

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 188

Introduced by Nebraska Retirement Systems Committee Pankonin, 2,
Chairperson; Heidemann, 1; Karpisek, 32; Louden, 49;
Mello, 5; Nordquist, 7.

Read first time January 12, 2009

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to retirement; to amend sections 23-2308.01,
2 23-2315, 23-2317, 23-2319, 23-2321, 84-712.05, 84-1302,
3 84-1307, 84-1309.02, 84-1317, 84-1319, 84-1321, 84-1323,
4 84-1330, 84-1331, and 84-1512, Reissue Revised Statutes
5 of Nebraska, and section 23-2306, Revised Statutes
6 Cumulative Supplement, 2008; to provide and change
7 participation, cash balance benefit, payment deferral,
8 and death benefit provisions relating to the County
9 Employees Retirement Act and the State Employees
10 Retirement Act; to provide for deferred compensation
11 transfers under the State Employees Retirement Act; to
12 provide for the withholding of certain records from
13 the public; to harmonize provisions; and to repeal the

1 original sections.

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

1 Section 1. Section 23-2306, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 23-2306 (1) The membership of the retirement system shall
4 be composed of all persons who are or were employed by member
5 counties and who maintain an account balance with the retirement
6 system.

7 (2) The following employees of member counties are
8 authorized to participate in the retirement system: (a) All
9 permanent full-time employees shall begin participation in the
10 retirement system upon employment and full-time elected officials
11 shall begin participation in the retirement system upon taking
12 office, (b) all permanent part-time employees who have attained
13 the age of twenty years may exercise the option to begin
14 participation in the retirement system, and (c) all part-time
15 elected officials may exercise the option to begin participation
16 in the retirement system. An employee who exercises the option to
17 begin participation in the retirement system shall remain in the
18 system until termination or retirement, regardless of any change of
19 status as a permanent or temporary employee.

20 (3) Within the first ~~thirty~~ one hundred eighty days
21 of employment, a full-time employee may apply to the board for
22 vesting credit for years of participation in another Nebraska
23 governmental plan, as defined by section 414(d) of the Internal
24 Revenue Code. During the years of participation in the other
25 Nebraska governmental plan, the employee must have been a full-time

1 employee, as defined in the Nebraska governmental plan in which
2 the credit was earned. The board may adopt and promulgate rules
3 and regulations governing the assessment and granting of vesting
4 credit.

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

14 (5) A full-time or part-time employee of a city, village,
15 or township who becomes a county employee pursuant to a merger
16 of services shall receive vesting credit for his or her years
17 of participation in a Nebraska governmental plan, as defined by
18 section 414(d) of the Internal Revenue Code, of the city, village,
19 or township.

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

25 (7) Counties shall ensure that employees authorized to

1 participate in the retirement system pursuant to this section shall
 2 enroll and make required contributions to the retirement system
 3 immediately upon becoming an employee. Information necessary to
 4 determine membership in the retirement system shall be provided by
 5 the employer.

6 Sec. 2. Section 23-2308.01, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 23-2308.01 (1) It is the intent of the Legislature that,
 9 in order to improve the competitiveness of the retirement plan
 10 for county employees, a cash balance benefit shall be added to
 11 the County Employees Retirement Act on and after January 1, 2003.
 12 Each member who is employed and participating in the retirement
 13 system prior to January 1, 2003, may either elect to continue
 14 participation in the defined contribution benefit as provided in
 15 the act prior to January 1, 2003, or elect to participate in the
 16 cash balance benefit as set forth in this section. The member
 17 shall make the election prior to January 1, 2003. ~~or on or~~
 18 ~~after November 1, 2007, but before January 1, 2008.~~ If no election
 19 is made prior to January 1, 2003, ~~or on or~~ ~~after November 1,~~
 20 ~~2007, but before January 1, 2008,~~ the member shall be treated as
 21 though he or she elected to continue participating in the defined
 22 contribution benefit as provided in the act prior to January 1,
 23 2003. ~~Members who elect to participate in the cash balance benefit~~
 24 ~~on or after November 1, 2007, but before January 1, 2008, shall~~
 25 ~~commence participation in the cash balance benefit on January 1,~~

1 ~~2008. Any member who made the election prior to January 1, 2003,~~
 2 ~~does not have to reelect the cash balance benefit on or after~~
 3 ~~November 1, 2007, but before January 1, 2008.~~ A member employed
 4 and participating in the retirement system prior to January 1,
 5 2003, who terminates employment on or after January 1, 2003, and
 6 returns to employment prior to having a five-year break in service
 7 shall participate in the cash balance benefit as set forth in this
 8 section.

9 (2) For a member employed and participating in the
 10 retirement system beginning on and after January 1, 2003, or a
 11 member employed and participating in the retirement system on
 12 January 1, 2003, who, prior to January 1, 2003, or on or after
 13 November 1, 2007, but before January 1, 2008, elects to convert his
 14 or her whose employee and employer accounts have been converted to
 15 the cash balance benefit:

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

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

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

23 (iii) Interest credits credited in accordance with
 24 subdivision (19) of section 23-2301; plus

25 (iv) Dividend amounts credited in accordance with

1 subdivision (4) (c) of section 23-2317; and

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

4 (i) The initial employer account balance, if any,
5 transferred from the defined contribution plan account described in
6 section 23-2310; plus

7 (ii) Employer contribution credits deposited in
8 accordance with section 23-2308; plus

9 (iii) Interest credits credited in accordance with
10 subdivision (19) of section 23-2301; plus

11 (iv) Dividend amounts credited in accordance with
12 subdivision (4) (c) of section 23-2317.

