

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1146

Introduced by Nebraska Retirement Systems Committee: Synowiecki, 7,
Chairperson; Erdman, 47; Karpisek, 32; White, 8.

Read first time January 23, 2008

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to the School Employees Retirement Act;
2 to amend section 79-902, Revised Statutes Cumulative
3 Supplement, 2006; to redefine compensation as prescribed;
4 and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-902, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 79-902 For purposes of the School Employees Retirement
4 Act, unless the context otherwise requires:

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

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

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

14 (4) County school official means (a) until July 1, 2000,
15 the county superintendent or district superintendent and any person
16 serving in his or her office who is required by law to have
17 a teacher's certificate and (b) on or after July 1, 2000, the
18 county superintendent, county school administrator, or district
19 superintendent and any person serving in his or her office who is
20 required by law to have a teacher's certificate;

21 (5) Creditable service means prior service for which
22 credit is granted under sections 79-926 to 79-929, service credit
23 purchased under sections 79-933.03 to 79-933.06 and 79-933.08,
24 and all service rendered while a contributing member of the
25 retirement system. Creditable service includes working days, sick

1 days, vacation days, holidays, and any other leave days for which
2 the employee is paid regular wages as part of the employee's
3 agreement with the employer. Creditable service does not include
4 lump-sum payments to the employee upon termination or retirement
5 in lieu of accrued benefits for such days, eligibility and vesting
6 credit, nor service years for which member contributions are
7 withdrawn and not repaid. Creditable service also does not include
8 service rendered by a member for which the retirement board
9 determines that the member was paid less in compensation than the
10 minimum wage as provided in the Wage and Hour Act or service which
11 the board determines was rendered with the intent to defraud the
12 retirement system;

13 (6) Disability retirement allowance means the annuity
14 paid to a person upon retirement for disability under section
15 79-952;

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

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

22 (9) Regular interest means interest fixed at a rate equal
23 to the daily treasury yield curve for one-year treasury securities,
24 as published by the Secretary of the Treasury of the United States,
25 that applies on July 1 of each year, which may be credited monthly,

1 quarterly, semiannually, or annually as the board may direct;

2 (10) School employee means a contributing member who
3 earns service credit pursuant to section 79-927. For purposes of
4 this section, contributing member means the following persons who
5 receive compensation from a public school: (a) Regular employees;
6 (b) regular employees having retired pursuant to the School
7 Employees Retirement Act who subsequently provide compensated
8 service on a regular basis in any capacity; and (c) regular
9 employees hired by a public school on an ongoing basis to assume
10 the duties of other regular employees who are temporarily absent.
11 Substitute employees shall not be considered school employees;

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

15 (12) Public school means any and all schools offering
16 instruction in elementary or high school grades, as defined in
17 section 79-101, which schools are supported by public funds and are
18 wholly under the control and management of the State of Nebraska
19 or any subdivision thereof, including (a) schools or other entities
20 established, maintained, and controlled by the school boards of
21 local school districts, except Class V school districts, (b) any
22 educational service unit, and (c) any other educational institution
23 wholly supported by public funds, except schools under the control
24 and management of the Board of Trustees of the Nebraska State
25 Colleges, the Board of Regents of the University of Nebraska, or

1 the community college boards of governors for any community college
2 areas;

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

6 (14) Retirement board or board means the Public Employees
7 Retirement Board;

8 (15) Retirement system means the School Retirement System
9 of the State of Nebraska;

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

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

17 (18) Service means employment as a school employee and
18 shall not be deemed interrupted by (a) termination at the end of
19 the school year of the contract of employment of an employee in a
20 public school if the employee enters into a contract of employment
21 in any public school, except a school in a Class V school district,
22 for the following school year, (b) temporary or seasonal suspension
23 of service that does not terminate the employee's employment,
24 (c) leave of absence authorized by the employer for a period
25 not exceeding twelve months, (d) leave of absence because of

1 disability, or (e) military service when properly authorized by
2 the retirement board. Service does not include any period of
3 disability for which disability retirement benefits are received
4 under sections 79-951 to 79-953;

5 (19) School retirement allowance means the total of the
6 savings annuity and the service annuity or formula annuity paid a
7 person who has retired under sections 79-931 to 79-935. The monthly
8 payments shall be payable at the end of each calendar month during
9 the life of a retired member. The first payment shall include all
10 amounts accrued since the effective date of the award of annuity.
11 The last payment shall be at the end of the calendar month in which
12 such member dies or in accordance with the payment option chosen by
13 the member;

