

## LEGISLATIVE BILL 623

Approved by the Governor March 26, 1997

Introduced by Nebraska Retirement Systems Committee:

Wickersham, 49, Chairperson; Crosby, 29; Lynch, 13; C. Peterson, 35; Stuhr, 24; Wehrbein, 2

AN ACT relating to retirement; to amend sections 23-2315.01, 24-703.01, 24-703.02, 24-709.02, 24-713, 48-1401, 79-902, 79-908, 79-916, 79-920, 79-921, 79-933.02 to 79-933.06, 79-936, 79-937, 79-939, 79-951, 79-953, 79-958, 79-978, 79-979, 79-986, 79-9,102, 79-9,104, 79-9,113, 81-2020, 81-2025, 81-2030, 84-1309, 84-1323.01, and 85-606, Reissue Revised Statutes of Nebraska, and sections 23-2310.01, 23-2310.02, 23-2331, 81-2026, 81-2027.01, 81-2027.02, 84-1311.01, 84-1311.02, 84-1331, 84-1501, 84-1503.01, 84-1503.03, 84-1504, and 84-1505, Revised Statutes Supplement, 1996; to change provisions relating to benefit limitations, board physicians, custodial funds, deferred compensation, payments for purchases of service credit, custodians of school funds, payments under qualified domestic relations orders, mandatory retirement, retirement ages of Nebraska State Patrol officers, dependents of Nebraska State Patrol officers, and Public Employees Retirement Board member terms; to redefine and eliminate terms; to provide powers and duties; to create expense funds; to eliminate provisions relating to benefit limitations; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

Sec. 2. Except as provided in sections 23-2309.01 and 23-2310, all expenses necessary in connection with the administration and operation of the retirement system shall be paid from the County Employees Retirement System Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the retirement system assets and income as directed by the board for the proper administration of the County Employees Retirement Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 23-2310.01, Revised Statutes Supplement, 1996, is amended to read:

23-2310.01. For purposes of ~~this section~~ and section 23-2310.02:

(1) 415 compensation ~~shall mean means~~ a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code for purposes of income tax withholding. 415 compensation ~~shall include~~ includes any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to ~~sections~~ section 125, 401(k), ~~and or~~ 403(b) of the code, deferred compensation pursuant to section 457 of the code, ~~and or~~ employee contributions picked up pursuant to section 414(h) of the code, 415 compensation ~~shall include~~ includes such amounts; and

(2) Limitation year ~~shall mean means~~ the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 4. Section 23-2310.02, Revised Statutes Supplement, 1996, is amended to read:

23-2310.02. (1) Notwithstanding any other provision of the County Employees Retirement Act, the sum of the annual additions to a member's account for any limitation year shall not exceed the lesser of: (a) Thirty thousand dollars or, if greater, one-fourth of the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code as

in effect for the limitation year, or (b) twenty-five percent of the member's 415 compensation for the entire limitation year.

(2) The term annual additions to a member's account for any limitation year shall mean the sum of:

(a) The member's allocable share of employer contributions for the limitation year;

(b) The amount of the member's contributions for the limitation year; and

(c) The member's allocable share of forfeitures, if any, credited to the member within the limitation year.

(3) Solely for purposes of this section, the determination of a member's contributions for a limitation year shall exclude the items set forth in 26 C.F.R. 1.415-6(b)(3)(i) through (iv), and the determination of a member's allocable share of employer contributions and forfeitures, if any, for a limitation year shall exclude any employer contributions and forfeitures, if any, allocated to the member for any of the reasons set forth in 26 C.F.R. 1.415-6(b)(2)(ii) through (vi), except as otherwise provided in such regulations.

(4) If it is determined that the annual additions to a member's account for any limitation year will exceed the limitations contained in this section, the annual additions shall be reduced to the extent necessary to meet the limitations contained in this section in accordance with income tax regulations by reducing the member's employee contributions.

(5) If the amount of any member's contributions is reduced in accordance with subsection (4) of this section, the amount of the reduction shall be refunded to the member.

(6) In the event that any member is also a member under any other defined contribution plan maintained by a controlled group member, the total amount of annual additions to the member's accounts under all such defined contribution plans shall not exceed the limitations set forth in this section. If the total amount of annual additions to a member's accounts under all such defined contribution plans does exceed the limitations set forth in this section, then the annual additions to a member's account shall be reduced subsequent to a reduction in the annual additions under any other defined contribution plan.

(7) ~~If~~ Until January 1, 2000, if a member is or has been a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by section 415(b)(1)(A) of the code, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(b)(1)(B) of the code for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more

defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(8) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(9) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the Internal Revenue Code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 5. Section 23-2315.01, Reissue Revised Statutes of Nebraska, is amended to read:

23-2315.01. (1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician licensed to practice medicine in this state legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member is physically or mentally incapable of further performing his or her duties as a county employee and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Sec. 6. Section 23-2331, Revised Statutes Supplement, 1996, is amended to read:

23-2331. Sections 23-2301 to 23-2332 and sections 1 and 2 of this act shall be known and may be cited as the County Employees Retirement Act.

Sec. 7. Section 24-703.01, Reissue Revised Statutes of Nebraska, is amended to read:

24-703.01. For purposes of this section and section 24-703.02, -

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and

403(b) of the code, deferred compensation pursuant to section 457 of the code, and contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts, and

(2) ~~limitation~~ ~~limitation~~ year shall mean means the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 8. Section 24-703.02, Reissue Revised Statutes of Nebraska, is amended to read:

24-703.02. (1) Notwithstanding any other provision of sections 24-701 to 24-714 the Judges Retirement Act, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of-

(a) ~~Ninety one hundred twenty-five thousand dollars, as adjusted,~~

(b) ~~One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.~~

(3)(a) For purposes of this section, annual benefit shall mean a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the ~~limitations~~ limitation in subsection (2) of this section ~~are~~ is met. If the aggregate benefits otherwise payable from any qualified plans created under sections 24-701 to 24-714 the act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) ~~If Except as provided in subsection (12) of this section, if the annual benefit begins before a member attains age sixty-two, the ninety thousand dollar one hundred twenty-five thousand dollar limitation, as adjusted,~~ shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. The adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five; and

(b) If the annual benefit begins after a member attains age sixty-five, the ~~ninety thousand dollar one hundred twenty-five thousand dollar limitation, as adjusted,~~ shall be increased so that it is the actuarial equivalent of the ~~one hundred twenty-five thousand dollar~~ ninety thousand dollar limitation at age sixty-five.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section, but not the seventy-five-thousand-dollar limitation provided by subsection (5) of this section, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in

computing the limitations under this section:

(a) For the purpose of adjusting the ~~ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar~~ limitation before a member attains age sixty-two, the interest rate assumption shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ~~ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar~~ limitation after a member attains age sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) ~~if Except as provided in subsection (12) of this section, if a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The one-hundred-percent limitation under subdivision (2)(b) of this section, the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.~~

(10) ~~if Until January 1, 2000, if a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:~~

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the ~~lesser of~~

~~(A) The product of 1.25 and the maximum dollar limitation provided by subdivision (2)(a) subsection (2) of this section, as adjusted, for the limitation year, or~~

~~(B) The product of 1.4 and the amount that may be taken into account under subdivision (2)(b) of this section for the limitation year.~~