13 (3) In order to carry out the provisions of this section,
14 the board may enter into administrative services agreements for
15 accounting or record-keeping services. No agreement shall be
16 entered into unless the board determines that it will result
17 in administrative economy and will be in the best interests of the
18 counties and their participating employees. The board may develop
19 a schedule for the allocation of the administrative services
20 agreements costs for accounting or record-keeping services and may
21 assess the costs so that each member pays a reasonable fee as
22 determined by the board. The money forfeited pursuant to section
23 23-2319.01 shall not be used to pay the administrative costs
24 incurred pursuant to this subsection.

25 Sec. 3. Section 23-2315, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 23-2315 (1) Upon filing an application for benefits with
3 the board, an employee may elect to retire at any time after
4 attaining the age of fifty-five or an employee may retire as a
5 result of disability at any age.

6 (2) The member shall specify in the application for
7 benefits the manner in which he or she wishes to receive the
8 retirement benefit under the options provided by the County
9 Employees Retirement Act. Payment under the application for
10 benefits shall be made (a) for annuities, no sooner than the
11 annuity start date, and (b) for other distributions, no sooner than
12 the date of final account value.

13 (3) Payment of any benefit provided under the retirement
14 system may not be deferred later than April 1 of the year following
15 the year in which the employee has both attained at least age
16 seventy and one-half years and terminated his or her employment
17 with the county, except that, for members participating in the
18 defined contribution benefit, no distribution is required to be
19 made for the plan year commencing January 1, 2009, through December
20 31, 2009.

21 (4) The board shall make reasonable efforts to locate
22 the member or the member's beneficiary and distribute benefits by
23 the required beginning date as specified by section 401(a)(9) of
24 the Internal Revenue Code and the regulations issued thereunder. If
25 the board is unable to make such a distribution, the benefit shall

1 be distributed pursuant to the Uniform Disposition of Unclaimed
2 Property Act and no amounts may be applied to increase the benefits
3 any member would otherwise receive under the County Employees
4 Retirement Act.

5 Sec. 4. Section 23-2317, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 23-2317 (1) The future service retirement benefit shall
8 be an annuity, payable monthly with the first payment made no
9 earlier than the annuity start date, which shall be the actuarial
10 equivalent of the retirement value as specified in section 23-2316
11 based on factors determined by the board, except that gender shall
12 not be a factor when determining the amount of such payments
13 pursuant to subsection (2) of this section.

14 Except as provided in section 42-1107, at any time before
15 the annuity start date, the retiring employee may choose to receive
16 his or her annuity either in the form of an annuity as provided
17 under subsection (4) of this section or any optional form that is
18 determined by the board.

19 Except as provided in section 42-1107, in lieu of the
20 future service retirement annuity, a retiring employee may receive
21 a benefit not to exceed the amount in his or her employer and
22 employee accounts as of the date of final account value payable
23 in a lump sum and, if the employee chooses not to receive the
24 entire amount in such accounts, an annuity equal to the actuarial
25 equivalent of the remainder of the retirement value, and the

1 employee may choose any form of such annuity as provided for by the
2 board.

3 In any case, the amount of the monthly payment shall
4 be such that the annuity chosen shall be the actuarial equivalent
5 of the retirement value as specified in section 23-2316 except as
6 provided in this section.

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

12 (2) Except as provided in subsection (4) of this section,
13 the monthly income payable to a member retiring on or after January
14 1, 1984, shall be as follows:

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

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

25 (b) The income provided by the accumulated contributions

1 made on and after January 1, 1984, based on the annuity purchase
2 rates in effect on the date of purchase which do not use gender as
3 a factor.

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

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

21 Except as provided in section 42-1107, a member may elect
22 a lump-sum distribution of his or her member cash balance account
23 as of the date of final account value upon termination of service
24 or retirement.

25 For a member employed and participating in the retirement

1 system prior to January 1, 2003, who has elected to participate
2 in the cash balance benefit pursuant to section 23-2308.01, or
3 for a member employed and participating in the retirement system
4 beginning on and after January 1, 2003, the balance of his or her
5 member cash balance account as of the date of final account value
6 shall be converted to an annuity using an interest rate used in the
7 actuarial valuation as recommended by the actuary and approved by
8 the board.

9 For an employee who is a member prior to January 1, 2003,
10 who has elected not to participate in the cash balance benefit
11 prior to January 1, 2003, or on or after November 1, 2007, but
12 before January 1, 2008, pursuant to section 23-2308.01, and who,
13 at the time of retirement, chooses the annuity option rather than
14 the lump-sum option, his or her employee and employer accounts
15 as of the date of final account value shall be converted to an
16 annuity using an interest rate that is equal to the lesser of (i)
17 the Pension Benefits Guarantee Corporation initial interest rate
18 for valuing annuities for terminating plans as of the beginning
19 of the year during which payment begins plus three-fourths of one
20 percent or (ii) the interest rate used in the actuarial valuation
21 as recommended by the actuary and approved by the board.

