

LEGISLATIVE BILL 687

Approved by the Governor April 17, 2002

Introduced by Nebraska Retirement Systems Committee: Bruning, 3, Chairperson; Bourne, 8; Erdman, 47; Stuhr, 24; Wehrbein, 2; Wickersham, 49; Schimek, 27

AN ACT relating to retirement; to amend sections 23-2305.01, 23-2309, 23-2316, 23-2317, 23-2321, 84-1305.02, 84-1310, 84-1311, 84-1318, 84-1319, 84-1321, 84-1322, 84-1323, and 84-1331, Reissue Revised Statutes of Nebraska, sections 2-1608, 23-2310, 23-2319, 23-2319.01, 23-2320, 84-1301, 84-1307, and 84-1321.01, Revised Statutes Supplement, 2000, and sections 23-2301, 23-2306, 23-2309.01, 23-2310.05, 23-2331, 84-1310.01, and 84-1311.03, Revised Statutes Supplement, 2001; to state intent; to change provisions relating to the County Employees Retirement Act and the State Employees Retirement Act; to provide for a cash balance benefit; to change provisions relating to vesting; to provide duties for the Public Employees Retirement Board; to change and eliminate provisions relating to annuities as prescribed; to define, redefine, and eliminate terms; to harmonize provisions; to repeal the original sections; to outright repeal section 23-2327, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. In January 2000, the Public Employees Retirement Board, with the support of the Nebraska Retirement Systems Committee of the Legislature, recommended a coordinated strategy be developed for the long-term management of the Nebraska Public Employees Retirement Systems. This strategy included a review of benefits, funding, and investment management. Among other things, the study found that state and county retirement systems do not meet adequacy needs and that such systems rank below median in the amount of initial normal retirement benefit and that, as defined contribution plans, such plans are dependent upon significant investment performance and substantial contributions, even though such plans are also subject to significant volatility in the delivery of such benefits.

Pursuant to the Benefit Review Study of the Nebraska Retirement Systems of August 2000, the previous findings of the Nebraska Retirement Systems Committee of the Legislature relating to the comprehensive study of the public employees retirement systems authorized by LR 328 (1992), the comparison of defined benefit plans and defined contribution plans - LR 383 (1994), and benefit adequacy studies, including the creation of a uniform set of criteria to be used in the determination of benefit adequacy - LR 148 (1997), benefit comparisons between systems - LR 431 (1998), the costs associated with changing current contribution rates to provide additional benefits for retirement plans which fail to meet income replacement needs identified in the comprehensive study of 1992 - LR 431 (1994), and the cost, feasibility, and design of cost-of-living adjustments for the retirement systems - LR 381 (1994), and in conjunction with the review and update of the General Principles of Sound Retirement Planning - LR 164 (1995) and LR 336 (2000), it is the intent of the Legislature that, in order to improve the competitiveness of the retirement plans for state and county employees, a defined benefit element shall be added to the state and county employees' retirement plans contained within the provisions of the State Employees Retirement Act and the County Employees Retirement Act. The Nebraska Retirement Systems Committee of the Legislature, with the assistance of the Public Employees Retirement Board, and pursuant to the findings of the August 2000 Benefit Review Study, shall design and propose changes in the state and county retirement plans in order to provide state and county employees with a choice between a traditional defined benefit plan or cash balance plan, and the current defined contribution plan. In addition, it is the intent of the Legislature to formulate an additional change to both systems in order to add a guaranteed income option for retiring employees which would be a self-funded approach to the purchase of an annuity in which a retiring employee could elect such annuity, with or without a cost-of-living adjustment built into the payments, using his or her account balance at retirement, and for which an annuity reserve account could be created to administer payments.

It is the intent of the Legislature that the changes required in this section be implemented beginning with this legislative bill and continuing through 2005.

Sec. 2. Section 2-1608, Revised Statutes Supplement, 2000, is amended to read:

2-1608. Whenever two or more county extension organizations have united as provided in section 2-1607 for the purpose of support and management of extension work, county extension employees jointly employed by the participating extension organizations shall be considered persons employed by a county for the purpose of subdivision ~~(6)~~ (10) of section 23-2301 and shall participate in the Retirement System for Nebraska Counties under the County Employees Retirement Act. To accomplish such participation the participating county extension organizations shall (1) pick up employee contributions as salary deductions on behalf of such county extension employees in the manner required for a county in section 23-2307, and (2) pay to the Public Employees Retirement Board or an entity designated by the board an amount in accordance with the provisions of section 23-2308. In all other respects the participation of such county extension employees in the retirement system shall be in accordance with the act.

