

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB198

Hearing Date: Thursday February 23, 2023
Committee On: Nebraska Retirement Systems
Introducer: McDonnell
One Liner: Provide for a return to work and authorize contributions under the School Employees Retirement Act and the Class V School Employees Retirement Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Clements, Conrad, Hardin, Ibach, McDonnell, Vargas
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:
Mike McDonnell
Jason Hayes

Jake Curtiss
Morgan Kreiser

Opponents:

Neutral:
Randy Gerke

Representing:
Introducer
Nebraska State Education Association, Nebraska Council of School Administrators, Nebraska Association of School Boards, Greater Nebraska Schools Association, Schools Taking Action for Children
NCSA
Omaha School Employee's Retirement System, Omaha Public Schools

Representing:

Representing:
NPERS

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

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Overview

LB 198 rewrites the definition of "termination" for NPERS School Plan members (Section 79-902 (45) – Section 2 of the bill) to allow members who have not submitted a retirement application or received benefits (new Section 3 in the bill) to not be categorized as terminated. Under current law, a "terminated" member is prohibited from reemployment

for 180 days with exceptions for intermittent substitute service. The substitute service is limited to 8 days per month under current law.

A new Section 3 of LB 198 provides that a member who does not file a retirement application and who has not received a distribution or retirement benefit may provide temporary or substitute services to a member employer within the 180 day limitation. Such service is not limited to 8 days per month. During this period the employee does not contribute to the retirement plan and does not accrue service credit.

Section 4 of the bill makes similar changes for members represented by the State Code Agency Teachers in section 79-920 and Section 6 of the bill also makes the changes for the Class V School Retirement Act (OSERS) members by rewriting section 79-978(42) and new language in section 79-992(2), subsections (c) and (d).

Section by section

Section 1: Amends section 79-901 to include the new Section 3 of the bill in the title section of the School Employees Retirement Act.

Section 2: Amends section 79-902, which provides definitions for the NPERS School plan, by rewriting the definition of "termination" in subsection (45) to exclude a member who complies with the return to work provisions contained in the new Section 3 of the bill.

Section 3: A new section that provides language (including the limitations) for those members deemed terminated and those deemed not terminated. A member who does not apply for or receive retirement benefits after separation from an employer is deemed not terminated and may return as a worker on a temporary or substitute basis. No contributions to the system are made and service credit does not accrue. Those applying or receiving benefits must abide by the 180 day separation and 8 day per month substitution limitation.

Section 4: Amends section 79-920, which addresses state teachers represented by the State Code Agency Teachers Association (SCATA), by allowing intermittent or substitute teaching pursuant to Section 3 of the bill.

Section 5: Amends section 79-955 by rewording various non substantive phrasings.

Section 6: Amends section 79-955, which provides definitions in the Class V School Employees Retirement Act, by rewriting the definition of "termination" in subsection (42) to exclude a member who complies with the return to work provisions contained in 79-992 (Section 7 of the bill).

Section 7: Amends section 79-992, which provides benefit language, for Class V school systems, by adding new subsections (c) and (d). These new subsections mirror Section 3 of the bill with subsection (c) applying to those deemed not terminated (not applying for or receiving benefits) and subsection (d) applying to those considered terminated.

Section 8: Repeals original sections.

Section 9: Emergency clause

Explanation of amendments:

Committee Amendment AM1391 adds LB 378 (as amended) to LB 198.

Motion to amend LB 198 with LB 378 as amended by AM1391:

Vote Results: 6-0

Voting Aye: Senators Clements, Conrad, Hardin, Ibach, McDonnell, Vargas

Voting Nay: None

Testifiers on LB 378

Proponents:

Senator Mike McDonnell, Legislative District #5

Orron Hill, NPERS

Opponents:

None

Neutral:

None

Submitted Written Testimony:

Proponents:

Heather Shepard, Elkhorn Public Schools

Opponents:

None

Neutral:

None

Explanation of amendments:

Committee Amendment AM1391 adds LB 378 (as amended) to LB 198.