22 (b) For the calendar year beginning January 1, 2003, and
23 each calendar year thereafter, the actuary for the board shall
24 perform an actuarial valuation of the system using the entry
25 age actuarial cost method. Under this method, the actuarially

1 required funding rate is equal to the normal cost rate plus the
2 contribution rate necessary to amortize the unfunded actuarial
3 accrued liability on a level-payment basis. The normal cost under
4 this method shall be determined for each individual member on
5 a level percentage of salary basis. The normal cost amount is
6 then summed for all members. The initial unfunded actual accrued
7 liability as of January 1, 2003, if any, shall be amortized
8 over a twenty-five-year period. During each subsequent actuarial
9 valuation, changes in the unfunded actuarial accrued liability
10 due to changes in benefits, actuarial assumptions, the asset
11 valuation method, or actuarial gains or losses shall be measured
12 and amortized over a twenty-five-year period beginning on the
13 valuation date of such change. If the unfunded actuarial accrued
14 liability under the entry age actuarial cost method is zero or
15 less than zero on an actuarial valuation date, then all prior
16 unfunded actuarial accrued liabilities shall be considered fully
17 funded and the unfunded actuarial accrued liability shall be
18 reinitialized and amortized over a twenty-five-year period as
19 of the actuarial valuation date. If the actuarially required
20 contribution rate exceeds the rate of all contributions required
21 pursuant to the County Employees Retirement Act, there shall be
22 a supplemental appropriation sufficient to pay for the difference
23 between the actuarially required contribution rate and the rate of
24 all contributions required pursuant to the act.

25 (c) If the unfunded accrued actuarial liability under the

1 entry age actuarial cost method is less than zero on an actuarial
2 valuation date, and on the basis of all data in the possession
3 of the retirement board, including such mortality and other tables
4 as are recommended by the actuary engaged by the retirement board
5 and adopted by the retirement board, the retirement board may
6 elect to pay a dividend to all members participating in the
7 cash balance option in an amount that would not increase the
8 actuarial contribution rate above ninety percent of the actual
9 contribution rate. Dividends shall be credited to the employee cash
10 balance account and the employer cash balance account based on the
11 account balances on the actuarial valuation date. In the event a
12 dividend is granted and paid after the actuarial valuation date,
13 interest for the period from the actuarial valuation date until the
14 dividend is actually paid shall be paid on the dividend amount. The
15 interest rate shall be the interest credit rate earned on regular
16 contributions.

17 (5) At the option of the retiring member, any lump sum
18 or annuity provided under this section or section 23-2334 may be
19 deferred to commence at any time, except that no benefit shall be
20 deferred later than April 1 of the year following the year in which
21 the employee has both attained at least seventy and one-half years
22 of age and has terminated his or her employment with the county,
23 except that, for members participating in the defined contribution
24 benefit, no distribution is required to be made for the plan
25 year commencing January 1, 2009, through December 31, 2009. Such

1 election by the retiring member may be made at any time prior to
2 the commencement of the lump-sum or annuity payments.

3 Sec. 5. Section 23-2319, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 23-2319 (1) Except as provided in section 42-1107, upon
6 termination of employment, except for retirement or disability, and
7 after filing an application with the board, a member may receive:

8 (a) If not vested, a termination benefit equal to the
9 amount of his or her employee account or member cash balance
10 account as of the date of final account value payable in a lump sum
11 or an annuity with the lump-sum or first annuity payment made at
12 any time after termination but no later than April 1 of the year
13 following the year in which the member attains the age of seventy
14 and one-half years, except that, for members participating in the
15 defined contribution benefit, no distribution is required to be
16 made for the plan year commencing January 1, 2009, through December
17 31, 2009; or

18 (b) If vested, a termination benefit equal to (i) the
19 amount of his or her member cash balance account as of the date
20 of final account value payable in a lump sum or an annuity with
21 the lump-sum or first annuity payment made at any time after
22 termination but no later than April 1 of the year following the
23 year in which the member attains the age of seventy and one-half
24 years or (ii)(A) the amount of his or her employee account as
25 of the date of final account value payable in a lump sum or an

1 annuity with the lump-sum or first annuity payment made at any
2 time after termination but no later than April 1 of the year
3 following the year in which the member attains the age of seventy
4 and one-half years plus (B) the amount of his or her employer
5 account as of the date of final account value payable in a lump
6 sum or an annuity with the lump-sum or first annuity payment made
7 at any time after termination but no later than April 1 of the
8 year following the year in which the member attains the age of
9 seventy and one-half years. For purposes of subdivision (1)(b) of
10 this section, for members participating in the defined contribution
11 benefit, no distribution is required to be made for the plan year
12 commencing January 1, 2009, through December 31, 2009.

13 The member cash balance account or employer and employee
14 accounts of a terminating member shall be retained by the board,
15 and the termination benefit shall be deferred until a valid
16 application for benefits has been received.

17 (2) At the option of the terminating member, any lump
18 sum of the employer account or member cash balance account or any
19 annuity payment provided under subsection (1) of this section shall
20 commence as of the first of the month at any time after such
21 member has terminated his or her employment with the county and no
22 later than April 1 of the year following the year in which the
23 member attains the age of seventy and one-half years, except that,
24 for members participating in the defined contribution benefit, no
25 distribution is required to be made for the plan year commencing

1 January 1, 2009, through December 31, 2009. Such election by
2 the terminating member shall be made at any time prior to the
3 commencement of the lump-sum or annuity payments.

4 (3) Members of the retirement system shall be vested
5 after a total of three years of participation in the system as a
6 member pursuant to section 23-2306, including vesting credit. If an
7 employee retires pursuant to section 23-2315, such employee shall
8 be fully vested in the retirement system.

