

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 40

Introduced by Nordquist, 7.

Read first time January 08, 2015

Committee: Nebraska Retirement Systems

1 A BILL FOR AN ACT relating to retirement; to amend sections 23-2305.01,
2 24-704.01, 79-904.01, 81-2019.01, 84-1305.02, and 84-1503, Reissue
3 Revised Statutes of Nebraska; to grant the Public Employees
4 Retirement Board certain investigative powers; and to repeal the
5 original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-2305.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 23-2305.01 (1)(a) If the board determines that the retirement system
4 has previously received contributions or distributed benefits which for
5 any reason are not in accordance with the statutory provisions of the
6 County Employees Retirement Act, the board shall refund contributions,
7 require additional contributions, adjust benefits, credit dividend
8 amounts, or require repayment of benefits paid. In the event of an
9 overpayment of a benefit, the board may, in addition to other remedies,
10 offset future benefit payments by the amount of the prior overpayment,
11 together with regular interest or interest credits, whichever is
12 appropriate, thereon. In the event of an underpayment of a benefit, the
13 board shall immediately make payment equal to the deficit amount plus
14 regular interest or interest credits, whichever is appropriate.

15 (b) The board shall have the power, through the director of the
16 Nebraska Public Employees Retirement Systems or the director's designee,
17 to make a thorough investigation of any overpayment of a benefit, when in
18 the judgment of the retirement system such investigation is necessary,
19 including, but not limited to, circumstances in which benefit payments
20 are made after the death of a member or beneficiary and the retirement
21 system is not made aware of such member's or beneficiary's death. In
22 connection with any such investigation, the board, through the director
23 or the director's designee, shall have the power to compel the attendance
24 of witnesses and the production of books, papers, records, and documents,
25 whether in hardcopy, electronic form, or otherwise, and issue subpoenas
26 for such purposes. Such subpoenas shall be served in the same manner and
27 have the same effect as subpoenas from district courts.

28 (2) The board shall adopt and promulgate rules and regulations
29 implementing this section, which shall include, but not be limited to,
30 the following: (a) The procedures for refunding contributions, adjusting
31 future contributions or benefit payments, and requiring additional

1 contributions or repayment of benefits; (b) the process for a member,
2 member's beneficiary, employee, or employer to dispute an adjustment of
3 contributions or benefits; and (c) notice provided to all affected
4 persons. All notices shall be sent prior to an adjustment and shall
5 describe the process for disputing an adjustment of contributions or
6 benefits.

7 Sec. 2. Section 24-704.01, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 24-704.01 (1)(a) If the board determines that the retirement system
10 has previously received contributions or distributed benefits which for
11 any reason are not in accordance with the Judges Retirement Act, the
12 board shall refund contributions, require additional contributions,
13 adjust benefits, or require repayment of benefits paid. In the event of
14 an overpayment of a benefit, the board may, in addition to other
15 remedies, offset future benefit payments by the amount of the prior
16 overpayment, together with regular interest thereon. In the event of an
17 underpayment of a benefit, the board shall immediately make payment equal
18 to the deficit amount plus regular interest.

19 (b) The board shall have the power, through the director of the
20 Nebraska Public Employees Retirement Systems or the director's designee,
21 to make a thorough investigation of any overpayment of a benefit, when in
22 the judgment of the retirement system such investigation is necessary,
23 including, but not limited to, circumstances in which benefit payments
24 are made after the death of a member or beneficiary and the retirement
25 system is not made aware of such member's or beneficiary's death. In
26 connection with any such investigation, the board, through the director
27 or the director's designee, shall have the power to compel the attendance
28 of witnesses and the production of books, papers, records, and documents,
29 whether in hardcopy, electronic form, or otherwise, and issue subpoenas
30 for such purposes. Such subpoenas shall be served in the same manner and
31 have the same effect as subpoenas from district courts.

1 (2) The board shall adopt and promulgate rules and regulations
2 implementing this section, which shall include, but not be limited to,
3 the following: (a) The procedures for refunding contributions, adjusting
4 future contributions or benefit payments, and requiring additional
5 contributions or repayment of benefits; (b) the process for a member,
6 member's beneficiary, employee, or employer to dispute an adjustment of
7 contributions or benefits; and (c) notice provided to all affected
8 persons. All notices shall be sent prior to an adjustment and shall
9 describe the process for disputing an adjustment of contributions or
10 benefits.

11 Sec. 3. Section 79-904.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 79-904.01 (1)(a) If the board determines that the retirement system
14 has previously received contributions or distributed benefits which for
15 any reason are not in accordance with the statutory provisions of the
16 School Employees Retirement Act, the board may refund contributions,
17 require additional contributions, adjust benefits, or require repayment
18 of benefits paid. In the event of an overpayment of a benefit, the board
19 may, in addition to other remedies, offset future benefit payments by the
20 amount of the prior overpayment, together with regular interest thereon.
21 In the event of a material underpayment of a benefit, the board shall
22 immediately make payment equal to the deficit amount plus regular
23 interest.

