

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB447

Hearing Date: Thursday March 05, 2015
Committee On: Nebraska Retirement Systems
Introducer: Mello
One Liner: Change provisions relating to the Class V School Employees Retirement Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Davis, Groene, Kolowski, Kolterman, Lindstrom, Mello
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

SENATOR HEATH MELLO
JASON HAYES

MIKE DULANEY

ROGER REA

JOHN JENSEN

CHRIS PROULX
MARY L MORRISSEY
JOHN JENSEN

JASON HAYES

ROGER REA

NANCY W HUSTON

Representing:

INTRODUCER
AM1815 - NEBRASKA STATE EDUCATION ASSOCIATION
AM1815 - NEBRASKA COUNCIL OF SCHOOL ADMINISTRATORS
AM1815 - NEBRASKA STATE EDUCATION ASSOCIATION - RETIRED
AM1815 - OMAHA EDUCATION ASSOCIATION - RETIRED
AM1815 - OMAHA EDUCATION ASSOCIATION
LB447 - SELF
LB447 - OMAHA EDUCATION ASSOCIATION - RETIRED
LB447 - NEBRASKA STATE EDUCATION ASSOCIATION
LB447 - NEBRASKA STATE EDUCATION ASSOCIATION - RETIRED
LB447 - SELF

Opponents:

LOU ANN GODING
DAVID KRAMER
LOU ANN GODING
JOHN A BONAIUTO

Representing:

AM1815 - OMAHA PUBLIC SCHOOLS
AM1815 - OMAHA PUBLIC SCHOOLS
LB447 - OMAHA PUBLIC SCHOOLS
LB447 - NEBRASKA ASSOCIATION OF SCHOOL BOARDS

Neutral:

MICHAEL WALDEN-NEWMAN
RUSS KARPISEK

Representing:

AM1815 - NEBRASKA INVESTMENT COUNCIL
AM1815 - AUDITOR OF PUBLIC ACCOUNTS

Summary of purpose and/or changes:

As introduced, LB 447 made the following governance changes to the Class V (Omaha) School Employees Retirement Act:

1. Removed the board of education members from the board of trustees and provided for the election of member trustees by the respective members of the retirement system;
2. Placed the retirement system administrator and other retirement system employees under the control of the board of trustees; and
3. Created independent investment authority for the board of trustees who make all investment decisions regarding the retirement system's funds.

AM 1815 - January 25, 2016 Hearing

AM 1815 was filed in early January 2016 and a hearing was held on the amendment on January 25, 2016. AM 1815 strikes the original language in LB 447 and inserts the provisions of LB 448 as advanced by the Committee in 2015 and amended during 2015 floor debate. In addition, the amendment includes several new provisions related to the School Employees and Class V (Omaha) School Employees Retirement (OSERS) Plans, and clarifies the language regarding any potential payment of the OSERS actuarially required contribution. The provisions of AM 1815 include the following:

Benefit changes for new Class V (Omaha) school employees hired on or after July 1,

1. Eliminates the State Service Annuity paid by the State
2. Eliminates the medical cost-of-living-adjustment
3. Retirement benefits are unreduced at age 65 rather than age 62

Benefit changes for School Employees Retirement Plan members:

1. Beginning on the effective date of the act, a member receiving a disability retirement benefit may no longer work up to 20 hours a week while receiving the disability benefit.
2. Employees hired on or after July 1, 2016 will no longer be able to vest with half year of service credit if they are at least 65 years of age.

Class V (Omaha) School Employees (OSERS) board of trustees governance changes:

1. The OSERS staff is under the control of the board of trustees rather than the board of education.
2. The board of trustees appoint the OSERS administrator who is approved by the board of education.
3. The board of trustees oversee the administrator and OSERS staff rather than the board of education.
4. The board of trustees may contract for services with a legal advisor.
5. The board of trustees contract with the actuary for OSERS rather than the board of education however, the selection of the actuary is approved by the board of education.
6. The board of trustees no longer make a recommendation to the board of education regarding the district contribution to the OSERS plan-- only the actuary makes a recommendation to the board of education.
7. A definition of "solvency" is added for purposes of determining the actuarially required contribution paid by the board of education.
8. The audit year is changed to calendar year, except in 2016 -- the audit year is a 4 month year; The audit year is used for preparation of the OSERS actuarial report and financial audit.
9. The board of trustees continue to administer the payment of pensions.

