

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 35**

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 and  
2 84-1322, Reissue Revised Statutes of Nebraska, and sections 23-2306  
3 and 84-1307, Revised Statutes Cumulative Supplement, 2018; to change  
4 provisions relating to reemployment, reinstatement, repayment, and  
5 age eligibility regarding certain retirement system members under  
6 the County Employees Retirement Act and State Employees Retirement  
7 Act; to provide an operative date; and to repeal the original  
8 sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-2306, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 23-2306 (1) The membership of the retirement system shall be  
4 composed of all persons who are or were employed by member counties and  
5 who maintain an account balance with the retirement system.

6 (2) The following employees of member counties are authorized to  
7 participate in the retirement system: (a) All permanent full-time  
8 employees who have attained the age of eighteen years shall begin  
9 participation in the retirement system upon employment and full-time  
10 elected officials shall begin participation in the retirement system upon  
11 taking office, (b) all permanent part-time employees who have attained  
12 the age of eighteen years may exercise the option to begin participation  
13 in the retirement system within the first thirty days of employment, and  
14 (c) all part-time elected officials may exercise the option to begin  
15 participation in the retirement system within thirty days after taking  
16 office. An employee who exercises the option to begin participation in  
17 the retirement system shall remain in the system until termination or  
18 retirement, regardless of any change of status as a permanent or  
19 temporary employee.

20 (3) On and after July 1, 2010, no employee of a member county shall  
21 be authorized to participate in the retirement system provided for in the  
22 County Employees Retirement Act unless the employee (a) is a United  
23 States citizen or (b) is a qualified alien under the federal Immigration  
24 and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on  
25 January 1, 2009, and is lawfully present in the United States.

26 (4)(a) The board may determine that a governmental entity currently  
27 participating in the retirement system no longer qualifies, in whole or  
28 in part, under section 414(d) of the Internal Revenue Code as a  
29 participating employer in a governmental plan.

30 (b)(i) To aid governmental entities in their business decisionmaking  
31 process, any governmental entity currently participating in the

1 retirement system contemplating a business transaction that may result in  
2 such entity no longer qualifying, in whole or in part, under section  
3 414(d) of the Internal Revenue Code may notify the board in writing as  
4 soon as reasonably practicable, but no later than one hundred eighty days  
5 before the transaction is to occur.

6 (ii) The board when timely notified shall, as soon as is reasonably  
7 practicable, obtain from its contracted actuary the cost of any actuarial  
8 study necessary to determine the potential funding obligation. The board  
9 shall notify the entity of such cost.

10 (iii) If such entity pays the board's contracted actuary pursuant to  
11 subdivision (4)(c)(vi) of this section for any actuarial study necessary  
12 to determine the potential funding obligation, the board shall, as soon  
13 as reasonably practicable following its receipt of the actuarial study,  
14 (A) determine whether the entity's contemplated business transaction will  
15 cause the entity to no longer qualify under section 414(d) of the  
16 Internal Revenue Code, (B) determine whether the contemplated business  
17 transaction constitutes a plan termination by the entity, (C) determine  
18 the potential funding obligation, (D) determine the administrative costs  
19 that will be incurred by the board or the Nebraska Public Employees  
20 Retirement Systems in connection with the entity's removal from the  
21 retirement system, and (E) notify the entity of such determinations.

22 (iv) Failure to timely notify the board pursuant to subdivision (4)  
23 (b)(i) of this section may result in the entity being treated as though  
24 the board made a decision pursuant to subdivision (4)(a) of this section.

25 (c) If the board makes a determination pursuant to subdivision (4)  
26 (a) of this section, or if the entity engages in the contemplated  
27 business transaction reviewed under subdivision (4)(b) of this section  
28 that results in the entity no longer qualifying under section 414(d) of  
29 the Internal Revenue Code:

30 (i) The board shall notify the entity that it no longer qualifies  
31 under section 414(d) of the Internal Revenue Code within ten business

1 days after the determination;

2 (ii) The affected plan members shall be immediately considered fully  
3 vested;

4 (iii) The affected plan members shall become inactive within ninety  
5 days after the board's determination;

6 (iv) The entity shall pay to the County Employees Retirement Fund an  
7 amount equal to any funding obligation;

8 (v) The entity shall pay to the County Employees Cash Balance  
9 Retirement Expense Fund an amount equal to any administrative costs  
10 incurred by the board or the Nebraska Public Employees Retirement Systems  
11 in connection with the entity's removal from the retirement system; and

12 (vi) The entity shall pay directly to the board's contracted actuary  
13 an amount equal to the cost of any actuarial study necessary to aid the  
14 board in determining the amount of such funding obligation, if not  
15 previously paid.

