

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB147

Hearing Date: Tuesday February 23, 2021
Committee On: Nebraska Retirement Systems
Introducer: Kolterman
One Liner: Change provisions relating to retirement systems for Class V school districts

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 4 Senators Kolterman, Lindstrom, McDonnell, Stinner
Nay:
Absent:
Present Not Voting: 2 Senators Clements, Slama

Oral Testimony:

Proponents:

Senator Mark Kolterman
Cheryl Logan
Robert Miller

Representing:

Introducer
Omaha Public Schools
OEA, NSEA

Opponents:

Walta Sue Dodd

Representing:

OEA-Retirement

Neutral:

Randy Gerke

Representing:

NPERS, PERB

Summary of purpose and/or changes:

LB 147 as introduced establishes the transfer of duties and responsibilities for management of the Class V retirement system to the Public Employees Retirement Board effective September 1, 2023. It describes planning and tasks that must be completed to accomplish the transition and transfer and identifies the school district of the Class V retirement system as the party responsible to pay all related costs of the Public Employees Retirement Board for its services and expenses related to the transfer of management.

The bill clarifies that the Class V school district remains solely financially responsible and liable for all funding requirements of the Class V retirement system during the transition and after the transfer of management to the Public Employees Retirement Board occurs. LB 147 specifies that the State of Nebraska, the Public Employees Retirement Board and the Nebraska Public Employees Retirement System are not liable for any of the funding obligations of the Class V retirement system, and that beginning September 1, 2023, the State of Nebraska, the Public Employees Retirement Board, and the Nebraska Public Employees Retirement Systems are indemnified and held harmless by the Class V school district from any and all liabilities related to the board of trustees, the Class V board of education, or the Class V school district duties and responsibilities for the retirement system under the Act until September 1, 2023. A member of the Class V retirement

system must be appointed to the Public Employees Retirement Board beginning September 1, 2023.

Explanation of amendments:

AM 926 incorporates LB 145 as amended, LB 146 as introduced, and LB 582 as amended into LB 147 as amended by the Committee.

LB 147

LB 147 as amended delays the transfer of management one year until September 1, 2024 to allow completion of the compliance audit of the Class V retirement system in 2021 and for completion of annual audits in 2022 and 2023 by the Auditor of Public Accounts. Duties before and after the date of transfer are further clarified. Completion of a transition and transfer management agreement among the school district, the board of education, the board of trustees and the Public Employees Retirement Board is required by December 31, 2021 and copies of such agreement must be provided to the Nebraska Retirement Systems Committee and to the Governor. Liability language is amended to require that at all times and under all circumstances the school district remains solely liable for the funding obligations of the Class V retirement system. Additional reporting requirements from the school district to the Public Employees Retirement Board are included. The representative appointed to the Public Employees Retirement Board must be a teacher. Membership of the Class V retirement system appointee will begin on the new date of transfer of management, September 1, 2024.

LB 145

Motion to amend LB 145. Vote results 6-0-0-0. Voting Aye: Senators Clements, Kolterman, Lindstrom, McDonnell, Slama, Stinner.

Motion to include LB 145 as amended as part of the Committee Amendment to LB 147. Vote results 6-0-0-0. Voting Aye: Senators Clements, Kolterman, Lindstrom, McDonnell, Slama, Stinner.

Oral Testimony

Proponents: Dr. Cheryl Logan, Omaha Public Schools

Robert Miller, Omaha Education Association and Nebraska State Education Association

Opponents: Walta Sue Dodd, OEA-Retirees

Neutral: Orron Hill, Public Employees Retirement Board, Nebraska Public Employees Retirement Systems

Russ Karpisek, Auditor of Public Accounts

Submitted Written Testimony

Proponents: John Peetz, Omaha School Employees Retirement System

Opponents: None

Neutral: None

LB 145 as introduced requires three additional areas of evaluation prior to transfer of management. An audit must be conducted by the Auditor of Public Accounts on the current Class V School Employees Retirement System and completed on an unspecified date in 2021.

A legal compliance audit must be completed on the current Class V School Employees Retirement System on an unspecified date in 2021, which includes examination of the records and policies of the board of trustees, the board of education, and the school district related to the administration and operation of the retirement system to determine compliance with all state and federal laws.

The Public Employees Retirement Board and the Nebraska Public Employees Retirement System staff are required to conduct further examination of issues related to the transfer of management that have emerged since the June 30, 2020 completion and report of the Work Plan to the Nebraska Retirement Systems Committee. The Public Employees Retirement

Board is authorized to bill the school district of the Class V retirement system for its additional management and transfer examination costs and expenses.