Sec. 3. Section 23-2301, Revised Statutes Supplement, 2001, is amended to read:

23-2301. For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later;

(3) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits;

(4) (a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include 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;

~~(2)~~ (5) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

~~(3)~~ (6) Date of disability means the date on which a member is determined by the board to be disabled;

(7) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

~~(4)~~ (8) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

~~(5)~~ (9) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska governmental plan for purposes of determining membership in the retirement system and vesting the employer account;

(10) Employee ~~(6) Employees~~ means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by whom they are employed, except that ~~employees~~ employee does not include judges, employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

~~(7)~~ (13) Five-year break in service means a period of five consecutive one-year breaks in service;

~~(8)~~ (14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

~~(9)~~ (15) Future service means service following the date of adoption of the retirement system;

~~(10)~~ Group annuity contract means the contract issued by one or more life insurance companies to the board in order to provide the future service benefits described in the act;

~~(11)~~ (16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(18) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's annuity starting date. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(19) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account;

~~(12)~~ (20) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

~~(13)~~ (21) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

~~(14)~~ (22) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

~~(15)~~ (23) Prior service means service prior to the date of adoption of the retirement system;

~~(16)~~ (24) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

~~(17)~~ (25) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

~~(18)~~ (26) Retirement means qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the

act;

~~(19)~~ (27) Retirement board or board means the Public Employees Retirement Board;

~~(20)~~ (28) Retirement system means the Retirement System for Nebraska Counties;

~~(21)~~ (29) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

~~(22)~~ Straight life annuity means an ordinary annuity, payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind;

~~(23)~~ (30) 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

~~(24)~~ (31) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board within two weeks after the date such a termination is deemed to have occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Sec. 4. Section 23-2305.01, Reissue Revised Statutes of Nebraska, is amended to read:

23-2305.01. (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Sec. 5. Section 23-2306, Revised Statutes Supplement, 2001, is amended to read:

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

(2) The following employees of member counties are authorized to participate in the retirement system: (a) ~~all~~ All full-time employees who have been employees for a period of twelve continuous months shall begin participation in the retirement system, except that full-time elected officials shall ~~be members~~ begin participation in the retirement system on taking office, (b) all full-time or part-time employees who have attained the age of twenty-five, and have been employed for a total of twelve months within a five-year period, ~~and~~ may exercise the option to ~~join~~ begin participation in the retirement system, and (c) all part-time elected officials ~~who~~ may exercise the option to ~~join~~ begin participation in the retirement system. A part-time employee who exercises the option to ~~join~~ begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

~~(2)~~ (3) Within the first thirty days of employment, a full-time employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

~~(3)~~ (4) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

~~(4)~~ (5) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive credit for his or her years of employment with the city, village, or township for purposes of the membership provisions of this section and shall receive eligibility and vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

~~(5)~~ (6) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the membership provisions of this section.

~~(6)~~ (7) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system. Information necessary to determine membership in the retirement system shall be provided by the employer.

Sec. 6. (1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003. If no election is made prior to January 1, 2003, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 23-2301; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus
 (ii) Employer contribution credits deposited in accordance with section 23-2308; plus
 (iii) Interest credits credited in accordance with subdivision (18) of section 23-2301.

Sec. 7. Section 23-2309, Reissue Revised Statutes of Nebraska, is amended to read:

23-2309. A For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 23-2307 shall be known as his or her employee account. Each year, commencing January 1, 1975, and ending December 31, 1985, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1, increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307.

On and after January 1, 1986, the employee account shall be equal to the sum of the employee's stable return account, equities account, and any assets of additional accounts created pursuant to section 23-2309.01.

Sec. 8. Section 23-2309.01, Revised Statutes Supplement, 2001, is amended to read:

23-2309.01. (1) ~~On or after January 1, 1997, on such date as is established by the retirement board, each member of the retirement system~~ Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account after such date to various investment options. The investment options shall include, but not be limited to, the following:

(a) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(b) An equities account which shall be invested by or under the direction of the state investment officer in domestic equities;

(c) A balanced account which shall be invested by or under the direction of the state investment officer in domestic equities and domestic fixed income instruments;

(d) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of domestic common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(e) A fixed income account which shall be invested by or under the direction of the state investment officer in domestic fixed income instruments; and

(f) A money market account which shall be invested by or under the direction of the state investment officer in domestic short-term fixed income securities.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (a) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Sec. 9. Section 23-2310, Revised Statutes Supplement, 2000, is amended to read:

23-2310. (1) A For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the county contributions shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty percent for the final three months of the year in accordance with section 23-2307. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty percent of the amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 23-2319.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with such section. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 23-2310.05.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 23-2310.05. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Sec. 10. Section 23-2310.05, Revised Statutes Supplement, 2001, is amended to read:

23-2310.05. (1) On or after July 1, 1999, on such date as is established by the retirement board, each member of the retirement system Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account ~~after such date~~ to various investment options. Such investment options shall be limited to the following:

(a) An account which shall be invested by or under the direction of the state investment officer in approximately twenty-five percent domestic equities and seventy-five percent domestic fixed income instruments;

(b) An account which shall be invested by or under the direction of the state investment officer in approximately fifty percent domestic equities and fifty percent domestic fixed income instruments; and

(c) An account which shall be invested by or under the direction of the state investment officer in approximately seventy-five percent domestic equities and twenty-five percent domestic fixed income instruments.

If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in one of the options described in subdivision (a), (b), or (c) of this subsection as determined by the board. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among

the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Sec. 11. Section 23-2316, Reissue Revised Statutes of Nebraska, is amended to read:

23-2316. The retirement value for any employee who retires under the provisions of section 23-2315 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the retirement date and (2) for participants in the cash balance benefit, the benefit provided in section 6 of this act as of the retirement date.

Sec. 12. Section 23-2317, Reissue Revised Statutes of Nebraska, is amended to read:

23-2317. (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made as of the retirement date, which shall be the actuarial equivalent of the retirement value based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the retirement date, the retiring employee may choose to receive his or her annuity either in the form of a straight life annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may, upon application to the board, receive a benefit not to exceed the amount in his or her employer and employee accounts payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) The Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the date of purchase which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4) (a) The normal form of payment shall be a single life annuity

with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the member's annuity starting date. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 6 of this act, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, pursuant to section 6 of this act, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall not provide for any benefit improvements that would increase the actuarial contribution rate above ninety percent of the actual contribution rate.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments. Retirement benefits for persons who retire prior to January 1, 1984, shall not be affected by changes to this section which become operative on or after January 1, 1984.

Sec. 13. Section 23-2319, Revised Statutes Supplement, 2000, is

amended to read:

23-2319. (1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit ~~not to exceed~~ equal to the amount of his or her employee account or member cash balance account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit ~~not to exceed~~ equal to (i) the amount of his or her member cash balance account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years or (ii) (A) the amount of his or her employee account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years plus (ii) (B) the amount of his or her employer account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

Benefits of a terminating member shall be deferred until the application is received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of ~~five~~ three years of ~~(a)~~ participation in the system, including plus (b) eligibility and vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

Sec. 14. Section 23-2319.01, Revised Statutes Supplement, 2000, is amended to read:

23-2319.01. (1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited ~~employer~~ account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Retirement System Expense Fund, and the remainder, if any, shall then be used to reduce the county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts.

(2) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account shall be suspended pending the final outcome of the grievance or other appeal.

Sec. 15. Section 23-2320, Revised Statutes Supplement, 2000, is amended to read:

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

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

pursuant to section 23-2319.

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

(c) After the member completes one year of service following reemployment, the value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored at the end of the plan year in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts of the county that received the member's forfeited employer account and then by additional employer contributions by the county that received the member's forfeited employer account.

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

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Sec. 16. Section 23-2321, Reissue Revised Statutes of Nebraska, is amended to read:

23-2321. In the event of the death before his or her retirement date of any employee who is a member of the system, a death benefit shall be paid to the member's beneficiary or to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107. The death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 6 of this act. The beneficiary may elect any retirement option to which the member would have been entitled. If an annuity option is not selected within sixty days after the death of the member, the beneficiary shall receive a lump-sum payment.

Sec. 17. Section 23-2331, Revised Statutes Supplement, 2001, is amended to read:

23-2331. Sections 23-2301 to 23-2332.01 and section 6 of this act shall be known and may be cited as the County Employees Retirement Act.