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of

this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) The reduction required by subdivision (5)(a) and subsection (9) of this section shall not apply to any benefit provided as the result of the member becoming disabled or to any benefit provided to the beneficiary, surviving spouse, or estate of the member as a result of the death of the member. Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 9. Section 24-709.02, Reissue Revised Statutes of Nebraska, is amended to read:

24-709.02. (1) Clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates shall have questions of disability decided by the Public Employees Retirement Board. Any such clerk magistrate may be retired as a result of disability either upon his or her own application or upon the application of an employer or any person acting in his or her behalf. Upon such retirement he or she shall be entitled to receive the retirement annuity as provided in section 24-710. Before any such clerk magistrate may be retired, a medical examination shall be made at the expense of the Nebraska Retirement Fund for Judges, which examination shall be conducted by a disinterested physician licensed to practice medicine in this state legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the board, and the physician shall certify to the board that the clerk magistrate is physically or mentally incapable of further performing his or her duties and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The board may require any such disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Sec. 10. Section 24-713, Reissue Revised Statutes of Nebraska, is amended to read:

24-713. The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The Director of Administrative Services is directed to draw warrants on the State Treasurer against the fund for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairman of the

signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

Sec. 11. Section 48-1401, Reissue Revised Statutes of Nebraska, is amended to read:

48-1401. (1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any employee's or independent contractor's income derived from such county, municipality, or other political subdivision, instrumentality, or agency, to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary, and shall be available to all regular employees and elected officials.

(2) The income to be deferred may never exceed the total compensation to be received by the employee or independent contractor from the employer.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan. Existing plans shall be amended by January 1, 1999, to comply with this provision.

(4) The treasurer of the county, municipality, or other political subdivision, instrumentality, or agency shall be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the income to be deferred under an agreement in the following categories of investment or insurance: (a) Life insurance; (b) annuities; (c) mutual funds; (d) bank savings accounts or savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; or (f) with an organization established for the purpose of administering public employee deferred compensation retirement plans and which have been approved by the United States Internal Revenue Service as nonprofit and tax exempt, licensed to do business in the State of Nebraska.

(4) (6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(5) (7) Any income deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(6) (8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such employee or independent contractor.

(7) (9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the employee or independent contractor in the deferred compensation agreement.

(8) (10) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

Sec. 12. Section 79-902, Reissue Revised Statutes of Nebraska, is amended to read:

79-902. For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon,

compounded monthly, quarterly, semiannually, or annually;

(2) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(3) Member means any person who has an account in the School Retirement Fund;

(4) County school official means the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(5) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06, and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid;

(6) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(7) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(8) Fiscal year means any year beginning July 1 and ending June 30 next following;

(9) Regular interest means interest at such a rate as determined by the retirement board in conformity with actual and expected earnings on its investments;

(10) Junior school employee means a school employee who has not arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(11) Present senior school employee means a senior school employee who was employed within the State of Nebraska on September 1, 1945;

(12) School employee means a contributing member who acquires five hundred sixteen hours or more of service in a fiscal year and thereby earns one-half year of service credit. A contributing member who acquires one thousand thirty-two hours or more of service in a fiscal year shall earn one year of service credit. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular teachers and administrators employed on a written contract basis; (b) regular employees, not certified, hired upon a full-time basis which contemplates a workweek of not less than thirty hours; and (c) part-time employees hired on a workweek of not less than fifteen hours;

(13) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(14) Public school means any and all schools supported by public funds and wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except as provided in sections 79-978 to 79-976 Class V school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(15) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

(16) Retirement board or board means the Public Employees Retirement Board;

(17) Retirement system means the School Retirement System of the State of Nebraska;

(18) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(19) School year means one fiscal year which includes not less than one thousand thirty-two instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;

(20) Senior school employee means a school employee who has arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(21) Service means service as a school employee;



(22) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-937. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies;

(23) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(24) State deposit means the deposit by the state in the retirement system on behalf of any member;

(25) State school official means the Commissioner of Education and his or her professional staff and the assistant commissioner of education in charge of vocational education and his or her professional staff;

(26) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(27) Emeritus member means a person (a) who has retired under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school in Nebraska as defined in subdivision (14) of this section, including schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors; or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(28) Primary carrier means the life insurance companies and trust companies designated as the underwriter or trustee of the retirement system;

(29) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1971 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of seven percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the prior June 30, rounded to the next lower quarter percent;

(30) Retirement date means the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system if the member has ceased employment in the school system. An application may be filed no more than ninety days in advance of the date on which a member ceases employment in the school system;

(31) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a retirement application provided by the retirement system if the member has ceased employment in the school system and has complied with sections 79-951 to 79-954 as such sections refer to disability retirement;

(32) Retirement application means the form approved by the retirement system for acceptance of a member's request for either regular or disability retirement;

(33) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(34) Final average compensation means (a) for full-time employees, the member's total compensation subject to required deposits for the three fiscal years in which such compensation was the highest divided by thirty-six, and (b) for part-time employees, the member's total adjusted compensation subject to required deposits for the three fiscal years in which such adjusted compensation was the highest divided by thirty-six. If a member has such compensation for less than three such fiscal years, his or her final average compensation shall be determined by dividing his or her total compensation in all such years by the total number of months of his or her creditable service therefor. Adjusted compensation for any year shall be equal to actual pay

times the ratio of one to the actual credited service for such year.

Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(35) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(36) Current benefit means the initial benefit increased by all adjustments made pursuant to section 79-947.02;

(37) Initial benefit means the retirement benefit calculated at the time of retirement;

(38) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(39)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993.

Sec. 13. Section 79-908, Reissue Revised Statutes of Nebraska, is amended to read:

79-908. The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duily signed by a person authorized by the retirement board, under regulations prescribed by it. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the retirement system, which statement shall be as of the fiscal year ending June 30 of each year transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

Sec. 14. Section 79-916, Reissue Revised Statutes of Nebraska, is amended to read:

79-916. (1) At the time of retirement of any employee who serves a public school operating under any other regularly established retirement or pension system Class V school district operating under a retirement system established pursuant to section 79-979, the retirement board shall, upon receipt of a certification from the public school district as to the number of years of service upon which the retirement is based, order the primary carrier to transfer to the funds of the retirement system of which such employee is a member the actuarial value of the service annuity to be paid by the state for the years of service thus certified in the same amount and basis as provided for members of the state retirement system School Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such employee, in order to qualify for prior service credit toward a service annuity, shall have the same qualifications as members of the School Retirement System of the State of Nebraska who became members on or before July 1, 1950, as provided by section 79-926 but shall not come under the provisions of the School Employees Retirement Act while so employed. Such transfer of actuarial value to the retirement system of which such employee is a member shall be in lieu of the payment of the service annuity to which he or she would be entitled on the

condition that the monthly payment received by him or her from such system shall be in the amount not less than the sum of his or her service annuity and the member's annuity which is the actuarial equivalent of his or her own contributions accumulated at interest to retirement. The public school district which such employee serves shall furnish to the retirement board all information required by the retirement board regarding service records of its employees. No member shall receive a retirement benefit from the retirement system covering years for which he or she is being paid a benefit under sections 79-978 to 79-9116.

(2) In addition to the transfer of the actuarial value of the service annuity to be paid by the state, the state shall also transfer to the funds of any other regularly established retirement or pension system for public school employees the Class V school district's retirement system an amount determined by multiplying the compensation of all members of the other regularly established retirement or pension system for public school employees such retirement system by the percent specified in section 79-966 for determining the amount of the state's payment to the School Employers Deposit Account. The transfer shall be made annually on or before July 1 of each fiscal year.