The cost of conducting the audit by the Auditor of Public Accounts and the cost of the legal compliance audit are paid by the Class V School Employees Retirement System. The Nebraska Retirement Systems Committee will hold public hearings on the completed compliance audit and the audit conducted by the Auditor of Public Accounts.

LB 145 as amended and incorporated into LB 147, requires the compliance audit to be completed by November 15, 2021. The first annual audit conducted by the State Auditor is delayed one year and is due July 1, 2022. The Public Employees Retirement Board and Nebraska Public Employees Retirement System staff examination is limited to issues related to maintaining the transferred retirement system plan's status as a qualified plan and Public Employees Retirement Board's related fiduciary duties and responsibilities.

LB 146

Motion to incorporate LB 146 as introduced into LB 147. Vote results 6-0-0-0. Voting Aye: Senators Clements, Kolterman, Lindstrom, McDonnell, Slama, Stinner.

Oral Testimony

Proponents: Dr. Cheryl Logan, Omaha Public Schools

Colby Coash, Nebraska Association of School Boards, Nebraska Rural Community Schools Association, Nebraska Council of School Administrators

Opponents: Walta Sue Dodd, OEA-Retirees

Neutral: Randy Gerke, Public Employees Retirement Board, Nebraska Public Employees Retirement Systems

Orron Hill, Public Employees Retirement Board, Nebraska Public Employees Retirement Systems

Submitted Written Testimony

Proponents: John Peetz, Omaha School Employees Retirement System

Jason Hayes, Nebraska State Education Association

Opponents: None

Neutral: None

LB 146 adds definitions to the Class V School Employees Retirement Act to clarify membership eligibility in the Class V plan and to define termination of employment which establishes limitations on service that can be provided during the 180-day period following termination or retirement to ensure that a bona fide separation of service has occurred.

The definition of termination of employment codifies current Class V school district guidelines regarding re-employment during the 180-day period which allows voluntary unpaid bona fide service without limitation. Temporary service is allowed after a 30-day waiting period following termination if it is to accomplish a specific purpose or task - not to exceed one year. Substitute service is allowed on an intermittent basis which is defined as no more than 8 service days during a calendar month.

LB 146 also provides specificity to the definition of termination of employment in the School Employees Retirement Act by defining intermittent service as no more than 8 service days in a calendar month.

LB 582

Motion to amend LB 582. Vote results 6-0-0-0. Voting Aye: Senators Clements, Kolterman, Lindstrom, McDonnell, Slama, Stinner.

Motion to include LB 582 as amended as part of the Committee Amendment to LB 147. Vote results 6-0-0-0. Voting Aye:

Senators Clements, Kolterman, Lindstrom, McDonnell, Slama, Stinner.

Oral Testimony

Proponents: Dr. Cheryl Logan, Omaha Public Schools

Robert Miller, Omaha Education Association, Nebraska State Education Association

Opponents: Walta Sue Dodd, OEA-Retirees

Neutral:

Submitted Written Testimony

Proponents: None

Opponents: None

Neutral: John Peetz, Omaha School Employees Retirement System

As introduced, LB 582 terminates the board of trustees' authority to administer the Class V retirement system and reinstates the board of education authority to administer the retirement system beginning on an unspecified date. It also terminates the current board of trustees on an unspecified date and requires the board of education to appoint a new board of trustees which includes the superintendent, one active member of the retirement system, one annuitant, two businesspersons with financial experience who are not members of the retirement system and an undesignated number of school board members.

The new board of trustees is directed to facilitate the transition and transfer of management to the Public Employees Retirement Board on September 1, 2023.

As amended and incorporated into LB 147, the current board of trustees' membership will terminate on July 1, 2021 and on that date, the new members of the board of trustees appointed by the board of education will begin serving and the board of education's authority to administer begins. As amended, the board of trustees specifies two school board members, and two members of the retirement system who may be either active or retired, one of retirement system members must be a teacher. The board of education's authority to administer the plan and board of trustees is delayed one year and will terminate September 1, 2024 when management of the retirement system is transferred to the Public Employees Retirement Board.

