

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 103

Introduced by McDonnell, 5.

Read first time January 06, 2023

Committee:

- 1 A BILL FOR AN ACT relating to retirement; to amend sections 79-920 and
2 84-1301, Revised Statutes Cumulative Supplement, 2022; to redefine
3 terms under the School Employees Retirement Act and the State
4 Employees Retirement Act; to change provisions relating to
5 participation in the School Employees Retirement System of the State
6 of Nebraska; to harmonize provisions; and to repeal the original
7 sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-920, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 79-920 (1) For purposes of this section:

4 (a) Association means the State Code Agency Teachers Association, or
5 its equivalent successor, recognized by the State of Nebraska as the
6 exclusive and sole collective-bargaining agent for all teachers other
7 than temporary teachers employed by an agency of the State of Nebraska;

8 (b) Eligible school plan state employee means an individual who
9 satisfies all school plan eligibility criteria and who is (i) an
10 individual employed by the State Department of Education after July 1,
11 1989, as a state school official, ~~or~~ (ii) an individual who is employed
12 by any state agency in a position covered by the association and who is
13 required to hold a certificate as defined in section 79-807 for the
14 position in which such individual is employed, or (iii) an individual who
15 is employed by any state agency not in a position covered by the
16 association who is required to hold a certificate as defined in section
17 79-807 for the position in which such individual is employed;

18 (c) School plan means the School Employees Retirement System of the
19 State of Nebraska;

20 (d) State agency school plan employer means the State Department of
21 Education or another agency of the State of Nebraska with employees
22 covered by the association; and

23 (e) State plan means the State Employees Retirement System of the
24 State of Nebraska.

25 (2)(a) Except as provided in subsection (3) of this section, an
26 individual shall become or remain a member of the school plan if:

27 (i) Such individual is or was previously a school employee or was
28 employed in an out-of-state school district or a Class V school district;
29 and

30 (ii) Such individual becomes an eligible school plan state employee
31 with a state agency school plan employer.

1 (b) An individual who is required to participate in the school plan
2 pursuant to subdivision (2)(a) of this section shall not be deemed to
3 have terminated employment for school plan purposes if such individual
4 subsequently provides service to any employer participating in the school
5 plan, including any school district or educational service unit, or any
6 state agency school plan employer, within one hundred eighty days after
7 ceasing employment except for intermittent voluntary or substitute
8 service at a school district or an educational service unit as described
9 in subdivision (45)(b)(i) of section 79-902.

10 (c) An individual who is required to participate in the school plan
11 pursuant to subdivision (2)(a) of this section shall not render any
12 service to another agency of the State of Nebraska within one hundred
13 twenty days after ceasing employment.

14 (3)(a) An individual shall participate in the state plan if:

15 (i) The individual has never previously participated in the school
16 plan while employed as an eligible school plan state employee with a
17 state agency school plan employer;

18 (ii) The individual terminated employment with a school district or
19 an educational service unit participating in the school plan and retired
20 or took a distribution pursuant to the School Employees Retirement Act;
21 and

22 (iii) The individual's employment as an eligible school plan state
23 employee with a state agency school plan employer began or will begin
24 within one hundred eighty days after termination of employment with the
25 school district or educational service unit.

26 (b) An individual who is required to participate in the state plan
27 pursuant to subdivision (3)(a) of this section shall not be deemed to
28 have terminated employment for state plan purposes if such individual
29 subsequently provides service to any employer participating in the state
30 plan, including any state agency school plan employer or an agency of the
31 State of Nebraska, within one hundred twenty days after ceasing

1 employment. No such individual may provide substitute or voluntary
2 service as defined in subdivision (45)(b)(i) of section 79-902 to any
3 employer participating in the school plan for at least one hundred twenty
4 days after ceasing employment.

5 (4) An individual who previously elected to participate in the
6 school plan prior to March 4 July 1, 2022, while employed as a state
7 school official and who terminated employment and retired or took a
8 distribution pursuant to the School Employees Retirement Act, shall not
9 render any service to:

10 (a) A school district or an educational service unit participating
11 in the school plan or a state agency school plan employer within one
12 hundred eighty days after terminating employment except as described in
13 subdivision (45)(b)(i) of section 79-902; or

14 (b) Another agency of the State of Nebraska within one hundred
15 twenty days after terminating employment.