Sec. 15. Section 79-920, Reissue Revised Statutes of Nebraska, is amended to read:

79-920. (1) An individual who was, prior to July 19, 1980, a state school official and did not become a member of the State Employees Retirement System of the State of Nebraska pursuant to the State Employees Retirement Act may, within sixty days after September 1, 1986, elect to become a member of such system. An individual so electing shall pay the contributions required by such system when the service and minimum age requirements have been met.

(2) An individual who is currently a school employee or who was employed in an out-of-state or a Class V school district and who becomes employed by the State Department of Education after July 1, 1989, regardless of position, may file with the retirement board an election to become or remain a member of the School Retirement System of the State of Nebraska, or, within thirty days after employment in the department, the individual may file an election to become a member of the State Employees Retirement System of the State of Nebraska. The individual shall pay the contributions required by the system which he or she elects when all eligibility requirements are met.

(3) If the employee elects to join the State Employees Retirement System of the State of Nebraska, such employee shall be eligible for immediate participation in the State Employees Retirement System of the State of Nebraska with no minimum period of service if the minimum age and length of service requirements under the State Employees Retirement System of the State of Nebraska or the School Retirement System of the State of Nebraska have been met and the requirements met are equal to the requirements of the State Employees Retirement System of the State of Nebraska.

(4) A state school official employed by the State Department of Education after July 1, 1989, may elect to become a member of the School Retirement System of the State of Nebraska or the State Employees Retirement System of the State of Nebraska.

(5) An employee electing not to be covered by the School Retirement System of the State of Nebraska under this section shall not be subject to section 79-957 but shall be allowed to retain his or her accumulated contribution in the system and continue to become vested in the state's accumulated contribution as well as the State Employees Retirement System of the State of Nebraska according to the following:

(a) The years of participation in the School Retirement System of the State of Nebraska before an election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with the five-year service requirement requirements provided under section 79-933 79-931; and

(b) The years of participation in the School Retirement System of the State of Nebraska before the election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with section 84-1321.

Sec. 16. Section 79-921, Reissue Revised Statutes of Nebraska, is amended to read:

79-921. The membership of any person in the retirement system shall cease only if he or she (1) withdraws his or her accumulated contributions under section 79-955, (2) retires on a school or formula or disability retirement allowance, or (3) dies. The retirement board shall reinstate to membership, with the same status as when such membership ceased, a school

employee who has withdrawn his or her accumulated contributions if he or she again becomes an employee and if such employee chooses within three years of rejoining the system to repay, within five years of the date on which he or she rejoins the retirement system or prior to retirement, whichever is first, to the retirement board part or all of the amount he or she has withdrawn plus interest which would have accrued on that amount under the retirement system. Repayment may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization. If the school employee chooses not to repay such withdrawals with interest, the school employee shall enter the system as a new member with no prior rights.

Sec. 17. Section 79-933.02, Reissue Revised Statutes of Nebraska, is amended to read:

79-933.02. (1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to sections 79-921-7 and 79-933.03, ~~and 79-933.04 to 79-933.06~~ if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such sections and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) The retirement system may accept direct rollover distributions made from a qualified trust pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(4) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Sec. 18. Section 79-933.03, Reissue Revised Statutes of Nebraska, is amended to read:

79-933.03. (1) Under such rules and regulations as the board shall adopt and promulgate, a contributing member under contract or employed on July 19, 1996, may receive credit for not to exceed ten years of creditable teaching service rendered in public schools in another state or schools in this state covered by a school retirement system established pursuant to section 79-979, if such member files an application for service credit within three years of membership or reinstatement in the School Retirement System of the State of Nebraska and makes payment into the retirement system of an amount equal to the required deposits he or she would have paid had he or she been employed in this state, plus the interest which would have accrued on such amount. Payment must be completed within five years of membership or reinstatement in the retirement system, or prior to retirement, whichever ~~is~~ occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979, in excess of the time he or she has been in service as a school employee in this state. The board shall refund to the member the payments made pursuant to subsection (1) of this section to the extent that the member does not receive credit for such service.

Sec. 19. Section 79-933.04, Reissue Revised Statutes of Nebraska, is amended to read:

79-933.04. (1) For contributing members under contract or employed on July 19, 1996, and under such rules and regulations as the board shall adopt and promulgate, 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 such leave of absence. Such credit shall increase the benefits provided by the retirement system and 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 compensation at the level received immediately prior to the leave of absence. Such credit shall be allowed if such member has paid into the retirement system an amount equal to the sum of the deductions from his or her compensation and any contribution which the school district would have been required to make had he or she continued to receive compensation at the level received immediately prior to the leave of absence with such deposits plus interest which would have accrued on such deposits to be paid as the retirement board may direct within five years of his or her return to employment with a school district membership in the retirement system, or prior to retirement, whichever ~~is~~ occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) 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 a school district, other than a Class V school district, in the state within one year after termination of the leave of absence and must apply for such credit within three years of the return to employment with a school district membership in the retirement system.

Sec. 20. Section 79-933.05, Reissue Revised Statutes of Nebraska, is amended to read:

79-933.05. (1) A contributing member hired or rehired after July 19, 1996, may purchase service credit for not to exceed ten years of creditable service rendered in public schools in another state or schools in this state covered by the school retirement system established pursuant to section 79-979. The election to purchase service credit shall be made within three years of employment or reemployment membership or reinstatement. The amount to be paid by the member for such service credit shall equal the actuarial cost to the School Retirement System of the State of Nebraska for allowing such additional service credit to the employee. Payment shall be completed within five years of employment or reemployment membership or reinstatement or prior to retirement, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979, in excess of the time he or she has been in service as a school employee in this state. The board shall refund to the member the payments made pursuant to this section to the extent that the member does not receive credit for such service.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

Sec. 21. Section 79-933.06, Reissue Revised Statutes of Nebraska, is amended to read:

79-933.06. (1) Any contributing member hired or rehired after July 19, 1996, may purchase service credit for time he or she was on a leave of absence 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. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The election to purchase service credit shall be made within three years of employment or reemployment such member's return to membership in the retirement system. The amount to be paid by the member for such service credit shall equal the actuarial cost to the School Retirement System of the State of Nebraska for allowing such additional service credit to the employee. Payment shall be completed within five years of employment or reemployment such member's return to membership in the retirement system or prior to retirement, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) 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. Such leave 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 a school district, other than a Class V school district, in the state within one year after termination of the leave of absence.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

Sec. 22. Section 79-936, Reissue Revised Statutes of Nebraska, is amended to read:

79-936. For purposes of this section and section 79-937, -

(1) 415 compensation means a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code for purposes of income tax withholding. 415 compensation includes any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts, and

(2) limitation limitation year means the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 23. Section 79-937, Reissue Revised Statutes of Nebraska, is amended to read:

79-937. (1) Notwithstanding any other provision of the School Employees Retirement Act, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of-

(a) ~~Ninety one hundred twenty-five~~ thousand dollars, ~~as adjusted;~~  
or

(b) One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.