OSERS Board of Trustees membership includes:

The three board of education members are eliminated from the membership of the board of trustees and the board of education no longer appoints all the members. The membership includes:

1. Two business members recommended by the trustees and approved by the board of education
2. Two certificated employees elected by its membership
3. One non-certificated employee elected by its membership
4. One retired member elected by its membership and
5. The superintendent or his or her designee as an ex officio voting member

Investment changes:

1. The authority to invest OSERS funds and to select banks and custodial arrangements for the OSERS plan investments is transferred to the State Treasurer, the Nebraska Investment Council, and the state investment officer.
2. The OSERS administrator serves as an ex officio non-voting member of the Nebraska Investment Council.
3. The state investment officer is required to submit quarterly reports to the board of trustees regarding the assets of the retirement system and related costs, fees, and expenses.

State funding changes:

1. The state-funded State Service Annuity is eliminated for new Class V School Employee Retirement Plan members hired on or after July 1, 2016.
2. Beginning July 1, 2016, if the School Employees Retirement Plan has an actuarially required contribution (ARC) and the state appropriates money for it, and the OSERS Plan has an ARC then the school district may request a public hearing before the Appropriations Committee to request additional state funding to pay its ARC. If the Appropriations Committee recommends payment of the additional funding and the Legislature approves the additional requested funding, then the School Plan ARC will be computed as a percent of payroll and the state will contribute to OSERS the lesser of the same percent of payroll that was paid to the School Plan or the percent of OSERS members' compensation needed to meet the ARC for the OSERS Plan.

Miscellaneous changes:

1. Beginning July 1, 2016, the board of education has no duty or responsibility for administration of the Class V School Employees Retirement System including calculation of benefits for members or beneficiaries, except as specifically provided in the Act.
2. The school district is not liable for acts or omissions in the administration of the Class V School Employees Retirement Act made at the direction of the board of trustees.

Committee Amendment AM 1979

The committee amendment, AM 1979 incorporates all of the provisions in AM 1815, adds fiduciary responsibility language for members of the Class V School Employees Retirement System board of trustees, re-phrases the provisions regarding the elimination of vesting with half year of service in the School Employees Retirement Act to clarify that it only applies to new members, and inserts technical and clarifying changes throughout the bill. Committee amendment AM 1979 also incorporates the following bills:

LB 805

LB 805 amends section 13-2402 to require each political subdivision that has a defined benefit plan to conduct an actuarial experience study at least every four years.

LB 922

LB 922 adjusts the terms so that no more than two Public Employee Retirement Board (PERB) members would be appointed or reappointed in any one year. It also clarifies that if a PERB member's position is vacated during the term, the member's replacement would at least initially, only be appointed to serve the remaining term. Following expiration of the remaining term, the replacement or another member would be appointed or reappointed for the normal five-year term.

LB 986 as amended

LB 986 is amended and incorporated. It adds new duties for the Nebraska Public Employees Retirement Systems (NPERS) Executive Director, the Public Employees Retirement Board, and the actuary. The provisions include the following:

1. Experience studies must be conducted at least every 4 years or at the request of the Retirement Committee;
2. The executive director of NPERS is required to provide the first draft and final draft copies of the annual valuation reports and the experience studies to the Retirement Committee and Governor as soon as the drafts are received from the actuary.
3. The drafts are considered confidential documents and are exempt from the Public Records Act;
4. The actuary is required to present the experience study to the Retirement Committee within 30 business days following presentation to the PERB;
5. The PERB is required to submit a written explanation to the Retirement Committee within 10 business days of taking formal action to not adopt one or more of the recommendations in the experience study; and
6. Business days are defined for purposes of this section.

Section-by-Section Summary of Committee amendment AM 1979

Section 1. (LB 805) [amends 13-2402] Requires each political subdivision that has a defined benefit plan to conduct an actuarial experience study at least every four years

Section 2. [amends 72-1237] Adds the Omaha School Employees Retirement System (OSERS) administrator as an ex officio non-voting member of the Nebraska Investment Council (NIC) beginning January 1, 2017; strikes obsolete language

Section 3. [amends 72-1239] Beginning January 1, 2017, exempts the OSERS administrator from receiving per diem for service on NIC

Section 4. [amends 72-1239.01] Adds NIC investment responsibility for OSERS retirement system assets beginning January 1, 2017; NIC members and the state investment officer are not fiduciaries for investments made by the board of education or the board of trustees, nor are they liable for action or inaction related to investment decisions of the board of trustees or the board of education

Section 5. [amends 72-1243] Beginning January 1, 2017, the state investment officer directs investment and reinvestment of OSERS retirement system assets; incorporates analysis of OSERS retirement assets as a subject in the NIC annual report which is presented to the Nebraska Retirement Systems Committee each March