16 (d) For purposes of this subsection:

17 (i) Business transaction means a merger; consolidation; sale of  
18 assets, equipment, or facilities; termination of a division, department,  
19 section, or subgroup of the entity; or any other business transaction  
20 that results in termination of some or all of the entity's workforce; and

21 (ii) Funding obligation means the financial liability of the  
22 retirement system to provide benefits for the affected plan members  
23 incurred by the retirement system due to the entity's business  
24 transaction calculated using the methodology and assumptions recommended  
25 by the board's contracted actuary and approved by the board. The  
26 methodology and assumptions used must be structured in a way that ensures  
27 the entity is financially liable for all the costs of the entity's  
28 business transaction, and the retirement system is not financially liable  
29 for any of the cost of the entity's business transaction.

30 (e) The board may adopt and promulgate rules and regulations to  
31 carry out this subsection including, but not limited to, the methods of

1 notifying the board of pending business transactions, the acceptable  
2 methods of payment, and the timing of such payment.

3 (5) Within the first one hundred eighty days of employment, a full-  
4 time employee may apply to the board for vesting credit for years of  
5 participation in another Nebraska governmental plan, as defined by  
6 section 414(d) of the Internal Revenue Code. During the years of  
7 participation in the other Nebraska governmental plan, the employee must  
8 have been a full-time employee, as defined in the Nebraska governmental  
9 plan in which the credit was earned. The board may adopt and promulgate  
10 rules and regulations governing the assessment and granting of vesting  
11 credit.

12 (6) Any employee who qualifies for membership in the retirement  
13 system pursuant to this section may not be disqualified from membership  
14 in the retirement system solely because such employee also maintains  
15 separate employment which qualifies the employee for membership in  
16 another public retirement system, nor may membership in this retirement  
17 system disqualify such an employee from membership in another public  
18 retirement system solely by reason of separate employment which qualifies  
19 such employee for membership in this retirement system.

20 (7) A full-time or part-time employee of a city, village, or  
21 township who becomes a county employee pursuant to a merger of services  
22 shall receive vesting credit for his or her years of participation in a  
23 Nebraska governmental plan, as defined by section 414(d) of the Internal  
24 Revenue Code, of the city, village, or township.

25 (8) A full-time or part-time employee of a city, village, fire  
26 protection district, or township who becomes a municipal county employee  
27 shall receive credit for his or her years of employment with the city,  
28 village, fire protection district, or township for purposes of the  
29 vesting provisions of this section.

30 (9) A full-time or part-time employee of the state who becomes a  
31 county employee pursuant to transfer of assessment function to a county

1 shall not be deemed to have experienced a termination of employment and  
2 shall receive vesting credit for his or her years of participation in the  
3 State Employees Retirement System of the State of Nebraska.

4 (10) Counties shall ensure that employees authorized to participate  
5 in the retirement system pursuant to this section shall enroll and make  
6 required contributions to the retirement system immediately upon becoming  
7 an employee. Information necessary to determine membership in the  
8 retirement system shall be provided by the employer.

9 Sec. 2. Section 23-2320, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 23-2320 (1) Prior to January 1, 2020, except ~~Except~~ as otherwise  
12 provided in this section, a member of the retirement system who has a  
13 five-year break in service shall upon reemployment be considered a new  
14 employee with respect to the County Employees Retirement Act and shall  
15 not receive credit for service prior to his or her reemployment date.

16 (2)(a) A member who ceases to be an employee before becoming  
17 eligible for retirement under section 23-2315 and again becomes a  
18 permanent full-time or permanent part-time county employee prior to  
19 having a five-year break in service shall immediately be reenrolled in  
20 the retirement system and resume making contributions. For purposes of  
21 vesting employer contributions made prior to and after the reentry into  
22 the retirement system under subsection (3) of section 23-2319, years of  
23 participation include years of participation prior to such employee's  
24 original termination. For a member who is not vested and has received a  
25 termination benefit pursuant to section 23-2319, the years of  
26 participation prior to such employee's original termination shall be  
27 limited in a ratio equal to the amount that the member repays divided by  
28 the termination benefit withdrawn pursuant to section 23-2319.