(3)(a) For purposes of this section, annual benefit means a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the limitations limitation in subsection (2) of this section are is met. If the aggregate benefits otherwise payable from any qualified plans created under the School Employees Retirement Act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) ~~If Except as provided in subsection (12) of this section, if the annual benefit begins before a member attains age sixty-two, the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation, as adjusted,~~ shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. The adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five; and

(b) If the annual benefit begins after a member attains age sixty-five, the ~~ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar~~ limitation, ~~as adjusted,~~ shall be increased so that it is the actuarial equivalent of the ~~the~~ ~~ninety-thousand-dollar~~

~~one-hundred-twenty-five-thousand-dollar~~ limitation at age sixty-five.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section, but not the ~~seventy-five-thousand-dollar~~ limitation provided by subsection (5) of this section, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in computing the limitations under this section:

(a) For the purpose of adjusting the ~~ninety-thousand-dollar~~ ~~one-hundred-twenty-five-thousand-dollar~~ limitation before a member attains age sixty-two, the interest rate assumption shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ~~ninety-thousand-dollar~~ ~~one-hundred-twenty-five-thousand-dollar~~ limitation after a member attains age sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) ~~If Except as provided in subsection (12) of this section, if a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ~~ninety-thousand-dollar~~ ~~one-hundred-twenty-five-thousand-dollar~~ limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The ~~one-hundred-percent~~ ~~limitation under subdivision (2)(b) of this section,~~ the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.~~

(10) ~~If Until January 1, 2000, if a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:~~

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of-

(A) The product of 1.25 and the maximum dollar limitation provided by ~~subdivision (2)(a)~~ subsection (2) of this section, as adjusted, for the limitation year, ~~or~~

(B) The product of 1.4 and the amount that may be taken into account ~~under subdivision (2)(b) of this section for the limitation year.~~

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's

account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) The reduction required by subdivision (5)(a) and subsection (9) of this section shall not apply to any benefit provided as the result of the member becoming disabled or to any benefit provided to the beneficiary, surviving spouse, or estate of the member as a result of the death of the member. Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 24. Section 79-939, Reissue Revised Statutes of Nebraska, is amended to read:

79-939. All benefits under the retirement system shall be paid as directed by the retirement board. Except as provided in section 79-916, no member shall receive a retirement benefit from the retirement system covering years for which he or she is being paid a benefit under sections 79-978 to 79-9.116.

Sec. 25. Section 79-951, Reissue Revised Statutes of Nebraska, is amended to read:

79-951. A member shall be retired on account of disability, either upon his or her own application or the application of his or her employer or a person acting in his or her behalf, if a medical examination, made at the expense of the retirement system and conducted by a competent disinterested physician who is duly licensed to practice medicine in this state legally authorized to practice medicine under the laws of the state in which he or she practices, selected by the retirement board, shows and the physician certifies to the retirement board that the member is physically or mentally incapacitated for the further performance of duty as a school employee and



ought to be retired. The member shall have one year from the date he or she ceases employment in a public school located in Nebraska in which to make application for disability retirement benefits. Any application for retirement on account of disability shall be made on a retirement application provided by the retirement system. Upon approval by the board, benefits shall begin on the disability retirement date.

Sec. 26. Section 79-953, Reissue Revised Statutes of Nebraska, is amended to read:

79-953. The retirement board may require any disability beneficiary who has not yet attained the age of sixty-five years to undergo a medical examination once each year. Such an examination shall be made (1) at the place of residence of the beneficiary or other place mutually agreed upon, (2) at the expense of the retirement system, and (3) by a physician, duly licensed to practice medicine in this state legally authorized to practice medicine under the laws of the state in which he or she practices, designated by the retirement board. If any disability beneficiary who has not yet attained the age of sixty-five years willfully refuses to submit to at least one such medical examination in any fiscal year, his or her allowance may be discontinued until his or her withdrawal of such refusal. If such refusal continues for one year, his or her rights in and to his or her disability retirement allowance may be revoked by the retirement board.

Sec. 27. Section 79-958, Reissue Revised Statutes of Nebraska, is amended to read:

79-958. (1) For the purpose of providing the funds to be transferred from the School Employees Savings Account for formula annuities, every employee shall be required to make deposits in the School Retirement Fund. Such deposits shall be a percentage of total compensation and shall be transmitted at the same time and in the same manner as required employer contributions. For the fiscal year beginning on July 1, 1996, the employee percentage shall be seven and twenty-five hundredths percent of compensation, of which three-tenths of one percent of compensation shall be transferred from the School Employees Savings Account into the School Employees Retirement System Reserve Fund pursuant to subsection (2) of section 79-975. For the fiscal year beginning on July 1, 1997, and each fiscal year thereafter, the retirement board shall set the employee percentage at forty-nine and seventy-five hundredths percent of the funding rate determined by the actuary or at seven and twenty-five hundredths percent of compensation, whichever is greater. The actuary for the retirement board shall determine the funding rate by taking the excess formula annuity liabilities less the actuarial value of both the School Employees Savings Account and the School Employers Deposit Account less the actuarial present value of the state deposit of seven-tenths of one percent of compensation of all members of the retirement system and dividing such result by the actuarial present value of future compensation for current active members.

(2) For the purpose of providing the funds to be transferred from the School Employers Deposit Account for formula annuities, every employer shall be required to make deposits in the School Retirement Fund. Such deposits shall be one hundred one percent of the required contributions of the school employees of each employer and shall be transmitted to the retirement board at the same time and in the same manner as such required employer contributions. For the fiscal year beginning on July 1, 1996, three-tenths of one percent of compensation shall be transferred from the School Employers Deposit Account into the School Employees Retirement System Reserve Fund pursuant to subsection (2) of section 79-975.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction either through a reduction in the cash compensation of the member or a combination of a reduction in compensation and offset against a future compensation increase. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921 and

79-933.03 to 79-933.06, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

Sec. 28. Section 79-978, Reissue Revised Statutes of Nebraska, is amended to read:

79-978. For purposes of sections 79-978 to 79-9,116, unless the context otherwise requires:

(1) Retirement system or system means the School Employees' Retirement System of (corporate name of the school district as described in section 79-405) as provided for by sections 79-978 to 79-9,116;

(2) Board means the board of education of the school district;

(3) Trustee means a trustee provided for in section 79-980;

(4) Employee means 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 included in subdivision (4)(a) of this section, hired upon a full-time basis, which basis shall contemplate a workweek of not less than thirty hours;

(5) Member means 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 means any member receiving an allowance;

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

(8) Membership service means 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 means service rendered prior to September 1, 1951, for which credit is allowed under section 79-999, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-990, 79-991, 79-994, 79-995, and 79-997;

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

(11) Compensation means salary or wages payable by the school district before reduction for contributions picked up under section 414(h) of the Internal Revenue Code or elective contributions made pursuant to sections 125 or 403(b) of the code, subject to the applicable limitations of section 401(a)(17) of the code;

(12) Military service means service in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard or any auxiliary thereof uniformed services as defined in 38 U.S.C. chapter 43, as such provision existed on the operative date of this section;

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

(14) Regular interest means 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 the last preceding fiscal year;

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

(16) Normal retirement date means the end of the month during which the member attains age sixty-five and has completed at least five years of membership service;

(17) Early retirement date means 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 means the total annual retirement benefit payable to a member for service or disability;

(19) Annuity means annual payments, for both prior service and membership service, for life as provided in sections 79-978 to 79-9,116;

(20) Actuarial tables means:

(a) For determining the actuarial equivalent of any annuities other than joint and survivorship annuities, 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 means the equality in value of the retirement allowance for early retirement or the retirement allowance for an optional form of 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 means complete severance of employment of a member as an employee of the school district by resignation, discharge, or dismissal;

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

(24) Primary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of a member; and

(25) Secondary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of all primary beneficiaries prior to the death of the member. If no primary beneficiary survives the member, secondary beneficiaries shall be treated in the same manner as primary beneficiaries.