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

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

19 (22) State school official means the Commissioner of
20 Education and his or her professional staff;

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

24 (24) Emeritus member means a person (a) who has entered
25 retirement under the provisions of the act, including those persons

1 who have retired since July 1, 1945, under any other regularly
2 established retirement or pension system as contemplated by section
3 79-916, (b) who has thereafter been reemployed in any capacity
4 by a public school, a Class V school district, or a school
5 under the control and management of the Board of Trustees of the
6 Nebraska State Colleges, the Board of Regents of the University of
7 Nebraska, or a community college board of governors or has become
8 a state school official or county school official subsequent to
9 such retirement, and (c) who has applied to the board for emeritus
10 membership in the retirement system. The school district or agency
11 shall certify to the retirement board on forms prescribed by the
12 retirement board that the annuitant was reemployed, rendered a
13 service, and was paid by the district or agency for such services;

14 (25) Actuarial equivalent means the equality in value of
15 the aggregate amounts expected to be received under different forms
16 of payment. The determinations shall be based on the 1994 Group
17 Annuity Mortality Table reflecting sex-distinct factors blended
18 using twenty-five percent of the male table and seventy-five
19 percent of the female table. An interest rate of eight percent
20 per annum shall be reflected in making these determinations except
21 when a lump-sum settlement is made to an estate. If the lump-sum
22 settlement is made to an estate, the interest rate will be
23 determined by the Moody's Triple A Bond Index as of the prior June
24 30, rounded to the next lower quarter percent;

25 (26) Retirement date means (a) if the member has

1 terminated employment, the first day of the month following the
2 date upon which a member's request for retirement is received on
3 a retirement application provided by the retirement system or (b)
4 if the member has filed an application but has not yet terminated
5 employment, the first day of the month following the date on which
6 the member terminates employment. An application may be filed no
7 more than ninety days prior to the effective date of the member's
8 initial benefit;

9 (27) Disability retirement date means the first day of
10 the month following the date upon which a member's request for
11 disability retirement is received on a retirement application
12 provided by the retirement system if the member has terminated
13 employment in the school system and has complied with sections
14 79-951 to 79-954 as such sections refer to disability retirement;

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

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

24 (30)(a) Final average compensation means the sum of the
25 member's total compensation during the three twelve-month periods

1 of service as a school employee in which such compensation was the
2 greatest divided by thirty-six.

3 (b) If a member has such compensation for less than
4 thirty-six months, his or her final average compensation shall be
5 determined by dividing his or her total compensation in all months
6 by the total number of months of his or her creditable service
7 therefor.

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

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

14 (32) Current benefit means (a) until July 1, 2000, the
15 initial benefit increased by all adjustments made pursuant to
16 section 79-947.02 and (b) on or after July 1, 2000, the initial
17 benefit increased by all adjustments made pursuant to the School
18 Employees Retirement Act;

19 (33) Initial benefit means the retirement benefit
20 calculated at the time of retirement;

21 (34) Surviving spouse means (a) the spouse married to
22 the member on the date of the member's death or (b) the spouse
23 or former spouse of the member if survivorship rights are provided
24 under a qualified domestic relations order filed with the board
25 pursuant to the Spousal Pension Rights Act. The spouse or former

1 spouse shall supersede the spouse married to the member on the
2 date of the member's death as provided under a qualified domestic
3 relations order. If the benefits payable to the spouse or former
4 spouse under a qualified domestic relations order are less than
5 the value of benefits entitled to the surviving spouse, the spouse
6 married to the member on the date of the member's death shall be
7 the surviving spouse for the balance of the benefits;

8 (35)(a) Compensation means gross wages or salaries
9 payable to the member for personal services performed during the
10 plan year and includes (i) overtime pay, (ii) member retirement
11 contributions, (iii) retroactive salary payments paid pursuant to
12 court order, arbitration, or litigation and grievance settlements,
13 and (iv) amounts contributed ~~by the member~~ to plans under sections
14 125, 403(b), and 457 of the Internal Revenue Code as defined in
15 section 49-801.01 or any other section of the code which defers or
16 excludes such amounts from income.

17 (b) Compensation does not include (i) fraudulently
18 obtained amounts as determined by the retirement board, (ii)
19 amounts for unused sick leave or unused vacation leave converted
20 to cash payments, (iii) insurance premiums converted into cash
21 payments, (iv) reimbursement for expenses incurred, (v) fringe
22 benefits, (vi) bonuses for services not actually rendered,
23 including, but not limited to, early retirement inducements, cash
24 awards, and severance pay, or (vii) beginning on September 4, 2005,
25 employer contributions made for the purposes of separation payments

1 made at retirement and early retirement inducements as provided for
2 in section 79-514.