Section 6. [amends 72-1249] Beginning on the effective date of the Act, expenses with respect to transfer and assumption of investment authority to the NIC may be charged against OSERS assets; the Class V School Employees Retirement Cash Fund is created for receipt of funds related to transfer and assumption of investment authority to NIC

Section 7. [amends 72-1249.02] Beginning on the effective date of the Act, a pro rata share may be charged against the Class V School Employees Retirement Fund and transferred to the State Investment Officer's Cash Fund; approval of the board of trustees and the board of education are not required for transfer of funds

Section 8. [79-916] Limits the State Service Annuity to those Class V (Omaha) school employees (OSERS) hired prior to July 1, 2016; adds reference to section 79-966 regarding state funding of percentage of OSERS actuarial required contribution (ARC)

Section 9. [amends 79-931] Members of the School Employees Retirement Plan hired or rehired on or after July 1, 2016, may retire if at least age 55 and age plus creditable service equal 85, or if a member is at least age 60 with 5 years creditable service. Members hired prior to July 1, 2016 may also retire if at least age 65 with half year service.

Section 10. [amends 79-934] Retirement benefits will not be reduced for members of the School Employees Retirement Plan hired or rehired after July 1, 2016 if the member is at least age 55 and age plus creditable service equal 85, or is at least age 60 with 5 years creditable service. Members hired prior to July 1, 2016 may also retire if at least age 65 with half year service.

Section 11. [amends 79-935] Clarifies the amount of benefit for members of the School Employees Retirement Plan as a result of changes in sections 79-931 and 79-934.

Section 12. [amends 79-954] On the effective date of the act, it eliminates the ability to work up to 20 hours a week while receiving disability retirement benefit under the School Employees Retirement Plan.

Section 13. [79-966] Beginning July 1, 2016, if the School Plan has an ARC and the state appropriates money for it, and the OSERS Plan has an ARC, then the school district may request a public hearing before the Appropriations Committee to request additional state funding to pay the OSERS ARC.

If the Appropriations Committee recommends payment of the additional funding and the Legislature approves the additional requested funding, then the School Plan ARC will be computed as a percent of payroll and the state will contribute to OSERS the lesser of the same percent of payroll that was paid to the School Plan or the percent of OSERS members' compensation needed to meet the ARC for the OSERS Plan.

It also limits state payment for the State Service Annuity to those OSERS employees who became members prior to July 1, 2016

Section 14. [amends 79-978] Amends or creates the following definitions in the Class V School Employees Retirement Act:

(2) Board of education definition is clarified

(14) Regular interest definition inserts language from the School Employees Retirement Act definition of "regular interest"; beginning September 1, 2016, it is rate based on daily treasury yield curve for one-year treasury securities

(15) Adds definition of interest, which is the investment return assumption used in the most recent actuarial valuation used for purposes of determining purchase of service credit, prior service credit, restored funds and delay payments;

(16) Normal retirement date is age 65 with 5 years of service;

(17) Early retirement for members hired before July 1, 2016 is age 55 with 10 years of service and for members hired on and after July 1, 2016, it is age 60 with 5 years of service

(23) Adds definition of audit year which includes a 4 month year in 2016 and thereafter will be calendar year; audit year is used for preparation of the actuarial report and financial audit of the retirement system

(26) Adds definition of Nebraska Investment Council

(26) Adds definition of state investment officer

Section 15. [amends 79-978.01] incorporates sections 20, 21, 34 and 46 into the Class V School Employees Retirement Act

Section 16. [amends 79-979] amends language related to the retirement system assets held in trust

Section 17. [amends 79-980] Beginning July 1, 2016, the administration of OSERS is placed with the board of trustees; the three board of education members are eliminated from the board of trustees; the board of education no longer appoints all trustees; the trustees now include the following:

- Two certificated staff - 1 serving initial term of 1 year, 1 serving initial 2-year term -elected by its membership
- One classified staff serving initial term of 3 years - elected by its membership
- One annuitant serving initial 4 year term - elected by its membership
- Two business persons qualified in financial affairs who are not members of the retirement system; appointments are approved by the board of education
- The superintendent or his or her designee as ex officio voting member

All subsequent trustee terms are 4 years; trustees arrange election of retirement system trustees and may appoint to fill any vacancy on the board of trustees; establishes same board of trustees provisions if there is more than one Class V School Employees Retirement System Board; strikes existing language

No board of education or trustee member is personally liable except in cases of willful dishonesty, gross negligence or intentional violations of law for duties related to the retirement system.