Sec. 29. Section 79-979, Reissue Revised Statutes of Nebraska, is amended to read:

79-979. In every Class V school district in the State of Nebraska there is hereby established a retirement system for all regular employees of such school district. Such system shall be for the purpose of providing retirement benefits for all regular employees of the school district as provided in sections 79-978 to 79-9,116. The system shall be known as School Employees' Retirement System of (corporate name of the school district as described in section 79-405). All of its business shall be transacted, all of its funds shall be invested, and all of its cash and securities and other property shall be held in trust by such name for the purposes set forth in sections 79-978 to 79-9,116. Such funds shall be kept separate from all other funds of the school district and shall be used for no other purpose.

Sec. 30. Section 79-986, Reissue Revised Statutes of Nebraska, is amended to read:

79-986. The treasurer of the school district shall be ex officio treasurer of the retirement system. The treasurer school district shall act as the treasurer of the system and the official custodian of the cash and securities belonging to the retirement system, shall provide adequate safe deposit facilities for the preservation of such securities, and shall hold such cash and securities subject to the order of the board of education.

The treasurer school district shall receive all items of taxes or cash belonging to the retirement system, and shall deposit in banks approved by the board of education all such amounts in a trust account secured by collateral in accordance with the depository law, and shall submit a monthly report to the board of all such transactions or custodial accounts. Notwithstanding any limitations elsewhere imposed by statute on the location of the retirement system's depository bank, such limitations shall not apply to the use of a depository bank banks for the custody of international investments or the system's cash, securities, and other investments, which require the use of a designated depository institution. The treasurer school district, as treasurer of the system, shall make payments for purposes specified in sections 79-978 to 79-9,116, upon warrants issued according to law by the board of education designated Retirement Fund, (corporate name of the school district as described in section 79-405), and signed by the president and secretary of the board of education. All banks and custodians which receive and hold securities and investments for the retirement system may hold and evidence such securities by book entry account rather than obtaining and retaining the original certificate, indenture, or governing instrument for such security. Before entering into the discharge of his or her duties and during the entire time he or she so serves, the treasurer shall furnish a corporate surety bond payable to the school district and acceptable to the board in such amount as the board shall designate. The bond shall be in addition to his or her bond as treasurer of the school district, and the cost of the bond shall be paid by the school district.

Sec. 31. Section 79-9,102, Reissue Revised Statutes of Nebraska, is amended to read:

79-9,102. (1) Notwithstanding any other provision of sections 79-978 to 79-9,116, no member of the retirement system shall receive in any calendar year an annuity benefit derived from contributions of the board which if received in the form of a straight life annuity with no ancillary benefits would exceed the lesser of: ~~(a) A~~ a dollar limitation of ninety thousand dollars, adjusted as of January 1 of each calendar year to the dollar limitation as determined for such year by the Commissioner of Internal Revenue pursuant to section 415(d) of the Internal Revenue Code, ~~or (b) a compensation limit of one hundred percent of the average compensation paid to the member during the three consecutive calendar years of employment with the board; or actual number of consecutive calendar years of employment if employed less than three consecutive years, which give the highest average.~~ The limitations provided in this section shall not apply to any board-derived annuity benefit which is less than ten thousand dollars.

(2) The limitations limitation provided in this section shall be adjusted as follows:

(a) If the annuity begins prior to the sixty-second birthday of the member, the dollar limitation shall be equal to an annual annuity benefit which is equal to the actuarial equivalent of an annuity benefit commencing on the sixty-second birthday of the member, but not less than seventy-five thousand dollars if the member's annuity benefit begins at or after age fifty-five and not less than the actuarial equivalent of seventy-five thousand dollars if the annuity benefit begins before age fifty-five;

(b) If the annuity begins after the sixty-fifth birthday of the member, the dollar limitation shall be equal to an annual annuity benefit which is equal to the actuarial equivalent of an annuity benefit commencing on the sixty-fifth birthday of the member; and

(c) If the annuity begins prior to the member having ten years of creditable service, the dollar limitation as well as the one hundred percent of average compensation limitation and the exception for an annuity benefit which is less than ten thousand dollars shall be reduced by a fraction, the numerator of which is the total full fractional parts of years of creditable service and the denominator of which is ten; and

(d) The adjustments provided in subdivisions (a) and (c) of this subsection shall not apply to the disability retirement annuity under section 79-9,105 or to any annuity paid to a beneficiary as the result of the death of a member.

(3) For purposes of the limitations provided in this section, the actuarial equivalent shall be determined from the actuarial tables used for the retirement allowance for early retirement, except that in the case of the adjustment for an annuity which begins (a) before the sixty-second birthday of a member, the rate to be used in determining actuarial equivalency shall not be less than five percent, and (b) after the sixty-fifth birthday of a member, the interest rate to be used in determining the actuarial equivalency shall not be greater than five percent, compounded annually. The value of the joint and survivorship feature of an annuity shall not be taken into account in applying the limitations provided in this section.

(4) Any payments provided for by sections 79-990, 79-991, and 79-992 for the purchase or restoration of creditable service shall be subject to the limitations of section 415 of the Internal Revenue Code on annual additions to the system, and the trustees may suspend payments, alter installment periods, or, if such suspension or alteration is not possible, deny the purchase of all or a portion of the creditable service desired to be purchased, as necessary to comply with the requirements of section 415 of the Internal Revenue Code.

(5) This section is intended to meet the requirements of section 415 of the Internal Revenue Code and shall be construed in accordance with such section and shall, by this reference, incorporate any subsequent changes made to such section as the same may apply to the retirement system.

Sec. 32. Section 79-9,104, Reissue Revised Statutes of Nebraska, is amended to read:

79-9,104. (1) All annuities and other benefits payable under sections 79-978 to 79-9,116 and all accumulated credits of members of the retirement 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.

(2) The retirement system shall permit the spouse of a member to receive a single sum payment of the actuarial equivalent value of the interest assigned to such spouse under a qualified domestic relations order on the condition that upon the payment of such amount the spouse shall have no further interest in the retirement system or in the remaining benefit of the member under the retirement system. A member's interest and benefits under the retirement system shall be reduced, either at termination of employment, retirement, disability, or death, by the benefit assigned to the member's spouse or other dependents under a qualified domestic relations order.

Sec. 33. Section 79-9,113, Reissue Revised Statutes of Nebraska, is amended to read:

79-9,113. (1) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. The contributions by the school district shall be such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees. The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under sections 79-978 to 79-9,116. After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of

salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement. Members of this system having the service qualifications of members of the School Retirement System of the State of Nebraska, as provided by section 79-926, shall receive the state service annuity provided by sections 79-933 to 79-937 and 79-951.

(2) The school district shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, and 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of sections 79-978 to 79-9,116 in the same manner and to the extent as employee contributions made prior to the date picked up.

