

LEGISLATIVE BILL 724

Approved by the Governor June 9, 1997

Introduced by Wickersham, 49

AN ACT relating to the School Employees Retirement Act; to amend sections 79-901, 79-902, 79-924, and 79-933.02, Reissue Revised Statutes of Nebraska; to authorize agreements for purchases of service credit; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) An employer and a school employee who has completed at least five years of creditable service plus eligibility and vesting credit may by agreement made in contemplation of retirement, to be effective within twelve months of the agreement, purchase service credit for such employee for not to exceed five years of creditable service. Such an agreement may be executed up to twelve months prior to the employee's retirement date. The agreement shall specify whether the school employee shall pay for the service credits, whether the employer shall pay for the service credits, or whether both the employee and employer shall share the cost of the service credits. Such service credits shall be purchased for an amount equal to the actuarial cost to the retirement system for allowing such additional service credit to the employee.

(2) Payment for such service credits shall be completed prior to the employee's retirement date and may be made through direct payment, installment payments, or an irrevocable deduction authorization. If payments are made on an installment basis, interest shall be charged at the rate of regular interest.

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

(4) The retirement board shall credit funds collected pursuant to this section to the Contingent Account pending the employee's retirement. If the employee does not retire within twelve months after the signing of the agreement made pursuant to this section, such funds shall be refunded, excluding interest earned, and the employee shall not be given credit for the service credit attempted to be purchased.

Sec. 2. Section 79-901, Reissue Revised Statutes of Nebraska, is amended to read:

79-901. Sections 79-901 to 79-977.01 and section 1 of this act shall be known and may be cited as the School Employees Retirement Act.

Sec. 3. Section 79-902, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(5) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and section 1 of this act, and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid;

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

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

- (8) Fiscal year means any year beginning July 1 and ending June 30 next following;
- (9) Regular interest means interest at such a rate as determined by the retirement board in conformity with actual and expected earnings on its investments;
- (10) Junior school employee means a school employee who has not arrived at his or her twenty-first birthday anniversary on August 15 preceding;
- (11) Present senior school employee means a senior school employee who was employed within the State of Nebraska on September 1, 1945;
- (12) School employee means a contributing member who acquires five hundred sixteen hours or more of service in a fiscal year and thereby earns one-half year of service credit. A contributing member who acquires one thousand thirty-two hours or more of service in a fiscal year shall earn one year of service credit. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular teachers and administrators employed on a written contract basis; (b) regular employees, not certified, hired upon a full-time basis which contemplates a workweek of not less than thirty hours; and (c) part-time employees hired on a workweek of not less than fifteen hours;
- (13) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;
- (14) Public school means any and all schools supported by public funds and wholly under the control and management of the State of Nebraska or any subdivision thereof, including schools or other entities established, maintained, and controlled by the school boards of local school districts, except as provided in sections 79-978 to 79-9,116, any educational service unit, and any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;
- (15) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;
- (16) Retirement board or board means the Public Employees Retirement Board;
- (17) Retirement system means the School Retirement System of the State of Nebraska;
- (18) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;
- (19) School year means one fiscal year which includes not less than one thousand thirty-two instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;
- (20) Senior school employee means a school employee who has arrived at his or her twenty-first birthday anniversary on August 15 preceding;
- (21) Service means service as a school employee;
- (22) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-937. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies;
- (23) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;
- (24) State deposit means the deposit by the state in the retirement system on behalf of any member;
- (25) State school official means the Commissioner of Education and his or her professional staff and the assistant commissioner of education in charge of vocational education and his or her professional staff;
- (26) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;
- (27) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school in Nebraska as defined in subdivision (14) of this section, including schools under the control and

management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors, or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

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

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

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

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

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

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

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

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

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

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

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

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

(39)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation

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

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

Sec. 4. Section 79-924, Reissue Revised Statutes of Nebraska, is amended to read:

79-924. The retirement board shall adopt and promulgate rules and regulations to allow for lump-sum or installment payments for school employees who elect to buy credit for prior years of service under sections 79-921 and 79-933.03 to 79-933.06 and section 1 of this act. Any person who elects to buy credit for prior years of service on an installment basis may be charged reasonable service costs, shall be credited with those prior years of service only as the money is actually received by the retirement system, and shall have paid to the retirement system all installments prior to the commencement of a retirement annuity.

Sec. 5. Section 79-933.02, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

Sec. 6. Original sections 79-901, 79-902, 79-924, and 79-933.02, Reissue Revised Statutes of Nebraska, are repealed.