9 Sec. 6. Section 23-2321, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 23-2321 In the event of the death before his or her
12 retirement date of any employee who is a member of the system,
13 the death benefit shall be equal to (1) for participants in the
14 defined contribution benefit, the total of the employee account
15 and the employer account and (2) for participants in the cash
16 balance benefit, the benefit provided in section 23-2308.01. The
17 death benefit shall be paid to the member's beneficiary, to an
18 alternate payee pursuant to a qualified domestic relations order
19 as provided in section 42-1107, or to the member's estate if there
20 are no designated beneficiaries. If the beneficiary is not the
21 member's surviving spouse, the death benefit shall be paid as a
22 lump-sum payment or payments, except that the entire account must
23 be distributed by the fifth anniversary of the member's death.
24 If the sole primary beneficiary is the member's surviving spouse,
25 the surviving spouse may elect to receive an annuity calculated

1 as if the member retired and selected a one-hundred-percent joint
2 and survivor annuity effective on the annuity purchase date. If
3 the surviving spouse does not elect the annuity option within one
4 hundred ~~twenty~~ eighty days after the death of the member, the
5 surviving spouse shall receive a lump-sum payment or payments,
6 except that the entire account must be distributed by the fifth
7 anniversary of the member's death.

8 Sec. 7. Section 84-712.05, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 84-712.05 The following records, unless publicly
11 disclosed in an open court, open administrative proceeding, or open
12 meeting or disclosed by a public entity pursuant to its duties, may
13 be withheld from the public by the lawful custodian of the records:

14 (1) Personal information in records regarding a student,
15 prospective student, or former student of any educational
16 institution or exempt school that has effectuated an election
17 not to meet state approval or accreditation requirements pursuant
18 to section 79-1601 when such records are maintained by and in
19 the possession of a public entity, other than routine directory
20 information specified and made public consistent with 20 U.S.C.
21 1232g, as such section existed on January 1, 2003;

22 (2) Medical records, other than records of births and
23 deaths and except as provided in subdivision (5) of this section,
24 in any form concerning any person; records of elections filed under
25 section 44-2821; and patient safety work product under the Patient

1 Safety Improvement Act;

2 (3) Trade secrets, academic and scientific research work
3 which is in progress and unpublished, and other proprietary or
4 commercial information which if released would give advantage to
5 business competitors and serve no public purpose;

6 (4) Records which represent the work product of an
7 attorney and the public body involved which are related to
8 preparation for litigation, labor negotiations, or claims made by
9 or against the public body or which are confidential communications
10 as defined in section 27-503;

11 (5) Records developed or received by law enforcement
12 agencies and other public bodies charged with duties of
13 investigation or examination of persons, institutions, or
14 businesses, when the records constitute a part of the examination,
15 investigation, intelligence information, citizen complaints or
16 inquiries, informant identification, or strategic or tactical
17 information used in law enforcement training, except that this
18 subdivision shall not apply to records so developed or received
19 relating to the presence of and amount or concentration of alcohol
20 or drugs in any body fluid of any person;

21 (6) Appraisals or appraisal information and negotiation
22 records concerning the purchase or sale, by a public body, of any
23 interest in real or personal property, prior to completion of the
24 purchase or sale;

25 (7) Personal information in records regarding personnel

1 of public bodies other than salaries and routine directory
2 information;

3 (8) Information solely pertaining to protection of the
4 security of public property and persons on or within public
5 property, such as specific, unique vulnerability assessments or
6 specific, unique response plans, either of which is intended
7 to prevent or mitigate criminal acts the public disclosure of
8 which would create a substantial likelihood of endangering public
9 safety or property; computer or communications network schema,
10 passwords, and user identification names; guard schedules; or lock
11 combinations;

12 (9) The security standards, procedures, policies, plans,
13 specifications, diagrams, access lists, and other security-related
14 records of the Lottery Division of the Department of Revenue and
15 those persons or entities with which the division has entered into
16 contractual relationships. Nothing in this subdivision shall allow
17 the division to withhold from the public any information relating
18 to amounts paid persons or entities with which the division has
19 entered into contractual relationships, amounts of prizes paid, the
20 name of the prize winner, and the city, village, or county where
21 the prize winner resides;

22 (10) With respect to public utilities and except as
23 provided in sections 43-512.06 and 70-101, personally identified
24 private citizen account payment information, credit information on
25 others supplied in confidence, and customer lists;

1 (11) Records or portions of records kept by a publicly
2 funded library which, when examined with or without other records,
3 reveal the identity of any library patron using the library's
4 materials or services;

5 (12) Correspondence, memoranda, and records of telephone
6 calls related to the performance of duties by a member of
7 the Legislature in whatever form. The lawful custodian of the
8 correspondence, memoranda, and records of telephone calls, upon
9 approval of the Executive Board of the Legislative Council, shall
10 release the correspondence, memoranda, and records of telephone
11 calls which are not designated as sensitive or confidential in
12 nature to any person performing an audit of the Legislature. A
13 member's correspondence, memoranda, and records of confidential
14 telephone calls related to the performance of his or her
15 legislative duties shall only be released to any other person with
16 the explicit approval of the member;

17 (13) Records or portions of records kept by public
18 bodies which would reveal the location, character, or ownership
19 of any known archaeological, historical, or paleontological site
20 in Nebraska when necessary to protect the site from a reasonably
21 held fear of theft, vandalism, or trespass. This section shall not
22 apply to the release of information for the purpose of scholarly
23 research, examination by other public bodies for the protection of
24 the resource or by recognized tribes, the Unmarked Human Burial
25 Sites and Skeletal Remains Protection Act, or the federal Native

1 American Graves Protection and Repatriation Act;

2 (14) Records or portions of records kept by public
3 bodies which maintain collections of archaeological, historical, or
4 paleontological significance which reveal the names and addresses
5 of donors of such articles of archaeological, historical, or
6 paleontological significance unless the donor approves disclosure,
7 except as the records or portions thereof may be needed to carry
8 out the purposes of the Unmarked Human Burial Sites and Skeletal
9 Remains Protection Act or the federal Native American Graves
10 Protection and Repatriation Act;