Sec. 34. Section 81-2020, Reissue Revised Statutes of Nebraska, is amended to read:

81-2020. The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the State Patrol Retirement Fund. The State Treasurer shall disburse money from such fund only on warrants issued by the Director of Administrative Services upon vouchers signed by the a person designated for such purpose by resolution of authorized by the retirement board.

Sec. 35. Section 81-2025, Reissue Revised Statutes of Nebraska, is amended to read:

81-2025. (1) Every officer who has been in the employ of the state as such and who becomes disabled and physically unfit to perform the duties of an officer shall be entitled to retire and receive an annuity as provided by law.

(2) Every officer who has been in the employ of the state as such for ten years or more, as calculated in section 81-2033, and has attained the age of fifty years or more shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years, unless such mandatory retirement is specifically restricted by federal law.

(3) Any officer who has attained the age of sixty years upon his or her separation from state service but who has not been in the employ of the state for ten years as such shall be entitled to the annuity as provided for in sections 81-2014 to 81-2036 the Nebraska State Patrol Retirement Act.

(4) Every officer who has been in the employ of the state as such

for twenty-five years or more, as calculated in section 81-2033, and has attained the age of fifty years shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years with twenty-five years of service or more shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years. ~~7 unless such mandatory retirement is specifically restricted by federal law.~~

(5) Every officer who has been in the employ of the state as such for thirty years or more, as calculated in section 81-2033, shall be entitled to retire and receive an annuity as provided by law. The right to retire with thirty years of service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(6) Payment of any benefit provided under sections 81-2014 to 81-2036 the Nebraska State Patrol Retirement Act may not be deferred later than the sixtieth day after the end of the year in which the officer has both attained at least age seventy and one-half years and terminated his or her employment with the Nebraska State Patrol.

~~(6)~~ (7) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

Sec. 36. Section 81-2026, Revised Statutes Supplement, 1996, is amended to read:

81-2026. (1) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of service. If the officer has completed more than seventeen years of service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, the officer's surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries. If the surviving spouse has a dependent child or children of the officer under the age of nineteen years in his or her care, the benefit shall be one hundred

percent of the amount of such officer's annuity until such time as the youngest such dependent child attains the age of nineteen years, after which time the benefit shall be reduced to seventy-five percent of the amount of such officer's annuity. If there is no surviving spouse living at the date of the officer's death, the officer's child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest such child attains the age of nineteen years. If there is more than one such child under the age of nineteen years at such time, the amount thereof shall be divided equally among such children under such age and, as they attain the age of nineteen years, only the other child or children under such age shall participate therein. If there is no surviving spouse or no child of the officer under the age of nineteen years at the date of the officer's death, the amount of annuities such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate. Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability. Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death as follows: (a) To the surviving spouse and dependent child or children of the officer under the age of nineteen years in such spouse's care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest dependent child attains the age of nineteen years after which time the benefit shall be reduced to seventy-five percent of the officer's annuity for the remainder of his or her life or until he or she remarries; (b) if there is no spouse living at the date of the officer's death, his or her child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest child attains the age of nineteen years; (c) if there is more than one child of the officer under the age of nineteen years at the date of the officer's death, the benefit shall be divided equally among such children and, as they attain the age of nineteen years, only the child or children under the age of nineteen years shall participate therein; and (d) if there is no child or children of the officer under the age of nineteen years living at the date of the officer's death, the surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of his or her life or until he or she remarries. If no benefits are paid to a surviving spouse or dependent children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(4) Any benefits provided in subsections (1), (2), and (3) of this section shall apply only to retirements, disabilities, and deaths occurring on or after September 2, 1977. No benefits being paid under the system on September 2, 1977, shall be modified, in any way, by the enactment of Laws 1977, LB 347.

Sec. 37. Section 81-2027.01, Revised Statutes Supplement, 1996, is amended to read:

81-2027.01. For purposes of this section and section 81-2027.02, +

(1) 415 compensation shall mean a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code for purposes of income tax withholding. 415 compensation shall include any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to sections 125, 401(k), and 403(b) of the code, deferred compensation pursuant to section 457 of the code, and employee contributions picked up pursuant to section 414(h) of the code, 415 compensation shall include such amounts; and

(2) Limitation limitation year shall mean means the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 38. Section 81-2027.02, Revised Statutes Supplement, 1996, is amended to read:

81-2027.02. (1) Notwithstanding any other provision of sections 81-2014 to 81-2036 the Nebraska State Patrol Retirement Act, the benefit provided with respect to any member may not exceed an annual benefit computed in accordance with the limitations prescribed by this section.

(2) The maximum annual benefit payable in any limitation year to a member may not exceed the lesser of:



(a) Ninety one hundred twenty-five thousand dollars, as adjusted;

(b) One hundred percent of a member's 415 compensation averaged over the three consecutive limitation years, or the actual number of limitation years for a member whose total service is less than three consecutive limitation years, during which the member had the greatest aggregate 415 compensation from the employer.

(3)(a) For purposes of this section, annual benefit shall mean a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit shall not include employee after-tax contributions. Such benefit shall include employee contributions picked up by the employer.

(b) If the retirement benefit is in any form other than a straight life annuity or if after-tax contributions are made by the employee, the benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit. The interest rate assumption for such adjustment shall be not less than the greater of five percent or the rate specified in the plan.

(c) No adjustment shall be required for a qualified joint and survivor annuity, preretirement disability and death benefits, postretirement medical benefits, or postretirement cost-of-living increases in accordance with section 415(d) of the Internal Revenue Code.

(4) Benefits provided to a member under this section and under any defined benefit plan or plans maintained by an employer shall be aggregated for purposes of determining whether the limitations limitation in subsection (2) of this section are is met. If the aggregate benefits otherwise payable from any qualified plans created under sections 81-2014 to 81-2036 the Nebraska State Patrol Retirement Act and any other defined benefit plan or plans maintained by an employer otherwise exceed the limitations of this section, the reductions in benefits shall first be made to the extent possible from the other plan or plans.

(5) The adjustments on retirement shall be the following:

(a) if Except as provided in subsection (12) of this section, if the annual benefit begins before a member attains age sixty-two, the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation, as adjusted, shall be reduced in a manner prescribed by the Secretary of the Treasury of the United States. Except as provided in subdivision (5)(c) of this section, the adjustment shall not reduce the member's annual benefit below seventy-five thousand dollars if the member's benefit begins at or after age fifty-five or below the actuarial equivalent of seventy-five thousand dollars for age fifty-five if benefits begin before age fifty-five;

(b) If the annual benefit begins after a member attains age sixty-five, the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation, as adjusted, shall be increased so that it is the actuarial equivalent of the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation at age sixty-five; and

(c) For a member with at least fifteen years of service as a full-time employee of the Nebraska State Patrol, including credit for full-time service in the armed forces of the United States, the adjustment under subdivision (5)(a) of this section shall not reduce the benefit limitation below fifty seventy thousand dollars, as adjusted by the Secretary of the Treasury of the United States under section 415(d) of the code.

(6)(a) The dollar limitation on annual benefits provided by subsection (2) of this section and the fifty-thousand-dollar seventy-thousand-dollar limitation provided by subsection (5) of this section, but not the seventy-five-thousand-dollar limitation provided by such subsection, shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States. The adjusted limitation shall be effective as of January 1 of each calendar year and shall be applicable to limitation years ending with or within that calendar year.

