

LEGISLATIVE BILL 215

Approved by the Governor April 15, 1985

Introduced by Goodrich, 20

AN ACT relating to retirement; to amend sections 79-1035 and 79-1046, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1044.01, and 79-1047 to 79-1049, Revised Statutes Supplement, 1984; to redefine terms; to change provisions relating to retirement benefits for employees of Class V school districts; to provide duties for the Revisor of Statutes; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 79-1032, Revised Statutes Supplement, 1984, be amended to read as follows:

79-1032. As used in sections 79-1032 to 79-1060 and section 8 of this act, unless the context otherwise requires:

(1) Retirement system or system shall mean the School Employees' Retirement System of the School District of (name of city) as provided for in sections 79-1032 to 79-1060 and section 8 of this act;

(2) Board shall mean the board of education of the school district;

(3) Trustee shall mean the trustees provided for in section 79-1034;

(4) Employee shall mean the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not teachers, hired upon a full-time basis, which basis shall contemplate a work week of not less than thirty hours;

(5) Member shall mean any employee included in the membership of the retirement system or any former employee who shall have made contributions to the system and shall not have received a refund;

(6) Annuitant shall mean any member receiving an allowance;

(7) Beneficiary shall mean any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Membership service shall mean service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the district;

(9) Prior service shall mean service rendered

prior to September 1, 1951, for which credit is allowed under sections 79-1044 and 79-1045, and service rendered by retired employees receiving benefits under preexisting systems;

(10) Creditable service shall mean the sum of the membership service and the prior service;

(11) Compensation shall mean salary or wages payable by the district;

(12) Military service shall mean service in the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or any women's auxiliary thereof;

(13) Accumulated contributions shall mean the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(14) Regular interest shall mean interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c) at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except ~~7 PROVIDED~~; that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during such year;

(15) Retirement date shall mean the date of retirement of a member for service or disability as fixed by the board;

(16) Normal retirement date shall mean the end of the fiscal year during which the member attains age sixty-five;

(17) Compulsory retirement date shall mean the end of the fiscal year during which the member attains age seventy;

(18) Early retirement date shall mean that month and year selected by a member having at least ten years creditable service and who has attained age fifty-five;

(19) Retirement allowance shall mean the total annual retirement benefit payable to a member for service or disability;

(20) Annuity shall mean annual payments, for both prior service and membership service, for life as provided in sections 79-1032 to 79-1060 and section 8 of this act;

(21) Actuarial tables shall mean: such tables as shall have been adopted by the board in accordance with recommendations of the actuary

(a) For retirement allowances at an early retirement date, a unisex mortality table using thirty per cent of the male mortality and seventy per cent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths per cent compounded annually; and

(b) For joint and survivorship annuities, a

unisex retiree mortality table using sixty-five per cent of the male mortality and thirty-five per cent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths per cent compounded annually and a unisex joint annuitant mortality table using thirty-five per cent of the male mortality and sixty-five per cent of the female mortality from the 1951 Group Annuity Mortality Table with a One Year Setback and using an interest rate of five and seventy-five hundredths per cent compounded annually;

(22) Actuarial equivalent shall mean an annuity or benefit of value equivalent to the annuity or benefit otherwise available, computed upon the basis of the actuarial tables adopted by the board for such purpose the equality in value of the retirement allowance for early retirement or the retirement allowance for a joint and survivorship annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(23) Withdrawal from service shall mean complete severance of employment of a member as an employee of the district by resignation, discharge, or dismissal; and

(24) Fiscal year shall mean the period beginning September 1 in any year and ending on August 31 of the next succeeding year.

Sec. 2. That section 79-1035, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1035. The board of education shall from time to time establish rules and regulations for the administration of the retirement system and for the transaction of its business. The secretary of the board of education shall act as ex officio secretary of the trustees. The board may contract for such medical and other services as shall be required to transact the business of the retirement system. Compensation for all persons employed by the board and all other expenses of the board necessary for the proper and efficient operation of the system shall be paid in such amounts as the board shall determine and approve. The board shall have, in addition to such duties and other duties arising out of sections 79-1032 to 79-1060 and section 8 of this act not specifically reserved or assigned to others, the following duties: It shall maintain a separate account of each member's contribution the record of which shall be available to the member upon request; ~~adept all necessary actuarial tables to be used for the operation of the system as recommended by the actuary and compile such data as may be necessary for the required actuarial valuation; consider and pass on all applications for annuities or~~

other benefits and have examinations made when advisable of persons receiving disability benefits; certify the amount of the tax levy required under section 79-1052 to the county board of equalization; and direct and determine all policies necessary in the administration of sections 79-1032 to 79-1060 and section 8 of this act.