16 Sec. 2. Section 84-1301, Revised Statutes Cumulative Supplement,
17 2022, is amended to read:

18 84-1301 For purposes of the State Employees Retirement Act, unless
19 the context otherwise requires:

20 (1)(a) Actuarial equivalent means the equality in value of the
21 aggregate amounts expected to be received under different forms of an
22 annuity payment.

23 (b) For an employee hired prior to January 1, 2018, the mortality
24 assumption used for purposes of converting the member cash balance
25 account shall be the 1994 Group Annuity Mortality Table using a unisex
26 rate that is fifty percent male and fifty percent female. For purposes of
27 converting the member cash balance account attributable to contributions
28 made prior to January 1, 1984, that were transferred pursuant to the act,
29 the 1994 Group Annuity Mortality Table for males shall be used.

30 (c) For an employee hired on or after January 1, 2018, or rehired on
31 or after January 1, 2018, after termination of employment and being paid

1 a retirement benefit or taking a refund of contributions, the mortality
2 assumption used for purposes of converting the member cash balance
3 account shall be a unisex mortality table that is recommended by the
4 actuary and approved by the board following an actuarial experience
5 study, a benefit adequacy study, or a plan valuation. The mortality table
6 and actuarial factors in effect on the member's retirement date will be
7 used to calculate the actuarial equivalency of any retirement benefit;

8 (2) Annuity means equal monthly payments provided by the retirement
9 system to a member or beneficiary under forms determined by the board
10 beginning the first day of the month after an annuity election is
11 received in the office of the Nebraska Public Employees Retirement
12 Systems or the first day of the month after the employee's termination of
13 employment, whichever is later. The last payment shall be at the end of
14 the calendar month in which the member dies or in accordance with the
15 payment option chosen by the member;

16 (3) Annuity start date means the date upon which a member's annuity
17 is first effective and shall be the first day of the month following the
18 member's termination or following the date the application is received by
19 the board, whichever is later;

20 (4) Cash balance benefit means a member's retirement benefit that is
21 equal to an amount based on annual employee contribution credits plus
22 interest credits and, if vested, employer contribution credits plus
23 interest credits and dividend amounts credited in accordance with
24 subdivision (4)(c) of section 84-1319;

25 (5)(a) Compensation means gross wages or salaries payable to the
26 member for personal services performed during the plan year. Compensation
27 does not include insurance premiums converted into cash payments,
28 reimbursement for expenses incurred, fringe benefits, per diems, or
29 bonuses for services not actually rendered, including, but not limited
30 to, early retirement inducements, cash awards, and severance pay, except
31 for retroactive salary payments paid pursuant to court order,

1 arbitration, or litigation and grievance settlements. Compensation
2 includes overtime pay, member retirement contributions, and amounts
3 contributed by the member to plans under sections 125, 403(b), and 457 of
4 the Internal Revenue Code or any other section of the code which defers
5 or excludes such amounts from income.

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

12 (6) Date of disability means the date on which a member is
13 determined to be disabled by the board;

14 (7) Defined contribution benefit means a member's retirement benefit
15 from a money purchase plan in which member benefits equal annual
16 contributions and earnings pursuant to section 84-1310 and, if vested,
17 employer contributions and earnings pursuant to section 84-1311;

18 (8) Disability means an inability to engage in any substantially
19 gainful activity by reason of any medically determinable physical or
20 mental impairment which was initially diagnosed or became disabling while
21 the member was an active participant in the plan and which can be
22 expected to result in death or to be of long-continued and indefinite
23 duration;

24 (9) Employee means any person or officer employed by the State of
25 Nebraska whose compensation is paid out of state funds or funds
26 controlled or administered by a state department through any of its
27 executive or administrative officers when acting exclusively in their
28 respective official, executive, or administrative capacities and any
29 employee of the State Board of Agriculture who is a member of the state
30 retirement system on July 1, 1982. Employee does not include (a) judges
31 as defined in section 24-701, (b) members of the Nebraska State Patrol,