(b) The limitations provided by this section for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by section 415(d) of the code and the regulations prescribed by the Secretary of the Treasury of the United States.

(7) The following interest rate assumptions shall be used in computing the limitations under this section:

(a) For the purpose of adjusting the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation before a member attains age sixty-two, the interest rate assumption shall be not less than the greater of five percent or the rate specified in the plan; and

(b) For the purpose of adjusting the ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar limitation after a member attains age

sixty-five, the interest rate assumption shall not be greater than the lesser of five percent or the rate specified in the plan.

(8) An annual benefit may be paid to any member in excess of the member's maximum annual benefit otherwise allowed if:

(a) The annual benefit derived from the employer contributions under the retirement system and all defined benefit plans maintained by the employer does not in the aggregate exceed ten thousand dollars for the limitation year or for any prior limitation year; and

(b) The member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this section, member contributions to the plan shall not be considered a separate defined contribution plan maintained by the employer.

(9) ~~¶ Except as provided in subsection (12) of this section, if a member has less than ten years of participation in the retirement system at the time the member begins to receive benefits, the ~~ninety-thousand-dollar one-hundred-twenty-five-thousand-dollar~~ limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of participation in the plan and the denominator is ten, except that the fraction may not be less than one-tenth. The ~~one-hundred-percent~~ limitation under subdivision (2)(b) of this section, the ten-thousand-dollar limitation of subsection (8) of this section, and the limitation calculated pursuant to subsection (10) of this section shall be reduced in the same manner as provided by this subsection, except that the numerator shall be the number of years of employment with the employer rather than years of participation.~~

(10) ~~¶ Until January 1, 2000, if a member is or has participated in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:~~

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the projected annual benefit of a member determined as of the close of the limitation year; and

(ii) The denominator is the lesser of--

(A) The product of 1.25 and the maximum dollar limitation provided by ~~subdivision (2)(a)~~ subsection (2) of this section, as adjusted, for the limitation year, ~~or~~

(B) The product of 1.4 and the amount that may be taken into account under ~~subdivision (2)(b) of this section for the limitation year.~~

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year beginning before January 1, 1987.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after

May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(11) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(12) The reduction required by subdivision (5)(a) and subsection (9) of this section shall not apply to any benefit provided as the result of the member becoming disabled or to any benefit provided to the beneficiary, surviving spouse, or estate of the member as a result of the death of the member. Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 39. Section 81-2030, Reissue Revised Statutes of Nebraska, is amended to read:

81-2030. The system board shall have the right to demand a physical examination of the member by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, chosen by the system and at the expense of the system.

Sec. 40. Except as provided in sections 84-1310.01 and 84-1311, all expenses necessary in connection with the administration and operation of the retirement system shall be paid from the State Employees Retirement System Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the retirement system assets and income as directed by the board for the proper administration of the State Employees Retirement Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 41. Section 84-1309, Reissue Revised Statutes of Nebraska, is amended to read:

84-1309. (1) There is hereby established in the state treasury a special fund to be known as the State Employees Retirement Fund to consist of such funds as the Legislature shall from time to time appropriate. The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from funds appropriated from the General Fund.

(2) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund from the funds of each department with at least one employee who is a member of the retirement system for a sum equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from any funds other than funds appropriated from the General Fund.

(3) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund for prior service benefits. After receiving the annual report required by section 84-1315, the Legislature may make such adjustments in the funding of prior service benefits as necessary to keep the plan sound. The contribution for prior service purposes shall cease when the prior service obligation is properly funded.

(4) The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The

State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the fund. He or she shall disburse money from the fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

Sec. 42. Section 84-1311.01, Revised Statutes Supplement, 1996, is amended to read:

84-1311.01. For purposes of this section and section 84-1311.02:

(1) 415 compensation ~~shall mean~~ means a member's total compensation for services to the extent such compensation constitutes wages as defined in section 3401(a) of the Internal Revenue Code for purposes of income tax withholding. 415 compensation ~~shall include~~ includes any compensation not included as section 3401(a) wages because of any special rule of section 3401 of the code which excludes compensation based on the nature or location of the services performed. In the event that section 415 of the code is amended to permit the inclusion of certain elective deferrals pursuant to ~~sections~~ section 125, 401(k), and ~~or~~ 403(b) of the code, deferred compensation pursuant to section 457 of the code, and ~~or~~ employee contributions picked up pursuant to section 414(h) of the code, 415 compensation ~~shall include~~ includes such amounts; and

(2) Limitation year ~~shall mean~~ means the twelve-consecutive-month period beginning on January 1 and ending on December 31. All qualified plans maintained by an employer shall use the same limitation year.

Sec. 43. Section 84-1311.02, Revised Statutes Supplement, 1996, is amended to read:

84-1311.02. (1) Notwithstanding any other provision of the State Employees Retirement Act, the sum of the annual additions to a member's account for any limitation year shall not exceed the lesser of: (a) Thirty thousand dollars or, if greater, one-fourth of the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code as in effect for the limitation year, or (b) twenty-five percent of such member's 415 compensation for the entire limitation year.

(2) The term annual additions to a member's account for any limitation year shall mean the sum of:

(a) The member's allocable share of employer contributions for the limitation year;

(b) The amount of the member's contributions for the limitation year; and

(c) The member's allocable share of forfeitures, if any, credited to the member within the limitation year.

(3) Solely for purposes of this section, the determination of a member's contributions for a limitation year shall exclude the items set forth in 26 C.F.R. 1.415-6(b)(3)(i) through (iv), and the determination of a member's allocable share of employer contributions and forfeitures, if any, for a limitation year shall exclude any employer contributions and forfeitures, if any, allocated to the member for any of the reasons set forth in 26 C.F.R. 1.415-6(b)(2)(ii) through (vi), except as otherwise provided in such regulations.

(4) If it is determined that the annual additions to a member's account for any limitation year will exceed the limitations contained in this section, the annual additions shall be reduced to the extent necessary to meet the limitations contained in this section in accordance with income tax regulations by reducing the member's employee contributions.

(5) If the amount of any member's contributions is reduced in accordance with subsection (4) of this section, the amount of the reduction shall be refunded to the member.

(6) In the event that any member is also a member under any other defined contribution plan maintained by a controlled group member, the total amount of annual additions to the member's accounts under all such defined contribution plans shall not exceed the limitations set forth in this section. If the total amount of annual additions to a member's accounts under all such defined contribution plans does exceed the limitations set forth in this section, then the annual additions to a member's account shall be reduced subsequent to a reduction in the annual additions under any other defined contribution plan.

(7) ~~¶~~ Until January 1, 2000, if a member is or has been a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the following provisions shall apply:

(a) The sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0;

(b) The defined benefit plan fraction for any limitation year shall

be a fraction in which:

(i) The numerator is the projected annual benefit of a member, determined as of the close of the limitation year; and

(ii) The denominator is the lesser of:

(A) The product of 1.25 and the maximum dollar limitation provided by section 415(b)(1)(A) of the code, as adjusted, for the limitation year; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(b)(1)(B) of the code for the limitation year.

If the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent of the sum of annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 6, 1986;

(c) The defined contribution plan fraction for any limitation year shall be a fraction in which:

(i) The numerator is the sum of the annual additions to the member's account as of the close of the limitation year; and

(ii) The denominator is the sum of the lesser of the following amounts determined for the limitation year and each prior year of service with the employer:

(A) The product of 1.25 and the dollar limitation in effect under section 415(c)(1)(A) of the code for the limitation year, determined without regard to section 415(c)(6) of the code; or

(B) The product of 1.4 and the amount that may be taken into account under section 415(c)(1)(B) of the code for the limitation year.

