

LEGISLATIVE BILL 350

Approved by the Governor April 5, 1991

Introduced by Horgan, 4; Hartnett, 45; Rasmussen, 20;
Will, 8

AN ACT relating to the retirement systems of Class V school districts; to amend sections 79-1035, 79-1037, 79-1051.01, and 79-1060, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1043, 79-1046, and 79-1048, Revised Statutes Supplement, 1990; to redefine terms; to provide for an administrator; to transfer duties; to change provisions relating to credit for military service; to provide a minimum number of payments for certain annuities; to change provisions relating to reduction of disability benefits and to investment of funds; to provide for payment of annuities and benefits pursuant to qualified domestic relations orders; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 79-1032, Revised Statutes Supplement, 1990, be amended to read as follows:

79-1032. For purposes of sections 79-1032 to 79-1060, unless the context otherwise requires:

(1) Retirement system or system shall mean the School Employees Retirement System of (corporate name of the school district as described in section 79-401) as provided for in sections 79-1032 to 79-1060;

(2) Board shall mean the board of education of the school district;

(3) Trustee shall mean the trustees provided for in section 79-1034;

(4) Employee shall mean the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not teachers, hired upon a full-time basis, which basis shall contemplate a work week of not less than thirty hours;

(5) Member shall mean any employee included in the membership of the retirement system or any former employee who has made contributions to the system and

has not received a refund;

(6) Annuitant shall mean any member receiving an allowance;

(7) Beneficiary shall mean any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Membership service shall mean service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the school district;

(9) Prior service shall mean service rendered prior to September 1, 1951, for which credit is allowed under section 79-1044, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-1043, 79-1045, 79-1049.02, 79-1049.03, and 79-1049.05;

(10) Creditable service shall mean the sum of the membership service and the prior service;

(11) Compensation shall mean salary or wages payable by the school district;

(12) Military service shall mean service in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard or any ~~women's~~ auxiliary thereof;

(13) Accumulated contributions shall mean the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(14) Regular interest shall mean interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c) at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during such the last preceding fiscal year;

(15) Retirement date shall mean the date of retirement of a member for service or disability as fixed by the board;

(16) Normal retirement date shall mean the end of the fiscal year month during which the member attains age sixty-five;

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

(18) Retirement allowance shall mean the total

annual retirement benefit payable to a member for service or disability;

(19) Annuity shall mean annual payments, for both prior service and membership service, for life as provided in sections 79-1032 to 79-1060;

(20) Actuarial tables shall mean:

(a) For retirement allowances at an early retirement date, a unisex mortality table using thirty percent of the male mortality and seventy percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually; and

(b) For joint and survivorship annuities, a unisex retiree mortality table using sixty-five percent of the male mortality and thirty-five percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually and a unisex joint annuitant mortality table using thirty-five percent of the male mortality and sixty-five percent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths percent compounded annually;

(21) Actuarial equivalent shall mean the equality in value of the retirement allowance for early retirement or the retirement allowance for a joint and survivorship annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(22) Withdrawal from service shall mean complete severance of employment of a member as an employee of the school district by resignation, discharge, or dismissal; and

(23) Fiscal year shall mean the period beginning September 1 in any year and ending on August 31 of the next succeeding year.

Sec. 2. That section 79-1035, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1035. The board of education shall from time to time establish rules and regulations for the administration of the retirement system and for the transaction of its business and shall appoint an

administrator of the retirement system. The secretary of the board of education shall act as ex officio secretary of the trustees. The board may contract for such medical and other services as shall be required to transact the business of the retirement system. Compensation for all persons employed by the board and all other expenses of the board necessary for the proper and efficient operation of the system shall be paid in such amounts as the board shall determine and approve determines and approves. The board shall have, in

In addition to such duties and other duties arising out of sections 79-1032 to 79-1060 not specifically reserved or assigned to others, the following duties: it board shall maintain a separate account of each member's contribution, the record of which shall be available to the member upon request, ; compile such data as may be necessary for the required actuarial valuation, ; consider and pass on all applications for annuities or other benefits and have examinations made when advisable of persons receiving disability benefits, ; certify the amount of the tax levy required under section 79-1052 to the county board of equalization, ; and direct and determine all policies necessary in the administration of sections 79-1032 to 79-1060.

Sec. 3. That section 79-1037, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1037. The secretary administrator of the retirement system shall keep the minutes and records of the system, . He shall be the executive officer in charge of the administration of the detailed affairs of the system, ; he shall sign warrants for the payment of money out of the retirement fund, and shall perform such other duties as may be assigned to him by the board of education or trustees.

Sec. 4. That section 79-1043, Revised Statutes Supplement, 1990, be amended to read as follows:

79-1043. (1) Any member who was or shall be drafted or shall have existed in the Army, Navy, Marine Corps, Air Force, Coast Guard, or any other armed service of the United States or any women's auxiliary thereof during time of war or who shall have been inducted into the armed forces of the United States during time of peace is eligible for reemployment pursuant to 38 U.S.C. 2021 to 2026, as amended, or is eligible for reemployment under sections 55-160 to 55-163 may pay to the system, within three years from

the date of his or her return from active military service, an amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the first, not to exceed three, years period of military service, plus regular interest thereon from the date such regular deductions would have been made to the date of repayment. If such payment be is made, the board shall pay simultaneously to the system a like amount, whereupon the member shall be entitled to credit for membership service for the period for which contributions shall have been made.