1 except for those members of the Nebraska State Patrol who elected
2 pursuant to section 60-1304 to remain members of the State Employees
3 Retirement System of the State of Nebraska, (c) employees of the
4 University of Nebraska, (d) employees of the state colleges, (e)
5 employees of community colleges, (f) employees of the Department of Labor
6 employed prior to July 1, 1984, and paid from funds provided pursuant to
7 Title III of the federal Social Security Act or funds from other federal
8 sources, except that if the contributory retirement plan or contract let
9 pursuant to section 48-609, as such section existed prior to January 1,
10 2018, is terminated, such employees shall become employees for purposes
11 of the State Employees Retirement Act on the first day of the first pay
12 period following the termination of such contributory retirement plan or
13 contract, (g) employees of the State Board of Agriculture who are not
14 members of the state retirement system on July 1, 1982, (h) the Nebraska
15 National Guard air and army technicians, (i) persons who are required to
16 participate in the School Employees Retirement System of the State of
17 Nebraska pursuant to section 79-920, except that those persons so
18 required and actively contributing to the State Employees Retirement
19 System of the State of Nebraska as of March 4 ~~July 1~~, 2022, shall
20 continue as members of the State Employees Retirement System of the State
21 of Nebraska, or (j) employees of the Coordinating Commission for
22 Postsecondary Education who are eligible for and have elected to become
23 members of a qualified retirement program approved by the commission
24 which is commensurate with retirement programs at the University of
25 Nebraska. Any individual appointed by the Governor may elect not to
26 become a member of the State Employees Retirement System of the State of
27 Nebraska;

28 (10) Employee contribution credit means an amount equal to the
29 member contribution amount required by section 84-1308;

30 (11) Employer contribution credit means an amount equal to the
31 employer contribution amount required by section 84-1309;

1 (12) Final account value means the value of a member's account on
2 the date the account is either distributed to the member or used to
3 purchase an annuity from the plan, which date shall occur as soon as
4 administratively practicable after receipt of a valid application for
5 benefits, but no sooner than forty-five days after the member's
6 termination;

7 (13) Five-year break in service means five consecutive one-year
8 breaks in service;

9 (14) Full-time employee means an employee who is employed to work
10 one-half or more of the regularly scheduled hours during each pay period;

11 (15) Fund means the State Employees Retirement Fund created by
12 section 84-1309;

13 (16) Guaranteed investment contract means an investment contract or
14 account offering a return of principal invested plus interest at a
15 specified rate. For investments made after July 19, 1996, guaranteed
16 investment contract does not include direct obligations of the United
17 States or its instrumentalities, bonds, participation certificates or
18 other obligations of the Federal National Mortgage Association, the
19 Federal Home Loan Mortgage Corporation, or the Government National
20 Mortgage Association, or collateralized mortgage obligations and other
21 derivative securities. This subdivision shall not be construed to require
22 the liquidation of investment contracts or accounts entered into prior to
23 July 19, 1996;

24 (17) Hire date or date of hire means the first day of compensated
25 service subject to retirement contributions;

26 (18) Interest credit rate means the greater of (a) five percent or
27 (b) the applicable federal mid-term rate, as published by the Internal
28 Revenue Service as of the first day of the calendar quarter for which
29 interest credits are credited, plus one and one-half percent, such rate
30 to be compounded annually;

31 (19) Interest credits means the amounts credited to the employee

1 cash balance account and the employer cash balance account at the end of
2 each day. Such interest credit for each account shall be determined by
3 applying the daily portion of the interest credit rate to the account
4 balance at the end of the previous day. Such interest credits shall
5 continue to be credited to the employee cash balance account and the
6 employer cash balance account after a member ceases to be an employee,
7 except that no such credit shall be made with respect to the employee
8 cash balance account and the employer cash balance account for any day
9 beginning on or after the member's date of final account value. If
10 benefits payable to the member's surviving spouse or beneficiary are
11 delayed after the member's death, interest credits shall continue to be
12 credited to the employee cash balance account and the employer cash
13 balance account until such surviving spouse or beneficiary commences
14 receipt of a distribution from the plan;

15 (20) Member cash balance account means an account equal to the sum
16 of the employee cash balance account and, if vested, the employer cash
17 balance account and dividend amounts credited in accordance with
18 subdivision (4)(c) of section 84-1319;

19 (21) One-year break in service means a plan year during which the
20 member has not completed more than five hundred hours of service;

21 (22) Participation means qualifying for and making the required
22 deposits to the retirement system during the course of a plan year;

23 (23) Part-time employee means an employee who is employed to work
24 less than one-half of the regularly scheduled hours during each pay
25 period;

26 (24) Plan year means the twelve-month period beginning on January 1
27 and ending on December 31;