If the member was a member as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of the excess of the sum of the fractions over 1.0 times the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment shall be calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation of the code applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions; and

(d) If the sum of the defined benefit plan fraction and the defined contribution plan fraction exceeds 1.0 in any limitation year for any member of any plan within the retirement system, the board shall limit, to the extent necessary, the annual additions to the member's account for that limitation year. If after limiting to the extent possible the annual additions to the member's account for the limitation year the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceeds 1.0, the board shall adjust the benefits under the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any limitation year for the member.

(8) For purposes of determining the limits provided by this section, all qualified defined benefit plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined benefit plan, and all qualified defined contribution plans, whether terminated or not, ever maintained by or contributed to by the employer, shall be treated as one defined contribution plan.

(9) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times comply with the requirements of section 415 of the code and all regulations promulgated under the code. If any provision of section 415 of the code is repealed or is not enforced by the Internal Revenue Service pursuant to a published notice, rule, or regulation, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

Sec. 44. Section 84-1323.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1323.01. (1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the

member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician licensed to practice medicine in this state legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member is physically or mentally incapable of further performing his or her duties as a state employee and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. If any disability beneficiary refuses to undergo such an examination, the disability retirement benefit may be discontinued by the board.

Sec. 45. Section 84-1331, Revised Statutes Supplement, 1996, is amended to read:

84-1331. Sections 84-1301 to 84-1331 and section 40 of this act shall be known and may be cited as the State Employees Retirement Act.

Sec. 46. Section 84-1501, Revised Statutes Supplement, 1996, is amended to read:

84-1501. The Public Employees Retirement Board is hereby established. Such board shall consist of seven appointed members and the state investment officer as a nonvoting, ex officio member. Three of the appointed members shall be participants in the retirement systems administered by the board, one of the appointed members shall be a participant in such retirement systems who has retired, and three of the appointed members shall not be employees of the State of Nebraska or any of its political subdivisions. Appointments to such board shall be made by the Governor subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska. The three appointed members who are not employees of the State of Nebraska or any of its political subdivisions shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. The members serving on July 19, 1996, the operative date of this section shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective. For members whose terms begin on January 1, 2000, one shall serve a three-year term and one shall serve a four-year term or until a successor has been appointed and qualified. For members whose terms begin on January 1, 2001, one shall serve a four-year term and two shall serve five-year terms, or until a successor has been appointed and qualified. All members appointed on and after January 1, 1997 2002, shall serve for terms of five years or until a successor has been appointed and qualified. The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

Sec. 47. Section 84-1503.01, Revised Statutes Supplement, 1996, is amended to read:

84-1503.01. The Public Employees Retirement Board shall develop a mechanism for identifying and monitoring members whose annual benefits or annual additions may exceed the 415 limitations contained in sections 23-2310.02, 24-703.02, 79-937, 81-2027.02, and 84-1311.02. Such mechanism may include, but shall not be limited to, the review of a member's wages and a member's contributions to a plan established pursuant to sections section 125, 401(k), 403(b), and or 457 of the Internal Revenue Code. The board shall adopt and promulgate rules and regulations to carry out this section. In accordance with such rules and regulations, each county, school district, or appropriate state agency shall submit to the board annual information on member wages and contributions.

Sec. 48. Section 84-1503.03, Revised Statutes Supplement, 1996, is amended to read:

84-1503.03. The director of the Nebraska Public Employees Retirement Systems shall employ qualified personnel as may be required to carry out the duties and responsibilities required under sections 84-1501 to 84-1513 and section 51 of this act. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. The director shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the

discharge of their duties.

Sec. 49. Section 84-1504, Revised Statutes Supplement, 1996, is amended to read:

84-1504. (1) The Public Employees Retirement Board, on behalf of the state, may contract with any state employee, including a person an individual under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges, to defer a portion of such employee's compensation pursuant to section 457 of the Internal Revenue Code.

(2) The compensation to be deferred shall not exceed the total compensation to be received by the employee or independent contractor from the employer or exceed the limits established by the Internal Revenue Service for such a plan.

(3) The state investment officer may invest the compensation to be deferred under an agreement in the following categories of investment or insurance:

- (a) Annuities;
- (b) Mutual funds;
- (c) Bank savings accounts or savings and loan associations;
- (d) Trust companies qualified to act as fiduciaries in this state;

or

(e) An organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska.

(4) The deferred compensation program shall serve in addition to but not be a part of any existing retirement or pension system provided for state employees or any other benefit program.

(5) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(6) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such employee or independent contractor.

(7) The state, the board, the state investment officer, or the agency shall not be responsible for any investment results entered into by the employee or independent contractor in the deferred compensation agreement.

(8) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

Sec. 50. Section 84-1505, Revised Statutes Supplement, 1996, is amended to read:

84-1505. (1) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall remain solely the property and rights of be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan.

(2) The State Treasurer shall be the custodian of the funds and securities of the deferred compensation plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly authorized by the retirement board. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31 of each year.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

Sec. 51. All expenses necessary in connection with the administration and operation of the deferred compensation plan authorized in section 84-1504 shall be paid from the Deferred Compensation Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the deferred compensation plan assets and income as directed by the Public Employees Retirement Board for the proper administration of the plan. Any money in the fund available for investment

shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 52. Section 85-606, Reissue Revised Statutes of Nebraska, is amended to read:

85-606. (1) Employees of the state colleges, community colleges, and the University of Nebraska may retire upon reaching the age of sixty-five. Any ~~tenured faculty member~~ or law enforcement personnel reaching the age of seventy shall retire, except that, with the annual approval of the governing board of the institution and the employee, such employee may continue his or her employment beyond the attainment of age seventy.

(2) Any employee continuing to work after age sixty-five shall continue to make contributions to the appropriate retirement system until the date of retirement.

(3) No faculty member of the University of Nebraska, the Nebraska State Colleges, or the community colleges ~~shall be forced to retire or~~ shall have his or her tenure status revoked ~~before age seventy~~ without due process.

Sec. 53. Sections 50 and 54 of this act become operative July 1, 1997. The other sections of this act become operative on their effective date.

Sec. 54. Original section 84-1505, Revised Statutes Supplement, 1996, is repealed.

Sec. 55. Original sections 23-2315.01, 24-703.01, 24-703.02, 24-709.02, 24-713, 48-1401, 79-902, 79-908, 79-916, 79-920, 79-921, 79-933.02 to 79-933.06, 79-936, 79-937, 79-939, 79-951, 79-953, 79-958, 79-978, 79-979, 79-986, 79-9,102, 79-9,104, 79-9,113, 81-2020, 81-2025, 81-2030, 84-1309, 84-1323.01, and 85-606, Reissue Revised Statutes of Nebraska, and sections 23-2310.01, 23-2310.02, 23-2331, 81-2026, 81-2027.01, 81-2027.02, 84-1311.01, 84-1311.02, 84-1331, 84-1501, 84-1503.01, 84-1503.03, and 84-1504, Revised Statutes Supplement, 1996, are repealed.

Sec. 56. Since an emergency exists, this act takes effect when passed and approved according to law.