11 (15) Job application materials submitted by applicants,
12 other than finalists, who have applied for employment by any
13 public body as defined in section 84-1409. For purposes of
14 this subdivision, (a) job application materials means employment
15 applications, resumes, reference letters, and school transcripts
16 and (b) finalist means any applicant (i) who reaches the final pool
17 of applicants, numbering four or more, from which the successful
18 applicant is to be selected, (ii) who is an original applicant
19 when the final pool of applicants numbers less than four, or (iii)
20 who is an original applicant and there are four or fewer original
21 applicants; and

22 (16) Records obtained by the Public Employees Retirement
23 Board pursuant to section 84-1512; and

24 ~~(16)~~ (17) Social security numbers; credit card, charge
25 card, or debit card numbers and expiration dates; and financial

1 account numbers supplied to state and local governments by
2 citizens.

3 Sec. 8. Section 84-1302, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 84-1302 (1) An employees retirement system is hereby
6 established for the purpose of providing a retirement annuity or
7 other benefits for employees as provided by ~~sections 84-1301 to~~
8 84-1333, the State Employees Retirement Act and sections 84-1332
9 and 84-1333 and section 11 of this act. The retirement system so
10 created shall begin operation January 1, 1964. It shall be known
11 as the State Employees Retirement System of the State of Nebraska
12 and by such name shall transact all business and hold all cash and
13 other property as provided in such sections.

14 (2) The retirement system shall not accept as
15 contributions any money from members or the state except the
16 following:

17 (a) Mandatory contributions established by sections
18 84-1308 and 84-1309;

19 (b) Money that is a repayment of refunded contributions
20 made pursuant to section 84-1322;

21 (c) Contributions for military service credit made
22 pursuant to section 84-1325;

23 (d) Actuarially required contributions pursuant to
24 subdivision (4)(b) of section 84-1319;

25 (e) Trustee-to-trustee transfers pursuant to section

1 84-1313.01; or

2 (f) Corrections ordered by the board pursuant to section
3 84-1305.02.

4 Sec. 9. Section 84-1307, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 84-1307 (1) The membership of the retirement system shall
7 be composed of all persons who are or were employed by the State
8 of Nebraska and who maintain an account balance with the retirement
9 system.

10 (2) The following employees of the State of Nebraska
11 are authorized to participate in the retirement system: (a) All
12 permanent full-time employees shall begin participation in the
13 retirement system upon employment; and (b) all permanent part-time
14 employees who have attained the age of twenty years may exercise
15 the option to begin participation in the retirement system. An
16 employee who exercises the option to begin participation in the
17 retirement system pursuant to this section shall remain in the
18 retirement system until his or her termination of employment or
19 retirement, regardless of any change of status as a permanent or
20 temporary employee.

21 (3) For purposes of this section, (a) permanent full-time
22 employees includes employees of the Legislature or Legislative
23 Council who work one-half or more of the regularly scheduled
24 hours during each pay period of the legislative session and (b)
25 permanent part-time employees includes employees of the Legislature

1 or Legislative Council who work less than one-half of the regularly
2 scheduled hours during each pay period of the legislative session.

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

13 (5) Any employee who qualifies for membership in the
14 retirement system pursuant to this section may not be disqualified
15 for membership in the retirement system solely because such
16 employee also maintains separate employment which qualifies the
17 employee for membership in another public retirement system,
18 nor may membership in this retirement system disqualify such an
19 employee from membership in another public employment system solely
20 by reason of separate employment which qualifies such employee for
21 membership in this retirement system.

22 (6) State agencies shall ensure that employees authorized
23 to participate in the retirement system pursuant to this section
24 shall enroll and make required contributions to the retirement
25 system immediately upon becoming an employee. Information necessary

1 to determine membership in the retirement system shall be provided
2 by the employer.

3 Sec. 10. Section 84-1309.02, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 84-1309.02 (1) It is the intent of the Legislature that,
6 in order to improve the competitiveness of the retirement plan
7 for state employees, a cash balance benefit shall be added to
8 the State Employees Retirement Act on and after January 1, 2003.
9 Each member who is employed and participating in the retirement
10 system prior to January 1, 2003, may either elect to continue
11 participation in the defined contribution benefit as provided in
12 the act prior to January 1, 2003, or elect to participate in the
13 cash balance benefit as set forth in this section. The member
14 shall make the election prior to January 1, 2003, ~~or on or~~
15 ~~after November 1, 2007, but before January 1, 2008.~~ If no election
16 is made prior to January 1, 2003, ~~or on or~~ ~~after November 1,~~
17 ~~2007, but before January 1, 2008,~~ the member shall be treated as
18 though he or she elected to continue participating in the defined
19 contribution benefit as provided in the act prior to January 1,
20 2003. ~~Members who elect to participate in the cash balance benefit~~
21 ~~on or after November 1, 2007, but before January 1, 2008, shall~~
22 ~~commence participation in the cash balance benefit on January 1,~~
23 ~~2008. Any member who made the election prior to January 1, 2003,~~
24 ~~does not have to reelect the cash balance benefit on or after~~
25 ~~November 1, 2007, but before January 1, 2008. A member employed~~

1 and participating in the retirement system prior to January 1,
2 2003, who terminates employment on or after January 1, 2003, and
3 returns to employment prior to having a five-year break in service
4 shall participate in the cash balance benefit as set forth in this
5 section.