29 (b) The reemployed member may repay the value of, or a portion of  
30 the value of, the termination benefit withdrawn pursuant to section  
31 23-2319. A reemployed member who elects to repay all or a portion of the

1 value of the termination benefit withdrawn pursuant to section 23-2319  
2 shall repay the actual earnings on such value. Repayment of the  
3 termination benefit shall commence within three years of reemployment and  
4 shall be completed within five years of reemployment or prior to  
5 termination of employment, whichever occurs first, through (i) direct  
6 payments to the retirement system, (ii) installment payments made  
7 pursuant to a binding irrevocable payroll deduction authorization made by  
8 the member, (iii) an eligible rollover distribution as provided under the  
9 Internal Revenue Code, or (iv) a direct rollover distribution made in  
10 accordance with section 401(a)(31) of the Internal Revenue Code.

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

17 (3) For a member who retired pursuant to section 23-2315 and becomes  
18 a permanent full-time employee or permanent part-time employee with a  
19 county under the County Employees Retirement Act more than one hundred  
20 twenty days after his or her retirement date, the member shall continue  
21 receiving retirement benefits. Such a retired member or a retired member  
22 who received a lump-sum distribution of his or her benefit shall be  
23 considered a new employee as of the date of reemployment and shall not  
24 receive credit for any service prior to the member's retirement for  
25 purposes of the act.

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

1 under subdivision (2)(b) of section 23-2319.01.

2 (5) Beginning January 1, 2020, if a contributing member of the  
3 retirement system ceases to be an employee and returns to service in any  
4 capacity with any county under the County Employees Retirement Act prior  
5 to having a one-hundred-twenty-day break in service, the member:

6 (a) Shall not be deemed to have had a bona fide separation of  
7 service;

8 (b) Shall be immediately reenrolled in:

9 (i) The defined contribution benefit if the member was contributing  
10 to the defined contribution benefit prior to ceasing employment; or

11 (ii) The cash balance benefit in which the member was participating  
12 prior to ceasing employment if the member was contributing to the cash  
13 balance benefit prior to ceasing employment;

14 (c) Shall immediately resume making contributions;

15 (d) Shall make up any missed contributions based upon services  
16 rendered and compensation received;

17 (e) Shall have all distributions from the retirement system  
18 canceled; and

19 (f) Shall repay the gross distributions from the retirement system.

20 (6)(a) Beginning January 1, 2020, if a contributing member of the  
21 retirement system ceases to be an employee and returns to permanent full-  
22 time or permanent part-time service in any capacity with any county under  
23 the County Employees Retirement Act after having a one-hundred-twenty-day  
24 break in service, the member:

25 (i) Shall be immediately reenrolled in:

26 (A) The defined contribution benefit if the member was contributing  
27 to the defined contribution benefit prior to ceasing employment; or

28 (B) The cash balance benefit in which the member was participating  
29 prior to ceasing employment if the member was contributing to the cash  
30 balance benefit prior to ceasing employment;

31 (ii) Shall immediately resume making contributions;

1       (iii) Shall continue receiving any annuity elected after the member  
2 ceased employment and before the member was reemployed; and

3       (iv) Shall be prohibited from taking any distributions from the  
4 retirement system until the employee again terminates employment with any  
5 and all counties under the County Employees Retirement Act.

6       (b) For the purposes of vesting employer contributions made prior to  
7 and after reentry into the retirement system, the member's years of  
8 participation prior to the date the member originally ceased employment  
9 and the years of participation after the member is reenrolled in the  
10 retirement system shall be included as years of participation, except  
11 that if the member has taken a distribution, the years of participation  
12 prior to the date the member originally ceased employment shall be  
13 limited in a ratio equal to the value of the distribution that the member  
14 repays divided by the total value of the distribution taken as described  
15 in subdivision (6)(c) of this section.

16       (c) A reemployed member may repay all or a portion of the value of a  
17 distribution except for an annuity elected after the member ceased  
18 employment and before the member was reemployed. Repayment of such a  
19 distribution shall commence within three years after reemployment and  
20 shall be completed within five years after reemployment or prior to the  
21 member again ceasing employment, whichever occurs first, through (i)  
22 direct payments to the retirement system, (ii) installment payments made  
23 pursuant to a binding irrevocable payroll deduction authorization made by  
24 the member, (iii) an eligible rollover distribution as provided under the  
25 Internal Revenue Code, or (iv) a direct rollover distribution made in  
26 accordance with section 401(a)(31) of the Internal Revenue Code. If the  
27 member fails to repay all of the value of such a distribution prior to  
28 the member again ceasing employment, the member shall be forever barred  
29 from repaying the value of such a distribution taken between the periods  
30 of employment. The value of the member's forfeited employer account or  
31 employer cash balance account, as of the date of forfeiture, shall be

1 restored in a ratio equal to the amount of the distribution repaid by the  
2 member divided by the amount of the distribution taken. The employer  
3 account or employer cash balance account shall be restored first out of  
4 the current forfeiture amounts and then by additional employer  
5 contributions.