Overview

LB 398 is in response to an Attorney General's opinion (#22-006/August 2022) requested by NPERS to clarify if the term "qualified alien" contained in current Nebraska statute is appropriate in light of the observation that the federal Immigration and Nationality Act does not use the term directly. Current statute provides that a retirement plan member must have a "lawful presence" in the United States. The opinion (in footnote 10), suggested current provisions in Arizona and Minnesota in lieu of the "qualified alien language. LB 398 is modeled after the Arizona statute. The proposal would provide a list of 10 documents that may be used to demonstrate "lawful presence" for purposes of retirement system participation.

Section by section

Section 1: Amends section 4-100(3), requiring a lawful presence to participate in state or school retirement plans, by striking language regarding citizenship or status as a qualified alien, and replacing the language with 10 documents, one of which must be provided to the employer. The employer maintains the record but makes available to NPERS upon request.

Section 2: Amends section 4-111, regarding the verification by the employer of lawful presence, by striking language requiring an attestation as to citizenship or being a qualified alien and replacing it with a requirement to maintain the records required in section 1.

Section 3: Amends section 23-2306(3), regarding Counties retirement plans, to replace citizenship of qualified alien status language with a list of 10 identification documents indicating lawful presence.

Section 4: Amends section 24-703.01, regarding the Judges retirement plan, to replace citizenship of qualified alien

status language with a list of 10 identification documents indicating lawful presence.

Section 5: Amends section 60-1304, regarding carrier enforcement participation in the Patrol retirement plan, by correcting a cross reference.

Section 6: Amends section 79-915(2), regarding citizenship or qualified alien status in the School retirement plan, to replace citizenship or qualified alien status language with a list of 10 identification documents indicating lawful presence and adding requirements that the employer maintain the record.

Section 7: Amends section 79-9,118, regarding citizenship or qualified alien status in the Class V School retirement plan, to replace citizenship or qualified alien status language with presentation of one of a list of 10 identification documents indicating lawful presence and require the employer to maintain the record.

Section 8: Amends section 81-2016(2), regarding citizenship or qualified alien status in the Patrol retirement plan, to replace citizenship or qualified alien status language with a list of 10 identification documents indicating lawful presence and adding requirements that the employer maintain the record.

Section 9: Amends section 84-1307(3), regarding citizenship or qualified alien status in the State retirement plan, to replace citizenship or qualified alien status language with a list of 10 identification documents indicating lawful presence and adding requirements that the employer maintain the record.

Section 10: Amends section 84-1504(8), regarding the State's deferred compensation program, by replacing citizenship or qualified alien status language with a list of 10 identification documents indicating lawful presence and adding requirements that the employer maintain the record.

Section 11: Repeals original sections.

Section 12: Emergency clause.

Changes to the original (green copy) LB 378 (contained in AM1391) include the following:

Most of these changes occur in every section (for each retirement plan). Any exception is noted.

1/ Reinserts " is a United State citizen or". This phrase is in current statute but was stricken in the green copy. Is combined with the "lawful presence" phrase. Appears in all sections.

2/ Prior to the list of acceptable documents, the phrase "which is unexpired , if applicable to the particular document" is added. This addition was suggested by the Revisor to compare to language in other areas of statute with a list of documentation. Appears in all sections but section 2 which does not contain a list of documents.

3/ Changes "Nebraska" to "state issued" as applied to driver's license and identification cards. This change was suggested to accommodate out of state or border state employees. Appears in all sections except section 2.

4/ Adds Permanent Resident Card (Form I-551) to the list and provides a catch all for additional documents as approved by the PERB. Appears in all sections with the list of documents. Section 7, which is the OSERS section, is a bit different as it has the catch all determined by the OSERs board of trustees until Sept '24 when NPERS takes over.

Mike McDonnell, Chairperson