6 (2) For a member employed and participating in the
7 retirement system beginning on and after January 1, 2003, or a
8 member employed and participating in the retirement system on
9 January 1, 2003, who, prior to January 1, 2003, or on or after
10 November 1, 2007, but before January 1, 2008, elects to convert his
11 or her whose employee and employer accounts have been converted to
12 the cash balance benefit:

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

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

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

20 (iii) Interest credits credited in accordance with
21 subdivision (18) of section 84-1301; plus

22 (iv) Dividend amounts credited in accordance with
23 subdivision (4)(c) of section 84-1319; and

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

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

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

6 (iii) Interest credits credited in accordance with
7 subdivision (18) of section 84-1301; plus

8 (iv) Dividend amounts credited in accordance with
9 subdivision (4)(c) of section 84-1319.

10 (3) In order to carry out the provisions of this section,
11 the board may enter into administrative services agreements for
12 accounting or record-keeping services. No agreement shall be
13 entered into unless the board determines that it will result
14 in administrative economy and will be in the best interests of
15 the state and its participating employees. The board may develop
16 a schedule for the allocation of the administrative services
17 agreements costs for accounting or record-keeping services and may
18 assess the costs so that each member pays a reasonable fee as
19 determined by the board. The money forfeited pursuant to section
20 84-1321.01 shall not be used to pay the administrative costs
21 incurred pursuant to this subsection.

22 Sec. 11. The retirement system may transfer deferred
23 compensation by a member under section 84-1313.01 as a plan-to-plan
24 transfer to the deferred compensation plan authorized under section
25 84-1504 if the following conditions are met:

1 (1) The member has an amount of compensation deferred
2 immediately after the transfer at least equal to the amount of
3 compensation deferred immediately before the transfer;

4 (2) The account of the member is valued as of the date of
5 final account value;

6 (3) The member is not eligible for additional annual
7 deferrals in the receiving plan unless the member is performing
8 services for the state; and

9 (4) The deferred compensation plan provides for such
10 transfers.

11 Sec. 12. Section 84-1317, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 84-1317 (1) Upon filing an application for benefits with
14 the board, an employee may elect to retire after the attainment of
15 age fifty-five or an employee may retire as a result of disability
16 at any age.

17 (2) The member shall specify in the application for
18 benefits the manner in which he or she wishes to receive the
19 retirement benefit under the options provided by the State
20 Employees Retirement Act. Payment under the application for
21 benefits shall be made (a) for annuities, no sooner than the
22 annuity start date, and (b) for other distributions, no sooner than
23 the date of final account value.

24 (3) Payment of any benefit provided under the retirement
25 system may not be deferred later than April 1 of the year following

1 the year in which the employee has both attained at least age
2 seventy and one-half years and terminated his or her employment
3 with the state, except that, for members participating in the
4 defined contribution benefit, no distribution is required to be
5 made for the plan year commencing January 1, 2009, through December
6 31, 2009.

7 (4) The board shall make reasonable efforts to locate
8 the member or the member's beneficiary and distribute benefits by
9 the required beginning date as specified by section 401(a)(9) of
10 the Internal Revenue Code and the regulations issued thereunder. If
11 the board is unable to make such a distribution, the benefit shall
12 be distributed pursuant to the Uniform Disposition of Unclaimed
13 Property Act and no amounts may be applied to increase the benefits
14 any member would otherwise receive under the State Employees
15 Retirement Act.

16 Sec. 13. Section 84-1319, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 84-1319 (1) The future service retirement benefit shall
19 be an annuity, payable monthly with the first payment made no
20 earlier than the annuity start date, which shall be the actuarial
21 equivalent of the retirement value as specified in section 84-1318
22 based on factors determined by the board, except that gender shall
23 not be a factor when determining the amount of such payments except
24 as provided in this section.

25 Except as provided in section 42-1107, at any time before

1 the annuity start date, the retiring employee may choose to receive
2 his or her annuity either in the form of an annuity as provided
3 under subsection (4) of this section or any optional form that is
4 determined acceptable by the board.

5 Except as provided in section 42-1107, in lieu of the
6 future service retirement annuity, a retiring employee may receive
7 a benefit not to exceed the amount in his or her employer and
8 employee accounts as of the date of final account value payable
9 in a lump sum and, if the employee chooses not to receive the
10 entire amount in such accounts, an annuity equal to the actuarial
11 equivalent of the remainder of the retirement value, and the
12 employee may choose any form of such annuity as provided for by the
13 board.

14 In any case, the amount of the monthly payment shall
15 be such that the annuity chosen shall be the actuarial equivalent
16 of the retirement value as specified in section 84-1318 except as
17 provided in this section.

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

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

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

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

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

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

19 (4) (a) The normal form of payment shall be a single life
20 annuity with five-year certain, which is an annuity payable monthly
21 during the remainder of the member's life with the provision that,
22 in the event of his or her death before sixty monthly payments
23 have been made, the monthly payments will be continued to his or
24 her estate or to the beneficiary he or she has designated until
25 sixty monthly payments have been made in total. Such annuity shall

1 be equal to the actuarial equivalent of the member cash balance
2 account or the sum of the employee and employer accounts, whichever
3 is applicable, as of the date of final account value. As a part
4 of the annuity, the normal form of payment may include a two and
5 one-half percent cost-of-living adjustment purchased by the member,
6 if the member elects such a payment option.

7 Except as provided in section 42-1107, a member may elect
8 a lump-sum distribution of his or her member cash balance account
9 as of the date of final account value upon termination of service
10 or retirement.