Section-by-Section of AM 926

Sec. 1 Amends 72-1237 specifies that Nebraska Public Employees Retirement System director ex officio non-voting Council member will also represent the Class V plan when the transfer occurs [Pages 1-2]

Sec. 2 Amends 72-1249.02 [LB 147] clarifies the Public Employees Retirement Board does not have authority to approve pro rata share of the Council's budget which is charged to the Class V School Employees Retirement Fund [Pages 2-3]

School Employees Retirement Act

Sec. 3 Amends 79-902 definitions [LB 146] termination of employment describes allowable substitute and bona fide unpaid voluntary service during the 180-day period following termination. Intermittent is defined as service provided on a day-to-day basis that is not greater than eight days of service during a calendar month, and day of service is defined as any length of substitute service or unpaid voluntary service provided during a single calendar day [Pages 3-14]

Sec. 4 Amends 79-916 [LB 147] clarifies that state funds are transferred to the school district for deposit in the retirement system, including State Service Annuity transfers [Pages 14-16]

Sec. 5 Amends 79-966 [LB 147] clarifies that state funds are transferred to the school district for deposit in the retirement system [Pages 16-18]

Sec. 6 Amends 79-972.01 [LB 147] authorizes the creation of sub-funds [Pages 18-19]

Class V School Employees Retirement Act

Sec. 7 Amends 79-978 definitions. Current definitions amended include actuarial table, audit year, board of education, early retirement inducement, employee, retirement date, solvency, and state investment officer. Adds new definitions for administrator, board, board of trustees, participation, retirement application, retirement board, school district, termination of employment, and transfer of management. Several definitions are defined as follows:

[LB 582] board is the board of trustees until July 1, 2016 and beginning July 1, 2016 until September 1, 2024, the board of education

[LB 582] board of trustee establishes the board of education as the successor in interest for all liability for actions and inactions of board of trustees after transfer of management to the Public Employees Retirement Board on September 1, 2024

[LB 146] employee specifies that teachers and administrators employed on a written contract basis are eligible to be members of the retirement plan regardless of number of hours worked in a week, and all regular employees who are hired on a full-time basis to work at least 30 hours a week

[LB 146] regular employee is defined as a person hired on a full-time to work at least 30 hours a week who is not a teacher or administrator employed on a written contract basis. Beginning September 1, 2021 any person who provides service an average of 30 hours or more per week in each calendar month of any three calendar months of a fiscal year becomes a regular employee and a member of the retirement plan

[LB 146] termination of employment definition added specifying bona fide unpaid voluntary service and temporary service are allowed during the 180-day period following termination or retirement and temporary service is allowed after 30 calendar days following termination if it is provided to accomplish a specific purpose or task for a limited period not to exceed one year. Intermittent is defined as service provided on a day-to-day basis that is not greater than eight days of service during a calendar month, and day of service is defined as any length of substitute service or unpaid voluntary service provided during a single calendar day.

[LB 147] transfer of management definition added specifies that transfer of management does not include an transfer of financial liability and funding obligation to the State of Nebraska and transfer of management specifically does not include a merger of the Class V retirement system with School Employees Retirement System or with any other system administered by the Public Employees Retirement Board [Pages 19-29]

Sec. 8 Amends 79-978.01 new sections 16, 17, 37, 38, 39, and 43 are incorporated into the Act

Sec. 9 Amends 79-979 [LB 146] changes regular employee to reflect terms as amended [Pages 29-30]

Sec. 10 Amends 79-980 [LBs 147 and 582] the current members of the board of trustees administer the retirement system until July 1, 2021 when the current board terminates. Beginning July 1, 2021 the board of education administers the retirement system and appoints all new board of trustee members, which specifically includes a teacher, two school board members, two businesspersons and the superintendent who serve until management is transferred to the Public Employee Retirement effective September 1, 2024. Same provisions apply If there is more than one Class V school district. [Pages 30-39]

Sec. 11 Amends 79-981 [LBs 147 and 582] describes duties of board of trustees until July 1, 2021, and duties of board of education beginning July 1, 2021 until September 1, 2024. Beginning September 1, 2024, the person appointed by the Public Employees Retirement Board pursuant to 84-1503 becomes the administrator of Class V retirement system [Pages 39-41]

Sec. 12 Amends 79-982 [LB 582] describes duties regarding meetings and supervision of staff for board of trustees and adds duty to facilitate transfer of management of the retirement system to the Public Employees Retirement Board. [Pages 41-42]

Sec. 13 Amends 79-982.01 [LB 582] the board of trustees and beginning July 1, 2021 also the board of education until September 1, 2024 are deemed fiduciaries [Pages 42-44]