28 (25) Prior service means service before January 1, 1964;

29 (26) Regular interest means the rate of interest earned each
30 calendar year commencing January 1, 1975, as determined by the retirement
31 board in conformity with actual and expected earnings on the investments

1 through December 31, 1984;

2 (27) Required beginning date means, for purposes of the deferral of
3 distributions, April 1 of the year following the calendar year in which a
4 member has:

5 (a)(i) Terminated employment with the State of Nebraska; and

6 (ii)(A) Attained at least seventy and one-half years of age for a
7 member who attained seventy and one-half years of age on or before
8 December 31, 2019; or

9 (B) Attained at least seventy-two years of age for a member who
10 attained seventy and one-half years of age on or after January 1, 2020;
11 or

12 (b)(i) Terminated employment with the State of Nebraska; and

13 (ii) Otherwise reached the date specified by section 401(a)(9) of
14 the Internal Revenue Code and the regulations issued thereunder;

15 (28) Required contribution means the deduction to be made from the
16 compensation of employees as provided in section 84-1308;

17 (29) Retirement means qualifying for and accepting the retirement
18 benefit granted under the State Employees Retirement Act after
19 terminating employment;

20 (30) Retirement application means the form approved and provided by
21 the retirement system for acceptance of a member's request for either
22 regular or disability retirement;

23 (31) Retirement board or board means the Public Employees Retirement
24 Board;

25 (32) Retirement date means (a) the first day of the month following
26 the date upon which a member's request for retirement is received on a
27 retirement application if the member is eligible for retirement and has
28 terminated employment or (b) the first day of the month following
29 termination of employment if the member is eligible for retirement and
30 has filed an application but has not yet terminated employment;

31 (33) Retirement system means the State Employees Retirement System

1 of the State of Nebraska;

2 (34) Service means the actual total length of employment as an
3 employee and shall not be deemed to be interrupted by (a) temporary or
4 seasonal suspension of service that does not terminate the employee's
5 employment, (b) leave of absence authorized by the employer for a period
6 not exceeding twelve months, (c) leave of absence because of disability,
7 or (d) military service, when properly authorized by the retirement
8 board. Service does not include any period of disability for which
9 disability retirement benefits are received under section 84-1317;

10 (35) State department means any department, bureau, commission, or
11 other division of state government not otherwise specifically defined or
12 exempted in the act, the employees and officers of which are not already
13 covered by a retirement plan;

14 (36) Surviving spouse means (a) the spouse married to the member on
15 the date of the member's death or (b) the spouse or former spouse of the
16 member if survivorship rights are provided under a qualified domestic
17 relations order filed with the board pursuant to the Spousal Pension
18 Rights Act. The spouse or former spouse shall supersede the spouse
19 married to the member on the date of the member's death as provided under
20 a qualified domestic relations order. If the benefits payable to the
21 spouse or former spouse under a qualified domestic relations order are
22 less than the value of benefits entitled to the surviving spouse, the
23 spouse married to the member on the date of the member's death shall be
24 the surviving spouse for the balance of the benefits;

25 (37) Termination of employment occurs on the date on which the
26 agency which employs the member determines that the member's employer-
27 employee relationship with the State of Nebraska is dissolved. The agency
28 which employs the member shall notify the board of the date on which such
29 a termination has occurred. Termination of employment does not occur if
30 an employee whose employer-employee relationship with the State of
31 Nebraska is dissolved enters into an employer-employee relationship with

1 the same or another agency of the State of Nebraska and there are less
2 than one hundred twenty days between the date when the employee's
3 employer-employee relationship ceased with the state and the date when
4 the employer-employee relationship commenced with the same or another
5 agency. It is the responsibility of the employer that is involved in the
6 termination of employment to notify the board of such change in
7 employment and provide the board with such information as the board deems
8 necessary. If the board determines that termination of employment has not
9 occurred and a retirement benefit has been paid to a member of the
10 retirement system pursuant to section 84-1321, the board shall require
11 the member who has received such benefit to repay the benefit to the
12 retirement system; and

13 (38) Vesting credit means credit for years, or a fraction of a year,
14 of participation in another Nebraska governmental plan for purposes of
15 determining vesting of the employer account.

16 Sec. 3. Original sections 79-920 and 84-1301, Revised Statutes
17 Cumulative Supplement, 2022, are repealed.