3 (c) Compensation in excess of the limitations set forth
4 in section 401(a)(17) of the Internal Revenue Code as defined
5 in section 49-801.01 shall be disregarded. For an employee who
6 was a member of the retirement system before the first plan year
7 beginning after December 31, 1995, the limitation on compensation
8 shall not be less than the amount which was allowed to be taken
9 into account under the retirement system as in effect on July 1,
10 1993.

11 (d)(i) In the determination of compensation for members
12 on or after July 1, 2002, through June 30, 2005, that part of
13 a member's compensation for the fiscal year which exceeds the
14 member's compensation with the same employer for the preceding
15 fiscal year by more than ten percent shall be excluded unless
16 (A) the member experienced a substantial change in employment
17 position or (B) the excess compensation occurred as the result
18 of a collective-bargaining agreement between the employer and
19 a recognized collective-bargaining unit or category of school
20 employee.

21 (ii) For purposes of this subdivision:

22 (A) Category of school employee means either all
23 employees of the employer who are administrators or certificated
24 teachers, or all employees of the employer who are not
25 administrators or certificated teachers, or both; and

1 (B) Recognized collective-bargaining unit means a group
2 of employees similarly situated with a similar community of
3 interest appropriate for bargaining recognized as such by a school
4 board.

5 (e) (i) In the determination of compensation for members
6 on or after July 1, 2005, that part of a member's compensation
7 for the plan year which exceeds the member's compensation with
8 the same employer for the preceding plan year by more than seven
9 percent of the compensation base during the sixty months preceding
10 the member's retirement shall be excluded unless (A) the member
11 experienced a substantial change in employment position, (B) as
12 verified by the school board, the excess compensation above seven
13 percent occurred as the result of a collective-bargaining agreement
14 between the employer and a recognized collective-bargaining unit
15 or category of school employee, and the percentage increase
16 in compensation above seven percent shall not be excluded for
17 employees outside of a collective-bargaining unit or within the
18 same category of school employee, or (C) the excess compensation
19 occurred as the result of a districtwide permanent benefit change
20 made by the employer for a category of school employee in
21 accordance with subdivision (35) (a) (iv) of this section.

22 (ii) For purposes of this subdivision:

23 (A) Category of school employee means either all
24 employees of the employer who are administrators or certificated
25 teachers, or all employees of the employer who are not

1 administrators or certificated teachers, or both;

2 (B) Compensation base means (I) for current members
3 employed with the same employer, the member's compensation for the
4 plan year ending June 30, 2005, or (II) for members newly hired or
5 hired by a separate employer on or after July 1, 2005, the member's
6 compensation for the first full plan year following the member's
7 date of hiring. Thereafter, the member's compensation base shall
8 be increased each plan year by the lesser of seven percent of the
9 member's preceding plan year's compensation base or the member's
10 actual annual compensation increase during the preceding plan year;
11 and

12 (C) Recognized collective-bargaining unit means a group
13 of employees similarly situated with a similar community of
14 interest appropriate for bargaining recognized as such by a school
15 board;

16 (36) Termination of employment occurs on the date on
17 which the member experiences a bona fide separation from service of
18 employment with the member's current employer, the date of which
19 separation is determined by the employer. The employer shall notify
20 the board of the date on which such a termination has occurred.
21 Termination of employment does not include ceasing employment if
22 the member subsequently provides service on a regular basis in
23 any capacity for any school district other than a Class V school
24 district within one hundred eighty calendar days after ceasing
25 employment or if the board determines that a purported termination

1 was not a bona fide separation from service with the employer;

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

6 (38) Substitute employee means a person hired by a public
7 school as a temporary employee on an intermittent basis to assume
8 the duties of regular employees due to the temporary absence of the
9 regular employees. Substitute employee does not mean a person hired
10 as a regular employee on an ongoing basis to assume the duties of
11 other regular employees who are temporarily absent;

12 (39) Participation means qualifying for and making
13 required deposits to the retirement system during the course of a
14 plan year;

15 (40) Regular employee means an employee hired by a public
16 school or under contract in a regular full-time or part-time
17 position who works a full-time or part-time schedule on an ongoing
18 basis for fifteen or more hours per week; and

19 (41) Temporary employee means an employee hired by a
20 public school who is not a regular employee.

21 Sec. 2. Original section 79-902, Revised Statutes
22 Cumulative Supplement, 2006, is repealed.