11 For a member employed and participating in the retirement
12 system prior to January 1, 2003, who has elected to participate
13 in the cash balance benefit pursuant to section 84-1309.02, or
14 for a member employed and participating in the retirement system
15 beginning on and after January 1, 2003, the balance of his or her
16 member cash balance account as of the date of final account value
17 shall be converted to an annuity using an interest rate used in the
18 actuarial valuation as recommended by the actuary and approved by
19 the board.

20 For an employee who is a member prior to January 1, 2003,
21 who has elected not to participate in the cash balance benefit
22 prior to January 1, 2003, or on or after November 1, 2007, but
23 before January 1, 2008, pursuant to section 84-1309.02, and who,
24 at the time of retirement, chooses the annuity option rather than
25 the lump-sum option, his or her employee and employer accounts

1 as of the date of final account value shall be converted to an
2 annuity using an interest rate that is equal to the lesser of (i)
3 the Pension Benefits Guarantee Corporation initial interest rate
4 for valuing annuities for terminating plans as of the beginning
5 of the year during which payment begins plus three-fourths of one
6 percent or (ii) the interest rate used in the actuarial valuation
7 as recommended by the actuary and approved by the board.

8 (b) For the calendar year beginning January 1, 2003, and
9 each calendar year thereafter, the actuary for the board shall
10 perform an actuarial valuation of the system using the entry
11 age actuarial cost method. Under this method, the actuarially
12 required funding rate is equal to the normal cost rate plus the
13 contribution rate necessary to amortize the unfunded actuarial
14 accrued liability on a level-payment basis. The normal cost under
15 this method shall be determined for each individual member on
16 a level percentage of salary basis. The normal cost amount is
17 then summed for all members. The initial unfunded actual accrued
18 liability as of January 1, 2003, if any, shall be amortized
19 over a twenty-five-year period. During each subsequent actuarial
20 valuation, changes in the unfunded actuarial accrued liability
21 due to changes in benefits, actuarial assumptions, the asset
22 valuation method, or actuarial gains or losses shall be measured
23 and amortized over a twenty-five-year period beginning on the
24 valuation date of such change. If the unfunded actuarial accrued
25 liability under the entry age actuarial cost method is zero or

1 less than zero on an actuarial valuation date, then all prior
2 unfunded actuarial accrued liabilities shall be considered fully
3 funded and the unfunded actuarial accrued liability shall be
4 reinitialized and amortized over a twenty-five-year period as
5 of the actuarial valuation date. If the actuarially required
6 contribution rate exceeds the rate of all contributions required
7 pursuant to the State Employees Retirement Act, there shall be
8 a supplemental appropriation sufficient to pay for the difference
9 between the actuarially required contribution rate and the rate of
10 all contributions required pursuant to the act.

11 (c) If the unfunded accrued actuarial liability under the
12 entry age actuarial cost method is less than zero on an actuarial
13 valuation date, and on the basis of all data in the possession
14 of the retirement board, including such mortality and other tables
15 as are recommended by the actuary engaged by the retirement board
16 and adopted by the retirement board, the retirement board may
17 elect to pay a dividend to all members participating in the
18 cash balance option in an amount that would not increase the
19 actuarial contribution rate above ninety percent of the actual
20 contribution rate. Dividends shall be credited to the employee cash
21 balance account and the employer cash balance account based on the
22 account balances on the actuarial valuation date. In the event a
23 dividend is granted and paid after the actuarial valuation date,
24 interest for the period from the actuarial valuation date until the
25 dividend is actually paid shall be paid on the dividend amount. The

1 interest rate shall be the interest credit rate earned on regular
2 contributions.

3 (5) At the option of the retiring member, any lump sum
4 or annuity provided under this section or section 84-1320 may be
5 deferred to commence at any time, except that no benefit shall be
6 deferred later than April 1 of the year following the year in which
7 the employee has both attained at least seventy and one-half years
8 of age and has terminated his or her employment with the state,
9 except that, for members participating in the defined contribution
10 benefit, no distribution is required to be made for the plan
11 year commencing January 1, 2009, through December 31, 2009. Such
12 election by the retiring member may be made at any time prior to
13 the commencement of the lump-sum or annuity payments.

14 Sec. 14. Section 84-1321, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 84-1321 (1) Except as provided in section 42-1107, upon
17 termination of employment before becoming eligible for retirement
18 under section 84-1317, a member may, upon application to the board,
19 receive:

20 (a) If not vested, a termination benefit equal to the
21 amount in his or her employee account or member cash balance
22 account as of the date of final account value payable in a lump sum
23 or an annuity with the lump-sum or first annuity payment made at
24 any time after termination but no later than April 1 of the year
25 following the year in which the member attains the age of seventy

1 and one-half years, except that, for members participating in the
2 defined contribution benefit, no distribution is required to be
3 made for the plan year commencing January 1, 2009, through December
4 31, 2009; or

5 (b) If vested, a termination benefit equal to (i) the
6 amount of his or her member cash balance account as of the date
7 of final account value payable in a lump sum or an annuity with
8 the lump-sum or first annuity payment made at any time after
9 termination but no later than April 1 of the year following the
10 year in which the member attains the age of seventy and one-half
11 years or (ii) (A) the amount in his or her employee account as
12 of the date of final account value payable in a lump sum or an
13 annuity with the lump-sum or first annuity payment made at any
14 time after termination but no later than April 1 of the year
15 following the year in which the member attains the age of seventy
16 and one-half years plus (B) the amount of his or her employer
17 account as of the date of final account value payable in a lump
18 sum or an annuity with the lump-sum or first annuity payment made
19 at any time after termination but no later than April 1 of the
20 year following the year in which the member attains the age of
21 seventy and one-half years. For purposes of subdivision (1)(b) of
22 this section, for members participating in the defined contribution
23 benefit, no distribution is required to be made for the plan year
24 commencing January 1, 2009, through December 31, 2009.

