
23 member's retirement for purposes of the act.

24 (4) A member who is reinstated as an employee pursuant to a  
25 grievance or appeal of his or her termination by the state shall be a  
26 member upon reemployment and shall not be considered to have a break in  
27 service for such period of time that the grievance or appeal was pending.  
28 ~~Following reinstatement, the member shall repay the value of the amount~~  
29 ~~received from his or her employee account or member cash balance account~~  
30 ~~under subdivision (2)(b) of section 84-1321.01.~~

31 Sec. 7. Original sections 23-2320, 84-1321.01, and 84-1322, Reissue

- 1 Revised Statutes of Nebraska, and sections 23-2308.01, 23-2319.01, and
- 2 84-1309.02, Revised Statutes Cumulative Supplement, 2018, are repealed.