Sec. 3. That section 79-1044.01, Revised Statutes Supplement, 1984, be amended to read as follows:

79-1044.01. In lieu of the retirement annuity provided by section 79-1044 or 79-1056, any member who becomes eligible to receive a retirement annuity after February 20, 1982, under the provisions of sections 79-1032 to 79-1060 and section 8 of this act shall receive a formula retirement annuity based on final average compensation, except that if the monthly formula retirement annuity based on final average compensation is less than the monthly retirement annuity specified in section 79-1044 or 79-1056, accrued to the date of retirement or August 31, 1983, whichever first occurs, the member shall receive the monthly retirement annuity specified in section 79-1044 or 79-1056 accrued to the date of retirement or August 31, 1983, whichever first occurs.

The monthly formula retirement annuity based on final average compensation shall be determined by multiplying the number of years of creditable service up to a maximum of thirty for which such member would otherwise receive the retirement annuity provided by section 79-1044 or 79-1056 by one and one half per cent of his or her final average compensation.

Final average compensation shall be determined by dividing the member's total compensation for the three fiscal years in which such compensation was the highest by thirty-six.

If the annuity begins prior to the sixty-second birthday of the member, the annuity at the date it begins shall be the actuarial equivalent of the annuity deferred to the sixty-second birthday of the member.

The normal form of the formula retirement annuity based on final average compensation shall be an annuity payable monthly during the remainder of the member's life. A member may elect to receive, in lieu of the normal form of annuity, the joint and survivorship annuity provided by section 79-1046 which shall be the actuarial equivalent of the formula retirement annuity based on final average compensation.

Any member receiving a formula retirement annuity based on final average compensation shall also receive in addition thereto the service annuity to be paid by the State of Nebraska as provided in sections 79-1522 to 79-1523.

Sec. 4. That section 79-1046, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1046. Any time prior to receiving the first

annuity payment the member may elect to receive in lieu of such annuity, but payable in the same manner, a joint and survivorship annuity which shall continue after the death of the member to the death of the member's spouse, or other designated beneficiary whose attained age at the time of such election is fifty-five years or more, in an amount which is the actuarial equivalent of the life annuity otherwise payable, ~~and computed in accordance with the tables recommended by the actuary and adopted by the board.~~

Sec. 5. That section 79-1047, Revised Statutes Supplement, 1984, be amended to read as follows:

79-1047. Upon the death of a member, if a joint and survivorship annuity has not been elected, the member's beneficiary, or, if no beneficiary has been named, his or her estate shall receive in a lump sum an amount equal to the member's accumulated contributions less any retirement allowance previously made, except ~~and PROVIDED~~, that at any time prior to retirement, a member who has twenty years or more of creditable service may elect that his or her designated beneficiary shall receive a survivorship annuity in lieu of a refund of the accumulated contributions for years of membership service upon his or her death prior to retirement. The amount of such survivorship annuity shall be determined as if the member had retired at age sixty-five and had in effect an election of a joint and survivorship annuity in accordance with section 79-1046 based upon the relative ages of the designated beneficiary and the member on his or her sixty-fifth birthday and the annuity credits on account of membership service to the date of death or, if a formula retirement annuity based on final average compensation would have been payable under section 79-1044.01, the number of years of creditable service to the date of death, up to a maximum of thirty years. The designated beneficiaries shall be the spouse or parent or parents of the member.

Sec. 6. That section 79-1048, Revised Statutes Supplement, 1984, be amended to read as follows:

79-1048. (1) Any member with ~~ten~~ five or more years of creditable service, excluding years of prior service acquired pursuant to section 79-1045, who shall have become totally disabled for further performance of duty may be retired by the board. In the case of such retirement, the amount of annuity payable to the member shall be the annuity earned to date of disability retirement, except ~~and PROVIDED~~, that payments for disability shall be reduced by the amount of any periodical payments to such employee under the Nebraska Workmen's Compensation Act as worker's compensation benefits. The board shall consider a member to be totally disabled when it shall have received an application by the member and a statement by at least two licensed and practicing physicians designated by the board certifying that the

member is totally and presumably permanently disabled and unable to perform his or her duties as a consequence thereof.