25 The member cash balance account or employer and employee

1 accounts of a terminating member shall be retained by the board,
2 and the termination benefit shall be deferred until a valid
3 application for benefits has been received.

4 (2) At the option of the terminating member, any lump
5 sum of the vested portion of the employer account or member cash
6 balance account or any annuity provided under subsection (1) of
7 this section shall commence as of the first of the month at any
8 time after such member has terminated his or her employment with
9 the state or may be deferred, except that no benefit shall be
10 deferred later than April 1 of the year following the year in which
11 the employee has both attained at least seventy and one-half years
12 of age and has terminated his or her employment with the state,
13 except that, for members participating in the defined contribution
14 benefit, no distribution is required to be made for the plan
15 year commencing January 1, 2009, through December 31, 2009. Such
16 election by the terminating member shall be made at any time prior
17 to the commencement of the lump-sum or annuity payments.

18 (3) Members of the retirement system shall be vested
19 after a total of three years of participation in the system as a
20 member pursuant to section 84-1307, including vesting credit. If
21 an employee retires pursuant to section 84-1317, such an employee
22 shall be fully vested in the retirement system.

23 Sec. 15. Section 84-1323, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 84-1323 In the event of the death before his or her

1 retirement date of any employee who is a member of the system,
2 the death benefit shall be equal to (1) for participants in the
3 defined contribution benefit, the total of the employee account
4 and the employer account and (2) for participants in the cash
5 balance benefit, the benefit provided in section 84-1309.02. The
6 death benefit shall be paid to the member's beneficiary, to an
7 alternate payee pursuant to a qualified domestic relations order
8 as provided in section 42-1107, or to the member's estate if there
9 are no designated beneficiaries. If the beneficiary is not the
10 member's surviving spouse, the death benefit shall be paid as a
11 lump-sum payment or payments, except that the entire account must
12 be distributed by the fifth anniversary of the member's death.
13 If the sole primary beneficiary is the member's surviving spouse,
14 the surviving spouse may elect to receive an annuity calculated
15 as if the member retired and selected a one-hundred-percent joint
16 and survivor annuity effective on the annuity purchase date. If
17 the surviving spouse does not elect the annuity option within one
18 hundred ~~twenty~~ eighty days after the death of the member, the
19 surviving spouse shall receive a lump-sum payment or payments,
20 except that the entire account must be distributed by the fifth
21 anniversary of the member's death.

22 Sec. 16. Section 84-1330, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 84-1330 The provisions of ~~sections 84-1301 to 84-1331~~
25 the State Employees Retirement Act and section 11 of this act

1 pertaining to elected officials or other employees having a regular
2 term of office shall be interpreted as to effectuate its general
3 purpose and to take effect as soon as the same may become operative
4 under the Constitution of the State of Nebraska.

5 Sec. 17. Section 84-1331, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 84-1331 Sections 84-1301 to 84-1331 and section 11 of
8 this act shall be known and may be cited as the State Employees
9 Retirement Act.

10 Sec. 18. Section 84-1512, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 84-1512 (1) The Public Employees Retirement Board, for
13 purposes of administering the various retirement systems under its
14 jurisdiction, shall receive from the Department of Administrative
15 Services and other employers such information as is necessary
16 for the efficient and accurate administration of the systems and
17 shall consult with the Department of Administrative Services and
18 other employers as to the form in which the information is to
19 be presented and received by the board. The information in the
20 records shall be provided by the employers in an accurate and
21 verifiable form, as specified by the director of the Nebraska
22 Public Employees Retirement Systems. The director shall, from time
23 to time, carry out testing procedures to verify the accuracy
24 of such information. The director shall have access to records
25 maintained by the Department of Administrative Services on the

1 Nebraska employees information system data base for the purpose
2 of obtaining any information which may be necessary to verify the
3 accuracy of information and administer the systems and the holder
4 of the records shall comply with a request by the director for
5 access by providing such facts and information to the director in
6 a timely manner. ~~By January 1, 2006, the director shall develop~~
7 ~~procedures necessary to carry out the testing procedures described~~
8 ~~in this section and sections 23-2312, 24-704, 79-906, 81-2021, and~~
9 ~~84-1305.01.~~

10 (2) The director shall develop and implement an employer
11 education program using principles generally accepted by public
12 employee retirement systems so that all employers have the
13 knowledge and information necessary to prepare and file reports
14 as the board requires.

15 (3) The information obtained by the board pursuant to
16 this section shall not be considered public records subject to
17 sections 84-712 to 84-712.09, except that the following information
18 shall be considered public records: The member's name, the
19 retirement system in which the member is a participant, the
20 date the member's participation in the retirement system commenced,
21 and the date the member's participation in the retirement system
22 ended, if applicable.

23 Sec. 19. Original sections 23-2308.01, 23-2315, 23-2317,
24 23-2319, 23-2321, 84-712.05, 84-1302, 84-1307, 84-1309.02, 84-1317,
25 84-1319, 84-1321, 84-1323, 84-1330, 84-1331, and 84-1512, Reissue

LB 188

LB 188

- 1 Revised Statutes of Nebraska, and section 23-2306, Revised Statutes
- 2 Cumulative Supplement, 2008, are repealed.