Beginning July 1, 2016, the board of education has no duty or responsibility for administration of the retirement system including the calculation of benefits for members or beneficiaries, except as specifically provided in the Act

Section 18. [amends 79-981] Beginning on the effective date of the act, neither the board of trustees nor the board of education may establish new rules and regulations for the administration of the Class V retirement system without first consulting the state investment officer;

Beginning January 1, 2017:

- All existing rules and regulations terminate;
- All expenses related to the investment of assets will be paid as determined by the state investment officer; and
- All contracts for investment assets are assigned to the NIC

Beginning on the effective date of the act, the board of education is required to provide retirement account information to the board of trustees in a timely manner

Section 19. [amends 79-982] Prior to January 1, 2017, investments and reinvestments are subject to approval of the board of education; beginning on the effective date of the act, the board of trustees administers the retirement system and approves (rather than recommends to the board of education) any changes to the administration of the retirement system essential to the actuarial requirements of the fund

Section 20. [NEW SECTION] Establishes a fiduciary duty of the board of trustee members to the retirement system members and the beneficiaries

Section 21. [NEW SECTION] Investment authority is transferred to the NIC and the state investment officer on January

1, 2017; the board of trustees administer the noninvestment affairs of the system including benefits and management of actuarial requirements

On or before July 1, 2016 the board of trustees and the state investment officer enter into a plan for transition, which shall address listed items; after the effective date of the act all costs, fees and expenses related to the transition of investment authority incurred by the NIC and the state investment officer are paid from the assets of the retirement system

The state investment officer is required to provide quarterly reports to the board of trustees regarding the assets of the retirement system and related costs, fees, and expenses.

Section 22. [amends 79-983] The administrator of the retirement system is appointed by the board of trustees and approved by the board of education; the administrator serves at the pleasure of the board of trustees and hires, dismisses and supervises the staff of the retirement system and serves as an ex officio non-voting member of the NIC

The administrator and staff are employees of the school district with compensation and benefits paid by the board of education as determined by the board trustees

Section 23. [amends 79-984] The board of trustees contracts for services of an actuary who performs duties as assigned by the trustees; the selection of actuary is approved by the board of education

Section 24. [amends 79-985] The board of trustees may contract for services of a legal advisor to the board of trustees

Section 25 [amends 79-986] Prior to January 1, 2017, the school district serves as treasurer and custodian of the retirement system; beginning January 1, 2017, the State Treasurer serves as treasurer and as official custodian of the retirement system cash and securities and approves banks for the custodial accounts

Beginning January 1, 2017, the State Treasurer as treasurer, shall make payments to the school district upon request of the OSERS administrator and as directed by the Nebraska Public Employees Retirement System; the school district shall use payments received from the State Treasurer for purposes as required in the Act

Section 26. [amends 79-987] An annual audit of the retirement system shall be conducted each fiscal year and at the option of the NIC, shall be conducted by a CPA or the State Auditor; costs shall be paid from funds of the system

Changes the date from March 1 to May 1 of each year for the board of trustees to prepare and file an annual report with the Nebraska Retirement Systems Committee of the Legislature and present the report to the Committee at a public hearing

Section 27. [amends 79-989] The board of education shall make listed records available as requested by the board of trustees necessary for actuarial study and administration of the system

Section 28. [amends 79-990] Establishes board of trustees and the board of education responsibilities regarding the purchase of military service credit

Section 29. [amends 79-991] Interest rate on purchase of service credit is established by definition

Section 30. [amends 79-992] Interest rate for refunded service is established by definition

Section 31. [amends 79-996] Strikes language regarding interest rate on purchase of additional service

Section 32. [amends 79-998] Trustees establish rules, regulations and limitation on eligible rollover distributions and direct trustee-to-trustee transfers

Section 33. [amends 79-9,100] Employees who are members prior to July 1, 2016 may receive an unreduced annuity at age 62 years with 35 years of creditable service; benefits are reduced 3% per year if age and service do not equal 85

Receipt of the State Service Annuity is limited to OSERS employees who are members prior to July 1, 2016

Section 34. [NEW SECTION] For OSERS employees who become members on and after July 1, 2016, the member may retire at age 60 with 5 years of services but benefits are reduced 25/100% per month below age 65

Section 35. [amends 79-9,102] The board of trustees may deny restoration of creditable service if necessary to comply with the requirements of section 415 of the Internal Revenue Code

Section 36. [amends 79-9,103] If the Consumer Price Index-All Urban Consumers is replaced, the trustees shall select a reasonable representative measure of the cost-of-living adjustment for retired employees