(2) The disability benefit, referred to in subsection (1) of this section, shall begin to accrue from the date of the first of the two examinations by which the member is determined to be totally disabled, shall be payable during the time the member shall not receive any wages or compensation for services, and shall continue until the time any one of the following events first occurs: (a) When disability ceases; (b) the normal retirement date; or (c) the member has been found to be engaged in gainful employment from which he or she has received more than one hundred dollars per month. The board may require periodical proof of disability and nonemployment or permissible employment, but not more frequently than semiannually. Any member whose disability benefits shall cease because of such member having reached the normal retirement date shall upon such date be entitled to the retirement allowance without reduction for amounts paid on account of disability, but without credit for service during the period of disability.

Sec. 7. That section 79-1049, Revised Statutes Supplement, 1984, be amended to read as follows:

79-1049. A member, who has ~~ten~~ five years or more of creditable service, excluding years of prior service acquired pursuant to section 79-1045, and who shall sever his or her employment, may elect to leave his or her contributions in the system, in which event he or she shall receive a retirement allowance at normal retirement age based on the annuity earned to the date of such severance. Such member may elect to receive a retirement allowance at early retirement age if such member qualifies for early retirement as defined in section 79-1032. Such annuity shall be adjusted in accordance with section 79-1044.01. Upon the severance of employment, except on account of retirement, a member shall be entitled to receive refunds as follows: (1) An amount equal to the accumulated contributions to the system by the member; and (2) any contributions made to a previously existing system which were refundable under the terms of that system. Any member, receiving a refund of contributions, shall thereby forfeit and relinquish all accrued rights in the retirement system including all accumulated creditable service, except, ~~PROVIDED~~, that if any member, who has withdrawn his or her contributions as provided in this section, shall reenter the service of the district within a period of five years from the date of withdrawal and again become a member of the system, he or she may restore all money previously received by him or her as a refund, including the regular interest for the period of his or her absence from the district's service, and he or she shall then again receive credit for service which he

or she forfeited by the acceptance of such refund. Such restoration can be made in equal installments over a period of not to exceed two years from the date of reemployment. Interest on delayed payments shall be at the rate of regular interest as defined in section 79-1032.

Sec. 8. Notwithstanding any other provision of sections 79-1032 to 79-1060, no member of the retirement system shall receive in any calendar year an annuity benefit derived from contributions of the board which if received in the form of a straight life annuity with no ancillary benefits would exceed the lesser of: (1) A dollar limitation of ninety thousand dollars, adjusted as of January 1 of each calendar year to the dollar limitation as determined for such year by the Commissioner of Internal Revenue pursuant to section 415(d) of the Internal Revenue Code of 1954, as amended; or (2) a compensation limit of one hundred per cent of the average compensation paid to the member during the three consecutive calendar years of employment with the board, or actual number of consecutive calendar years of employment if employed less than three consecutive years, which give the highest average. The limitations provided in this section shall not apply to any board-derived annuity benefit which is less than ten thousand dollars.

The limitations provided in this section shall be adjusted as follows:

(a) If the annuity begins prior to the sixty-second birthday of the member, the dollar limitation shall be equal to an annual annuity benefit which is equal to the actuarial equivalent of an annuity benefit commencing on the sixty-second birthday of the member, but not less than seventy-five thousand dollars;

(b) If the annuity begins after the sixty-fifth birthday of the member, the dollar limitation shall be equal to an annual annuity benefit which is equal to the actuarial equivalent of an annuity benefit commencing on the sixty-fifth birthday of the member; and

(c) If the annuity begins prior to the member having ten years of creditable service, the dollar limitation as well as the one hundred per cent of average compensation limitation and the exception for an annuity benefit which is less than ten thousand dollars shall be reduced by a fraction, the numerator of which is the total full fractional parts of years of creditable service and the denominator of which is ten.

For purposes of the limitations provided in this section, the actuarial equivalent shall be determined from the actuarial tables used for the retirement allowance for early retirement, except that in the case of the adjustment for an annuity which begins after the sixty-fifth birthday of a member, the interest rate to be used in determining the actuarial equivalency shall be five per cent compounded annually. The value of the joint and

survivorship feature of an annuity shall not be taken into account in applying the limitations provided in this section.

This section is intended to meet the requirements of section 415 of the Internal Revenue Code of 1954, as amended, and shall be construed in accordance with such section and shall, by this reference, incorporate any subsequent changes made to such section as the same may apply to the retirement system.

Sec. 9. The Revisor of Statutes shall assign section 8 of this act to Chapter 79, article 10, and references to sections 79-1032 to 79-1060 and to Chapter 79, article 10, shall be construed to include section 8 of this act.

Sec. 10. That original sections 79-1035 and 79-1046, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1032, 79-1044.01, and 79-1047 to 79-1049, Revised Statutes Supplement, 1984, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.