Sec. 14 Amends 79-982.02 [LB 582] specifies that administration of the retirement system by the Public Employees Retirement Board does not include investment responsibilities nor financial responsibility or liability for funding obligations of the retirement system [Pages 44-46]

Sec 15 Amends 79-983 [LB 582] specifies appointment and duties of the administrator which includes supervision of retirement system staff and maintenance of records. The retirement system reimburses the school district for administrator and staff salaries, employment taxes and benefits. Beginning September 1, 2024, the administrator and staff positions terminate, and the Class V administrator is the director appointed by the Public Employees Retirement Board pursuant to 84-1503 [Pages 46-47]

Sec. 16 [LB 147] Requires the board of trustees, board of education, school district and the Public Employees Retirement Board to enter into transition and transfer of management plan agreement no later than December 31, 2021. A copy of the agreement must be provided to the Retirement Committee and to the Governor. Also requires the Class V entities to timely provide all records and data requested by the Public Employees Retirement Board related to the transfer. Requires the school district to pay all Public Employees Retirement Board management transfer fees, costs and expenses through August 31, 2025.

The Public Employees Retirement Board must complete the work necessary for the transfer no later than September 1, 2024, except for information technology stabilization work performed until September 1, 2025 and is authorized to enter into contracts, and access and copy administrative and computer systems and records of the Class V retirement system [Pages 47-49]

Sec. 17 [LB 147] Beginning September 1, 2024, the school district indemnifies and holds harmless, the State, Public Employees Retirement Board and Nebraska Public Employees Retirement System from all liabilities, claims, suits, losses, damages, and costs related to the conduct, actions, decisions, or inaction of the board of trustees, board of education, or school district performing their respective duties and responsibilities related to the retirement system

The school district of a Class V retirement system remains, at all times, and in all circumstances, solely liable for all funding obligations and responsibilities as described in the act. At no time, and under no circumstances, are the State of Nebraska, Public Employees Retirement Board, Nebraska Public Employees Retirement System, other state entities or officers, employees and assigns of such state entities with duties related to the Class V retirement system liable for any funding obligations of the Class V School Employees Retirement System

The State of Nebraska, Public Employees Retirement Board and Nebraska Public Employees Retirement System are not liable for acts or omissions prior to September 1, 2024, in the administration of the Class V retirement system made at the direction of or by the board of trustees or its employees, the school district or its employees and the board of education

Members of board of trustees, board of education or Public Employees Retirement Board not personally liable for retirement duties except in cases of willful dishonesty, gross negligence, or intentional violation of the law. Except as provided, the school district is not liable for acts or omissions in the administration of the Class V retirement system made at the direction of the Public Employees Retirement Board or staff on or after September 1, 2024 [Pages 49-50]

Sec 18 Amends 79-984 [LB 147] Describes which entity contracts with the actuary. Beginning September 1, 2024, the Public Employees Retirement Board selects the actuary for the Class V retirement system [Pages 50-51]

Sec 19 Amends 79-985 [LB 147] Until September 1, 2024, the board contracts for attorney services. Beginning September 1, 2024, the Public Employee Retirement Board hires the attorney pursuant to 84-1503 and specifies attorney retained by such Board advises regarding Class V retirement system [Page 51]

Sec 20 Amends 79-986 describes the State Treasurer's duties after management is transferred on September 1, 2024 [Pages 51-53]

Sec 21 Amends 79-987 [LB 145] Beginning January 1, 2022 the Auditor of Public Accounts conducts an annual audit and completes it by July 1 of each year. The cost is charged to the Class V retirement system and describes which entities must receive copies. At the request of the Nebraska Retirement Systems Committee the audit report must be presented at a public hearing. [Pages 53-55]

Sec 22 Amends 79-989 [LB 147] Describes school district recordkeeping responsibilities. Beginning September 2024, the Nebraska Public Employees Retirement System director becomes the recordkeeper, must maintain records of Class V retirement system members, carry out testing procedures to verify information, and implement an employer education program [Pages 55-57]

Sec 23 Beginning January 1, 2023 every Class V employee contract of employment must specify start and end dates of the contract and that the contract is subject to the Class V Retirement Act [Page 57]

Sec 24 Amends 79-990 [LB 582] describes payments of military service credit duties [Pages 57-59]

Sec 25 Amends 79-991 [LB 582] describes purchase of prior service credit duties [Pages 59-63]

Sec 26 Amends 79-992 [Amends 79-992] describes refund and repayment upon reemployment duties [Pages 63-65]