Sec. 18. Section 84-1301, Revised Statutes Supplement, 2000, is amended to read:

84-1301. For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later;

(3) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits;

(4) (a) Compensation means gross wages or salaries payable to the

member for personal services performed during the plan year. Compensation does not include 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;

(5) ~~(2)~~ Date of disability means the date on which a member is determined to be disabled by the board;

(6) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 84-1310 and, if vested, employer contributions and earnings pursuant to section 84-1311;

(7) ~~(3)~~ Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(8) ~~(4)~~ Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska governmental plan for purposes of determining membership in the system and vesting the employer account;

(9) ~~(5)~~ Employee means any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (k) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) ~~(6)~~ Five-year break in service means five consecutive one-year breaks in service;

(13) ~~(7)~~ Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(14) ~~(8)~~ Fund means the State Employees Retirement Fund created by section 84-1309;

~~(9) Group annuity contract means the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323.01;~~

(15) ~~(10)~~ Guaranteed investment contract means an investment

contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

~~(11)~~ (16) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(17) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's annuity starting date. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(18) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account;

(19) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(20) ~~(12)~~ Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(21) ~~(13)~~ Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(22) ~~(14)~~ Prior service means service before January 1, 1964;

(23) ~~(15)~~ Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

(24) ~~(16)~~ Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(25) ~~(17)~~ Retirement means qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

(26) ~~(18)~~ Retirement board or board means the Public Employees Retirement Board;

(27) ~~(19)~~ Retirement system means the State Employees Retirement System of the State of Nebraska;

(28) ~~(20)~~ Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(29) ~~(21)~~ State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

~~(22)~~ Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind;

(30) ~~(23)~~ 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

(31) ~~(24)~~ Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board within two weeks after the date such a termination is deemed to have occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Sec. 19. Section 84-1305.02, Reissue Revised Statutes of Nebraska, is amended to read:

84-1305.02. (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the State Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Sec. 20. Section 84-1307, Revised Statutes Supplement, 2000, is amended to read:

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

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) ~~all~~ All permanent full-time employees who have ~~twenty-four~~ twelve continuous months of service shall begin participation in the retirement system; and who have attained the age of ~~thirty~~ and (b) all permanent full-time or permanent part-time employees, who have twelve months of service within a five-year period, and who have attained the age of twenty, and who may exercise the option to ~~join~~ begin participation in the retirement system. An employee who exercises the option to ~~join~~ begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

~~(2)~~ (3) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

~~(3)~~ (4) Within the first thirty days of employment, a full-time employee may apply to the board for eligibility and vesting credit for years

of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

~~(4)~~ (5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

~~(5)~~ (6) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system. Information necessary to determine membership in the retirement system shall be provided by the employer.

Sec. 21. (1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003. If no election is made prior to January 1, 2003, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (17) of section 84-1301; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (17) of section 84-1301.

Sec. 22. Section 84-1310, Reissue Revised Statutes of Nebraska, is amended to read:

84-1310. A For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 84-1308 shall be known as his or her employee account. Each year commencing January 1, 1975, and ending December 31, 1984, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1 increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with the provisions of section 84-1308. On and after January 1, 1985, the employee account shall be equal to the sum of the stable return account, the equities account, and any assets of additional accounts created by the board pursuant to section 84-1310.01.

Sec. 23. Section 84-1310.01, Revised Statutes Supplement, 2001, is amended to read:

84-1310.01. (1) On or after January 1, 1997, on such date as is established by the retirement board, each member of the retirement system Each member employed and participating in the retirement system prior to January 1,

2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account ~~after such date~~ to various investment options. Such investment options shall include, but not be limited to, the following:

(a) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(b) An equities account which shall be invested by or under the direction of the state investment officer in domestic equities;

(c) A balanced account which shall be invested by or under the direction of the state investment officer in domestic equities and domestic fixed income instruments;

(d) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of domestic common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(e) A fixed income account which shall be invested by or under the direction of the state investment officer in domestic fixed income instruments; and

(f) A money market account which shall be invested by or under the direction of the state investment officer in domestic short-term fixed income securities.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (a) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Sec. 24. Section 84-1311, Reissue Revised Statutes of Nebraska, is amended to read:

84-1311. (1) A For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the state contributions made in accordance with section 84-1309 shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred four percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred four percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty-six percent of the amount so deducted for the final three months of the year in accordance with section 84-1308. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty-six percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or

other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 84-1321.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with section 84-1321.01. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 84-1311.03.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 84-1311.03. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Sec. 25. Section 84-1311.03, Revised Statutes Supplement, 2001, is amended to read:

84-1311.03. (1) ~~On or after July 1, 1999, on such date as is established by the retirement board, each member of the retirement system~~ Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account after such date to various investment options. Such investment options shall be limited to the following:

(a) An account which shall be invested by or under the direction of the state investment officer in approximately twenty-five percent domestic equities and seventy-five percent domestic fixed income instruments;

(b) An account which shall be invested by or under the direction of the state investment officer in approximately fifty percent domestic equities and fifty percent domestic fixed income instruments; and

(c) An account which shall be invested by or under the direction of the state investment officer in approximately seventy-five percent domestic equities and twenty-five percent domestic fixed income instruments.