(2) Under such rules and regulations as the board may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for such time as he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member shall have paid pays into the system an amount equal to the sum of the deductions from his or her salary, any contribution which the school district would have been required to make had he or she continued to receive salary at the level received immediately prior to the leave of absence, and regular interest on these combined payments from the date such deductions would have been made to the date of repayment, with such deposits to be paid as the board may direct within three years of the termination of his or her leave of absence. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must return to employment with the Class V school district within one year after termination of the leave of absence.

Sec. 5. That section 79-1046, Revised Statutes Supplement, 1990, be amended to read as

follows:

79-1046. Any time prior to receiving the first annuity payment, the member may elect to receive in lieu of such annuity, but payable in the same manner, an actuarially equivalent annuity in one of the following forms:

(1) A joint and survivorship annuity which shall continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose attained age at the time of such election is fifty-five years or more;

(2) A joint and survivorship annuity which shall continue after the death of the member so that seventy-five percent of the amount of the member's monthly benefit under this option shall be paid monthly to the (a) member's spouse until his or her death or (b) other designated beneficiary whose age at the time of such election is fifty-five years or more until his or her death;

(3) An annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before one hundred twenty monthly payments have been made the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until a total of one hundred twenty monthly payments have been made; or

(4) A joint and survivorship annuity which will continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose attained age at the time of such election is fifty-five years or more, but which annuity shall, upon the spouse's or designated beneficiary's death before the death of the member, be increased after such death for the remaining life of the member so that the monthly benefit equals the monthly benefit which would have been payable to the member had the member selected the normal form of the formula retirement annuity specified in section 79-1044.01.

Each of these actuarially equivalent annuities, except for the form provided in subdivision (3) of this section, shall continue for a minimum of sixty months. The amount of each monthly payment shall be the amount specified in the form elected by the member. If the member and his or her spouse or other designated beneficiary both die before sixty monthly payments have been made, the remaining number of the sixty payments shall be paid to the estate of the spouse or other designated beneficiary unless he or she

predeceased the member, in which case the remaining payments shall be made to the member's estate.

Sec. 6. That section 79-1048, Revised Statutes Supplement, 1990, be amended to read as follows:

79-1048. (1) Any member with five or more years of creditable service, excluding years of prior service acquired pursuant to section 79-1043, 79-1045, 79-1049.02, 79-1049.03, or 79-1049.05, who ~~shall have become~~ becomes totally disabled for further performance of duty may be retired by the board. In the case of such retirement, the amount of annuity payable to the member shall be the annuity earned to date of disability retirement, except that payments for disability shall be reduced by the amount of any periodical payments to such employee as workers' compensation benefits. If the annuity begins prior to the sixty-second birthday of the member, the annuity shall not be actuarially reduced to the equivalent of the annuity deferred to the sixty-second birthday of the member, except that reductions for workers' compensation benefits shall be made as specified in this section. The board shall consider a member to be totally disabled when it ~~shall have~~ has received an application by the member and a statement by at least two licensed and practicing physicians designated by the board certifying that the member is totally and presumably permanently disabled and unable to perform his or her duties as a consequence thereof.

(2) The disability benefit, referred to in subsection (1) of this section, shall begin to accrue from the date of the first of the two examinations by which the member is determined to be totally disabled, shall be payable during the time the member ~~shall not receive~~ does not receive any wages or compensation for services, and shall continue until the time any one of the following events first occurs: (a) When disability ceases; (b) the normal retirement date; or (c) the member has been found to be engaged in gainful employment from which he or she has received more than one hundred dollars per month. The board may require periodical proof of disability and unemployment or permissible employment, but not more frequently than semiannually. Any member whose disability benefits ~~shall~~ cease because of such member having reached the normal retirement date shall upon such date be entitled to the retirement allowance without reduction for amounts paid on account of disability, but without credit for service during the period of disability.

Sec. 7. That section 79-1051.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1051.01. The board of trustees, with approval of the board of education, shall invest and reinvest funds of the retirement system. A professional investment manager may be employed by the board of trustees subject to approval of the board of education. He or she shall be responsible for recommend the purchase, sale, exchange, investment, or reinvestment of such funds subject to guidelines determined by the board of trustees. The trustees shall each month submit a report to the board of education with respect to the investment of funds. The board of education shall approve or disapprove the investments in the report, and in the event of disapproval of any investment, the board shall direct the sale of all or part of such investment or establish future policy with respect to that type of investment. The investment manager shall give bond in an amount to be determined by the board of education conditional upon the faithful performance of his duties. The premium for such bond shall be paid from funds of the retirement system-

Sec. 8. That section 79-1060, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1060. All annuities and other benefits payable under sections 79-1032 to 79-1060 and all accumulated credits of members of the system shall not be assignable or subject to execution, garnishment, or attachment except to the extent that such annuity or benefit is subject to a qualified domestic relations order as such term is defined in and which meets the requirements of section 414(p) of the Internal Revenue Code. Payments under such a qualified domestic relations order shall be made only after the administrator of the retirement system receives written notice of such order and such additional information and documentation as the administrator may require.

Sec. 9. That original sections 79-1035, 79-1037, 79-1051.01, and 79-1060, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1043, 79-1046, and 79-1048, Revised Statutes Supplement, 1990, are repealed.