Sec 27 Amends 79-992.01 [LB 582] describes member and employer notification duties upon member's termination of employment and early retirement [Pages 65-67]

Sec 28 Amends 79-992.02 [LB 582] describes responsibilities for determination of fraudulent claims or benefit applications and penalty provisions [Page 67]

Sec 29 Amends 79-998 [LB 582] describes adoption of rules and regulations duties for rollover provisions [Pages 67-70]

Sec 30 Amends 79-9,102 [LB 582] describes authorities regarding suspension of annuity or other benefit to comply with limitations under IRC 415 [Pages 70-71]

Sec 31 Amends 79-9,103 [LB 582] describes authority for selection of a substitute index if CPI is discontinued [Pages 71-78]

Sec 32 Amends 79-9,105 [LB 582] describes authority for adoption of rules, regulations, or policies regarding disability determinations [Pages 78-81]

Sec 33 Amends 79-9,107 [LB 582] includes member of the Public Employees Retirement Board as additional persons who are not an endorser or surety or an obligor in any way of any money loaned or borrowed from the Class V retirement system [Pages 81-82]

Sec 34 Amends 79-9,108 [LB 582] clarifies that the Public Employees Retirement Board has no investment authority over retirement system funds following management transfer [Pages 82-83]

Sec 35 Amends 79-9,113 [LB 147] strikes obsolete language on employee contributions prior to school opting into social security. Specifies requirements regarding contributions from the school district paid to the Class V Fund following management transfer on September 1, 2024. [Pages 83-89]

Sec 36 Amends 79-9,115 [LB 147] prior to September 1, 2024 the school district provides accommodations and services to the Class V retirement system administrator and staff, and costs for such services are billed to the retirement system. Beginning September 1, 2024, benefits and annuities are paid as directed by the Public Employees Retirement Board. [Pages 89-90]

Sec. 37 [LB 145] Creates the Class V School Expense Fund beginning September 1, 2024, pro rata administrative expenses are then paid from this Fund for administration of the Class V retirement system by the Public Employees Retirement Board [Page 90]

Sec 38 [LB 147] Beginning September 1, 2024, directs the school district to withhold employee contributions on each payroll and transmit them to the Public Employees Retirement Board with other required information. A late fee may be assessed if information and money are delinquent. Clarifies timeliness is consistent with language in 79-9,113 regarding submittal of contributions [Pages 90-91]

Sec. 39 Beginning September 1, 2024 directs crediting of assets to various funds based on fund purpose. Available funds to be invested by State Investment Officer pursuant to investment acts [Page 91]

Sec 40 Amends 79-9,117 [LB 147] describes preretirement planning program duties after management transfer on September 1, 2024 [Pages 91-92]

Sec 41 Amends 79-9,122 [LBs 147 and 582] requires the school district to remit payments to the Management Transfer Work Plan Fund as described in section 79-9,121 for transition and transfer of management expenses incurred by the Public Employees Retirement Board [Pages 92-93]

Sec 42 Amends 79-9,123 [LB 147] authorizes board of trustees to bill the school district for its expenses related to the transition and transfer of administration. Timing and manner of payment may be negotiated in the management transition and transfer plan agreement [Pages 93-94]

Sec 43 [LB 145] requires board of trustees to conduct a compliance audit to ensure compliance with all state and federal laws. Lists specific subject areas which must be included. Requires all entities to provide compliance auditors with requested documents and access to all personnel with duties related to retirement system. All compliance audit expenses charged to the retirement system. Compliance audit completed by November 15, 2021 and must be presented to the Nebraska Retirement Systems Committee at a public hearing. Copies of the compliance audit report must be provided to listed entities [Pages 94-97]

Sec 44 Amends 84-712.02 [LB 147] Public Records Act is amended to exempt Class V retirement system records the school district submits to the Public Employees Retirement Board [Pages 97-103]

Public Employees Retirement Board

Sec 45 Amends 84-1501 [LB 147] beginning September 1, 2024, Public Employees Retirement Board increases to nine members, which includes appointed Class V retirement system teacher [Pages 103-106]

Sec 46 Amends 84-1503 [LB 147] beginning September 1, 2024, the Board has duty to administer the Class V retirement system. Adds Board authority and duties to carry out necessary actions for Class V retirement system transition and transfer of management [Pages 106-113]

Adds an inseverability clause and the emergency clause

Mark Kolterman, Chairperson