

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 209**

FINAL READING

Introduced by McDonnell, 5.

Read first time January 08, 2021

Committee: Nebraska Retirement Systems

- 1 A BILL FOR AN ACT relating to retirement; to amend section 48-1401,
- 2 Revised Statutes Cumulative Supplement, 2020; to change provisions
- 3 relating to treatment of deferred compensation by certain political
- 4 subdivisions, state agencies, and the Public Employees Retirement
- 5 Board; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-1401, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 48-1401 (1)(a) ~~(1)~~ Any county, municipality, or other political  
4 subdivision, instrumentality, or agency of the State of Nebraska, except  
5 any agency subject to sections 84-1504 to 84-1506 or section 85-106,  
6 85-320, or 85-606.01, may enter into an agreement to defer a portion of  
7 any individual's compensation derived from such county, municipality, or  
8 other political subdivision, instrumentality, or agency to a future  
9 period in time pursuant to section 457 of the Internal Revenue Code. Such  
10 plan of deferred compensation may provide for the deferral of an  
11 individual's compensation on either a pretax basis or an after-tax Roth  
12 contribution basis under a qualified Roth contribution program pursuant  
13 to section 402A of the Internal Revenue Code. Such deferred compensation  
14 plan shall be voluntary and shall be available to all regular employees  
15 and elected officials except as otherwise provided in this section.

16 (b) This section shall not authorize an entity excepted from this  
17 section pursuant to subdivision (1)(a) of this section to modify a plan  
18 of deferred compensation or establish a separate plan of deferred  
19 compensation. This section shall not require either the Public Employees  
20 Retirement Board or the Nebraska Public Employees Retirement Systems to  
21 modify a plan of deferred compensation established pursuant to sections  
22 84-1504 to 84-1506 to allow for after-tax Roth contributions pursuant to  
23 a qualified Roth contributions program under section 402A of the Internal  
24 Revenue Code.

25 (2) All The compensation to be deferred under this section may never  
26 exceed the total compensation to be received by the individual from the  
27 employer or exceed the limits established by the Internal Revenue Code  
28 for such a plan.

29 (3) All compensation deferred under the plan, all property and  
30 rights purchased with the deferred compensation, and all investment  
31 income attributable to the deferred compensation, property, or rights

1 shall be held in trust for the exclusive benefit of participants and  
2 their beneficiaries by the county, municipality, or other political  
3 subdivision, instrumentality, or agency until such time as payments are  
4 made under the terms of the deferred compensation plan.

5 (4) The county, municipality, or other political subdivision,  
6 instrumentality, or agency shall designate its treasurer or an equivalent  
7 official, including the State Treasurer, to be the custodian of the funds  
8 and securities of the deferred compensation plan.

9 (5) The county, municipality, or other political subdivision,  
10 instrumentality, or agency may invest the compensation to be deferred  
11 under an agreement in or with: (a) Annuities; (b) mutual funds; (c)  
12 banks; (d) savings and loan associations; (e) trust companies qualified  
13 to act as fiduciaries in this state; (f) an organization established for  
14 the purpose of administering public employee deferred compensation  
15 retirement plans and authorized to do business in the State of Nebraska;  
16 or (g) investment advisers as defined in the federal Investment Advisers  
17 Act of 1940.

18 (6) The deferred compensation program authorized under this section  
19 shall exist and serve in addition to, and shall not be a part of, any  
20 existing retirement or pension system provided for state, county,  
21 municipal, or other political subdivision, instrumentality, or agency  
22 employees, or any other benefit program.

23 (7) Any compensation deferred under such a deferred compensation  
24 plan, including an individual's compensation deferred on either a pretax  
25 basis or an after-tax Roth contribution basis under a qualified Roth  
26 contribution program pursuant to section 402A of the Internal Revenue  
27 Code, shall continue to be included as regular compensation for the  
28 purpose of computing the retirement, pension, or social security  
29 contributions made or benefits earned by any employee.

30 ~~(8)(a)~~ (8) Any sum so deferred on a pretax basis shall not be  
31 included in the computation of any federal or state taxes withheld on

1 behalf of any such individual at the time of deferral.

2 (b) Any sum so deferred on an after-tax Roth contribution basis  
3 pursuant to a qualified Roth contribution program under section 402A of  
4 the Internal Revenue Code shall be included in the computation of any  
5 federal or state taxes withheld on behalf of any such individual at the  
6 time of deferral.

7 (9) The state, county, municipality, or other political subdivision,  
8 instrumentality, or agency shall not be responsible for any investment  
9 results entered into by the individual in the deferred compensation  
10 agreement.

11 (10) All compensation deferred under the plan, including  
12 compensation deferred on either a pretax basis or an after-tax Roth  
13 contribution basis under a qualified Roth contribution program pursuant  
14 to section 402A of the Internal Revenue Code, all property and rights  
15 purchased with the deferred compensation, and all investment income  
16 attributable to the deferred compensation, property, or rights shall not  
17 be subject to garnishment, attachment, levy, the operation of bankruptcy  
18 or insolvency laws, or any other process of law whatsoever and shall not  
19 be assignable.

20 (11) Nothing contained in this section shall in any way limit,  
21 restrict, alter, amend, invalidate, or nullify any deferred compensation  
22 plan previously instituted by any county, municipality, or other  
23 political subdivision, instrumentality, or agency of the State of  
24 Nebraska, and any such plan is hereby authorized and approved.

25 (12) If a county has not established a deferred compensation plan  
26 pursuant to this section, each individual may require that the county  
27 enter into an agreement with the individual to defer a portion of such  
28 individual's compensation and place it under the management and  
29 supervision of the state deferred compensation plan created pursuant to  
30 sections 84-1504 to 84-1506. If such an agreement is made, the county  
31 shall designate the State Treasurer as custodian of such deferred

1 compensation funds and such deferred compensation funds shall become a  
2 part of the trust administered by the Public Employees Retirement Board  
3 or the Nebraska Public Employees Retirement Systems pursuant to sections  
4 84-1504 to 84-1506. Nothing in this subsection shall require a plan of  
5 deferred compensation that is administered by the Public Employees  
6 Retirement Board or the Nebraska Public Employees Retirement Systems  
7 pursuant to sections 84-1504 to 84-1506 to provide for the ability of an  
8 individual to defer compensation on an after-tax Roth contribution basis  
9 pursuant to a qualified Roth contribution program under section 402A of  
10 the Internal Revenue Code.

11 (13) For purposes of this section, individual means (a) any person  
12 designated by the county, municipality, or other political subdivision,  
13 instrumentality, or agency of the State of Nebraska, except any agency  
14 subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or  
15 85-606.01, as a permanent part-time or full-time employee of the county,  
16 municipality, or other political subdivision, instrumentality, or agency  
17 and (b) a person under contract providing services to the county,  
18 municipality, or other political subdivision, instrumentality, or agency  
19 of the State of Nebraska, except any agency subject to sections 84-1504  
20 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered  
21 into a contract with such county, municipality, political subdivision,  
22 instrumentality, or agency to have compensation deferred prior to August  
23 28, 1999.

24 Sec. 2. Original section 48-1401, Revised Statutes Cumulative  
25 Supplement, 2020, is repealed.