If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in one of the options described in subdivision (a), (b), or (c) of this subsection as determined by the board. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Sec. 26. Section 84-1318, Reissue Revised Statutes of Nebraska, is amended to read:

84-1318. The retirement value for any employee who retires under the provisions of section 84-1317 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the retirement date and (2) for participants in the cash balance benefit, the benefit provided in section 21 of this act as of the retirement date.

Sec. 27. Section 84-1319, Reissue Revised Statutes of Nebraska, is amended to read:

84-1319. (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made as of the retirement date, which shall be the actuarial equivalent of the retirement value based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the retirement date, the retiring employee may choose to receive his or her annuity either in the form of a ~~straight life~~ an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may, upon application to the board, receive a benefit not to exceed the amount in his or her employer and employee accounts payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value except as provided in this section.

The board shall provide to any state employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) ~~The~~ Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the date of purchase which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4) (a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the member's annuity starting date. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 21 of this act, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, pursuant to section 21 of this act, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits

Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall not provide for any benefit improvements that would increase the actuarial contribution rate above ninety percent of the actual contribution rate. Retirement benefits for persons who retire prior to January 1, 1984, shall not be affected by changes to this section which become operative on or after January 1, 1984.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Sec. 28. Section 84-1321, Reissue Revised Statutes of Nebraska, is amended to read:

84-1321. (1) Except as provided in section 42-1107, upon termination of employment before becoming eligible for retirement under section 84-1317, a member may, upon application to the board, receive:

(a) If not vested, a termination benefit ~~not to exceed~~ equal to the amount in his or her employee account or member cash balance account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit ~~not to exceed~~ equal to (i) the amount of his or her member cash balance account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years or (ii) (A) the amount in his or her employee account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years plus ~~(B)~~ (B) the amount of his or her employer account payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

Benefits of a terminating member shall be deferred until the application is received.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or member cash balance account or any annuity provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her

employment with the state or may be deferred, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of ~~five~~ three years of ~~(a)~~ participation in the system, including plus (b) eligibility and vesting credit. If an employee retires pursuant to section 84-1317, such an employee shall be fully vested in the retirement system.

Sec. 29. Section 84-1321.01, Revised Statutes Supplement, 2000, is amended to read:

84-1321.01. (1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited ~~employer~~ account shall be credited to the State Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the State Employees Retirement System Expense Fund, and the remainder, if any, shall then be used to reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts.

(2) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account shall be suspended pending the final outcome of the grievance or other appeal.

Sec. 30. Section 84-1322, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. In addition, the member may repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) After the member completes one year of service following reemployment, the value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored at the end of the plan year in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee

as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Sec. 31. Section 84-1323, Reissue Revised Statutes of Nebraska, is amended to read:

84-1323. In the event of the death before his or her retirement date of any employee who is a member of the system, a death benefit shall be paid to the member's beneficiary or to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107. The death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 21 of this act. The beneficiary may elect any retirement option to which the member would have been entitled. If an annuity option is not selected within sixty days after the death of the member, the beneficiary shall receive a lump-sum payment.

Sec. 32. Section 84-1331, Reissue Revised Statutes of Nebraska, is amended to read:

84-1331. Sections 84-1301 to 84-1331 and section 21 of this act shall be known and may be cited as the State Employees Retirement Act.

Sec. 33. Original sections 23-2305.01, 23-2309, 23-2316, 23-2317, 23-2321, 84-1305.02, 84-1310, 84-1311, 84-1318, 84-1319, 84-1321, 84-1322, 84-1323, and 84-1331, Reissue Revised Statutes of Nebraska, sections 2-1608, 23-2310, 23-2319, 23-2319.01, 23-2320, 84-1301, 84-1307, and 84-1321.01, Revised Statutes Supplement, 2000, and sections 23-2301, 23-2306, 23-2309.01, 23-2310.05, 23-2331, 84-1310.01, and 84-1311.03, Revised Statutes Supplement, 2001, are repealed.

Sec. 34. The following section is outright repealed: Section 23-2327, Reissue Revised Statutes of Nebraska.

Sec. 35. Since an emergency exists, this act takes effect when passed and approved according to law.