6 Sec. 3. Section 84-1307, Revised Statutes Cumulative Supplement,  
7 2018, is amended to read:

8 84-1307 (1) The membership of the retirement system shall be  
9 composed of all persons who are or were employed by the State of Nebraska  
10 and who maintain an account balance with the retirement system.

11 (2) The following employees of the State of Nebraska are authorized  
12 to participate in the retirement system: (a) All permanent full-time  
13 employees who have attained the age of eighteen years shall begin  
14 participation in the retirement system upon employment; and (b) all  
15 permanent part-time employees who have attained the age of eighteen years  
16 may exercise the option to begin participation in the retirement system  
17 within the first thirty days of employment. An employee who exercises the  
18 option to begin participation in the retirement system pursuant to this  
19 section shall remain in the retirement system until his or her  
20 termination of employment or retirement, regardless of any change of  
21 status as a permanent or temporary employee.

22 (3) On and after July 1, 2010, no employee shall be authorized to  
23 participate in the retirement system provided for in the State Employees  
24 Retirement Act unless the employee (a) is a United States citizen or (b)  
25 is a qualified alien under the federal Immigration and Nationality Act, 8  
26 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is  
27 lawfully present in the United States.

28 (4) For purposes of this section, (a) permanent full-time employees  
29 includes employees of the Legislature or Legislative Council who work  
30 one-half or more of the regularly scheduled hours during each pay period  
31 of the legislative session and (b) permanent part-time employees includes

1 employees of the Legislature or Legislative Council who work less than  
2 one-half of the regularly scheduled hours during each pay period of the  
3 legislative session.

4 (5)(a) Within the first one hundred eighty days of employment, a  
5 full-time employee may apply to the board for vesting credit for years of  
6 participation in another Nebraska governmental plan, as defined by  
7 section 414(d) of the Internal Revenue Code. During the years of  
8 participation in the other Nebraska governmental plan, the employee must  
9 have been a full-time employee, as defined in the Nebraska governmental  
10 plan in which the credit was earned. The board may adopt and promulgate  
11 rules and regulations governing the assessment and granting of vesting  
12 credit.

13 (b) If the contributory retirement plan or contract let pursuant to  
14 section 48-609, as such section existed prior to January 1, 2018, is  
15 terminated, employees of the Department of Labor who are active  
16 participants in such contributory retirement plan or contract on the date  
17 of termination of such plan or contract shall be granted vesting credit  
18 for their years of participation in such plan or contract.

19 (6) Any employee who qualifies for membership in the retirement  
20 system pursuant to this section may not be disqualified for membership in  
21 the retirement system solely because such employee also maintains  
22 separate employment which qualifies the employee for membership in  
23 another public retirement system, nor may membership in this retirement  
24 system disqualify such an employee from membership in another public  
25 employment system solely by reason of separate employment which qualifies  
26 such employee for membership in this retirement system.

27 (7) State agencies shall ensure that employees authorized to  
28 participate in the retirement system pursuant to this section shall  
29 enroll and make required contributions to the retirement system  
30 immediately upon becoming an employee. Information necessary to determine  
31 membership in the retirement system shall be provided by the employer.

1           Sec. 4. Section 84-1322, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           84-1322 (1) Prior to January 1, 2020, except ~~Except~~ as otherwise  
4 provided in this section, a member of the retirement system who has a  
5 five-year break in service shall upon reemployment be considered a new  
6 employee with respect to the State Employees Retirement Act and shall not  
7 receive credit for service prior to his or her reemployment date.