The medical cost-of-living-adjustment is not available to persons hired on or after July 1, 2016

Section 37. [amends 79-9,105] The definition of board of trustees is clarified

Section 38. [amends 79-9,107] Funds of the retirement system not required for current operations are invested and reinvested by the board of trustees with the approval of the board of education prior to January 1, 2017; after that date, the NIC and the state investment officer shall invest and reinvest funds in accordance with the Nebraska State Funds Investment Act; no trustee, board member or NIC member shall become an endorser or surety for money loaned by or borrowed from the retirement system

Section 39. [amends 79-9,108] Beginning January 1, 2017, the NIC and the state investment officer shall invest and reinvest funds in accordance with the Nebraska State Funds Investment Act; after that date the funds of the retirement system may employ advisors and managers in accordance with the Nebraska State Funds Investment Act; beginning January 1, 2017 the board of trustees and the board of education shall not have any duty responsibility or authority for investment or reinvestment of funds

Section 40. [amends 79-9,109] Beginning January 1, 2017, the duty, responsibility and authority under this section shall be transferred to the NIC, which may delegate such duty, responsibility and authority to the state investment officer

Section 41. [amends 79-9,111] Beginning January 1, 2016, the funds of the retirement system shall be invested solely by the NIC and the state investment officer in accordance with the Nebraska State Funds Investment Act, including 79-1239.01(3) and 72-1246; the state investment officer may lend securities and vote proxies in accordance with the standards in 72-1246

Section 42. [amends 79-9,113] A definition of "solvency" is added for purposes of determining the contributions of the school district in any fiscal year; eliminates the authority of the board of trustee to make a recommendation to the board of education regarding the contribution made to the plan; requires the employees' contributions to be immediately transmitted to the account of the retirement system

Employees who become members on or after July 1, 2016 shall not receive the State Service Annuity

Section 43. [amends 79-9,115] Inserts the title of the retirement fund as the Class V School Employees Retirement Fund; the administrator and staff of the retirement system shall be permitted reasonable office and records storage space in the central office building; all expenses of the retirement system office shall be charged to retirement system.

Beginning on the effective date of the act, any expenses with respect to the transfer and assumption of investment authority by the NIC and state investment officer shall be paid from the Class V School Employees Retirement Fund without approval of board of education or the board of trustees

The school district is not liable for acts or omissions in the administration of the act made at the direction of the board of trustees

Expenses for clerical work performed by employees of the school district related to Class V School Employees Retirement Plan will be paid by the Plan

Section 44. [amends 79-9,117] The board of trustees shall establish a comprehensive preretirement planning program for school employees

Section 45. (LB 986 as amended) [amends 84-712.05] amends the Public Records Act to exempt drafts as public records that are received by the Nebraska Retirement Systems Committee of the Legislature from the PERB

Section 46. [NEW SECTION] The Class V Retirement System Payment Processing Fund is created to transfer funds as specified in 79-986; NPERS, PERB, NIC, State Treasurer or employees of these entities have no responsibility to review or verify the accuracy of requests, or any liability arising from payments

Section 47. (LB 922) [amends 84-1501] re-staggers the terms of the members of the PERB

Section 48. [amends 84-1503] adds to list of PERB duties the authority to direct the State Treasurer to transfer OSERS funds for the benefit of the Class V School Employees Retirement System in order to implement the Act

(LB 986 as amended) requires experience studies to be conducted at least every 4 years or at the request of the Nebraska Retirement Systems Committee

Requires the director of the Nebraska Public Employees Retirement System to provide draft copies of the actuarial valuation reports and the experience study to the Nebraska Retirement Systems Committee of the Legislature and the Governor

Drafts are considered confidential and are exempt from Public Records Act

Requires presentation of the experience study by the actuary to the Nebraska Retirement Systems Committee of the Legislature within 30 business days of presentation to the Public Employees Retirement Board

Requires the Public Employees Retirement Board to provide a written explanation to the Nebraska Retirement Systems Committee within 10 business days of its decision, if it rejects one or more of the recommendations in the experience study

Section 49. Sections 17 and 52 become operative July 1, 2016. Sections 31 and 53 become operative September 1, 2016. The other sections become operative on their effective date.

Section 50. Severability clause

Section 51. Repeals sections amended by the bill

Section 52. Outright repeals section 79-980

Section 53. Outright repeals section 79-966

Section 54. Outright repeals obsolete section 79-988.01 (state contribution which ceased after fiscal year 2013-14 for purchasing power cost-of-living adjustment)

Explanation of amendments:

Mark Kolterman, Chairperson