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

23           (b) The reemployed member may repay the value of, or a portion of  
24 the value of, the termination benefit withdrawn pursuant to section  
25 84-1321. A reemployed member who elects to repay all or a portion of the  
26 value of the termination benefit withdrawn pursuant to section 84-1321  
27 shall repay the actual earnings on such value. Repayment of the  
28 termination benefit shall commence within three years after reemployment  
29 and shall be completed within five years after reemployment or prior to  
30 termination of employment, whichever occurs first, through (i) direct  
31 payments to the retirement system, (ii) installment payments made

1 pursuant to a binding irrevocable payroll deduction authorization made by  
2 the member, (iii) an eligible rollover distribution as provided under the  
3 Internal Revenue Code, or (iv) a direct rollover distribution made in  
4 accordance with section 401(a)(31) of the Internal Revenue Code.

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

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

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

26 (5) Beginning January 1, 2020, if a contributing member of the  
27 retirement system ceases to be an employee and returns to service in any  
28 capacity with the state prior to having a one-hundred-twenty-day break in  
29 service, the member:

30 (a) Shall not be deemed to have had a bona fide separation of  
31 service;

1       (b) Shall be immediately reenrolled in:

2       (i) The defined contribution benefit if the member was contributing  
3 to the defined contribution benefit prior to ceasing employment; or

4       (ii) The cash balance benefit in which the member was participating  
5 prior to ceasing employment if the member was contributing to the cash  
6 balance benefit prior to ceasing employment;

7       (c) Shall immediately resume making contributions;

8       (d) Shall make up any missed contributions based upon services  
9 rendered and compensation received;

10       (e) Shall have all distributions from the retirement system  
11 canceled; and

12       (f) Shall repay the gross distributions from the retirement system.

13       (6)(a) Beginning January 1, 2020, if a contributing member of the  
14 retirement system ceases to be an employee and returns to permanent full-  
15 time or permanent part-time service in any capacity with the state after  
16 having a one-hundred-twenty-day break in service, the member:

17       (i) Shall be immediately reenrolled in:

18       (A) The defined contribution benefit if the member was contributing  
19 to the defined contribution benefit prior to ceasing employment; or

20       (B) The cash balance benefit in which the member was participating  
21 prior to ceasing employment if the member was contributing to the cash  
22 balance benefit prior to ceasing employment;

23       (ii) Shall immediately resume making contributions;

24       (iii) Shall continue receiving any annuity elected after the member  
25 ceased employment and before the member was reemployed; and

26       (iv) Shall be prohibited from taking any distributions from the  
27 retirement system until the employee again terminates employment with the  
28 state.

29       (b) For the purposes of vesting employer contributions made prior to  
30 and after reentry into the retirement system, the member's years of  
31 participation prior to the date the member originally ceased employment

1 and the years of participation after the member is reenrolled in the  
2 retirement system shall be included as years of participation, except  
3 that if the member has taken a distribution, the years of participation  
4 prior to the date the member originally ceased employment shall be  
5 limited in a ratio equal to the value of the distribution that the member  
6 repays divided by the total value of the distribution taken as described  
7 in subdivision (6)(c) of this section.

8 (c) A reemployed member may repay all or a portion of the value of a  
9 distribution except for an annuity elected after the member ceased  
10 employment and before the member was reemployed. Repayment of such a  
11 distribution shall commence within three years after reemployment and  
12 shall be completed within five years after reemployment or prior to the  
13 member again ceasing employment, whichever occurs first, through (i)  
14 direct payments to the retirement system, (ii) installment payments made  
15 pursuant to a binding irrevocable payroll deduction authorization made by  
16 the member, (iii) an eligible rollover distribution as provided under the  
17 Internal Revenue Code, or (iv) a direct rollover distribution made in  
18 accordance with section 401(a)(31) of the Internal Revenue Code. If the  
19 member fails to repay all of the value of such a distribution prior to  
20 the member again ceasing employment, the member shall be forever barred  
21 from repaying the value of such a distribution taken between the periods  
22 of employment. The value of the member's forfeited employer account or  
23 employer cash balance account, as of the date of forfeiture, shall be  
24 restored in a ratio equal to the amount of the distribution repaid by the  
25 member divided by the amount of the distribution taken. The employer  
26 account or employer cash balance account shall be restored first out of  
27 the current forfeiture amounts and then by additional employer  
28 contributions.

29 Sec. 5. Sections 2, 4, and 6 of this act become operative on  
30 January 1, 2020. The other sections of this act become operative on their  
31 effective date.

1           Sec. 6.   Original sections 23-2320 and 84-1322, Reissue Revised  
2 Statutes of Nebraska, are repealed.

3           Sec. 7.   Original sections 23-2306 and 84-1307, Revised Statutes  
4 Cumulative Supplement, 2018, are repealed.