24 (b) The board shall have the power, through the director of the
25 Nebraska Public Employees Retirement Systems or the director's designee,
26 to make a thorough investigation of any overpayment of a benefit, when in
27 the judgment of the retirement system such investigation is necessary,
28 including, but not limited to, circumstances in which benefit payments
29 are made after the death of a member or beneficiary and the retirement
30 system is not made aware of such member's or beneficiary's death. In
31 connection with any such investigation, the board, through the director

1 or the director's designee, shall have the power to compel the attendance
2 of witnesses and the production of books, papers, records, and documents,
3 whether in hardcopy, electronic form, or otherwise, and issue subpoenas
4 for such purposes. Such subpoenas shall be served in the same manner and
5 have the same effect as subpoenas from district courts.

6 (2) If the board determines that termination of employment has not
7 occurred and a retirement benefit has been paid to a member of the
8 retirement system pursuant to section 79-933, such member shall repay the
9 benefit to the retirement system.

10 (3) The board shall adopt and promulgate rules and regulations
11 implementing this section, which shall include, but not be limited to,
12 the following: (a) The procedures for refunding contributions, adjusting
13 future contributions or benefit payments, and requiring additional
14 contributions or repayment of benefits; (b) the process for a member,
15 member's beneficiary, employee, or employer to dispute an adjustment of
16 contributions or benefits; and (c) notice provided to all affected
17 persons. All notices shall be sent at the time of or prior to an
18 adjustment and shall describe the process for disputing an adjustment of
19 contributions or benefits.

20 (4) The board shall not refund contributions made on compensation in
21 excess of the limitations imposed by subdivision (35) of section 79-902.

22 Sec. 4. Section 81-2019.01, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 81-2019.01 (1)(a) If the board determines that the retirement system
25 has previously received contributions or distributed benefits which for
26 any reason are not in accordance with the statutory provisions of
27 sections 81-2014 to 81-2036, the board shall refund contributions,
28 require additional contributions, adjust benefits, or require repayment
29 of benefits paid. In the event of an overpayment of a benefit, the board
30 may, in addition to other remedies, offset future benefit payments by the
31 amount of the prior overpayment, together with regular interest thereon.

1 In the event of an underpayment of a benefit, the board shall immediately
2 make payment equal to the deficit amount plus regular interest.

3 (b) The board shall have the power, through the director of the
4 Nebraska Public Employees Retirement Systems or the director's designee,
5 to make a thorough investigation of any overpayment of a benefit, when in
6 the judgment of the retirement system such investigation is necessary,
7 including, but not limited to, circumstances in which benefit payments
8 are made after the death of a member or beneficiary and the retirement
9 system is not made aware of such member's or beneficiary's death. In
10 connection with any such investigation, the board, through the director
11 or the director's designee, shall have the power to compel the attendance
12 of witnesses and the production of books, papers, records, and documents,
13 whether in hardcopy, electronic form, or otherwise, and issue subpoenas
14 for such purposes. Such subpoenas shall be served in the same manner and
15 have the same effect as subpoenas from district courts.

16 (2) The board shall adopt and promulgate rules and regulations
17 implementing this section, which shall include, but not be limited to,
18 the following: (a) The procedures for refunding contributions, adjusting
19 future contributions or benefit payments, and requiring additional
20 contributions or repayment of benefits; (b) the process for a member,
21 member's beneficiary, employee, or employer to dispute an adjustment of
22 contributions or benefits; and (c) notice provided to all affected
23 persons. All notices shall be sent prior to an adjustment and shall
24 describe the process for disputing an adjustment of contributions or
25 benefits.

26 Sec. 5. Section 84-1305.02, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 84-1305.02 (1)(a) If the board determines that the retirement system
29 has previously received contributions or distributed benefits which for
30 any reason are not in accordance with the statutory provisions of the
31 State Employees Retirement Act, the board shall refund contributions,

1 require additional contributions, adjust benefits, credit dividend
2 amounts, or require repayment of benefits paid. In the event of an
3 overpayment of a benefit, the board may, in addition to other remedies,
4 offset future benefit payments by the amount of the prior overpayment,
5 together with regular interest or interest credits, whichever is
6 appropriate, thereon. In the event of an underpayment of a benefit, the
7 board shall immediately make payment equal to the deficit amount plus
8 regular interest or interest credits, whichever is appropriate.

9 (b) The board shall have the power, through the director of the
10 Nebraska Public Employees Retirement Systems or the director's designee,
11 to make a thorough investigation of any overpayment of a benefit, when in
12 the judgment of the retirement system such investigation is necessary,
13 including, but not limited to, circumstances in which benefit payments
14 are made after the death of a member or beneficiary and the retirement
15 system is not made aware of such member's or beneficiary's death. In
16 connection with any such investigation, the board, through the director
17 or the director's designee, shall have the power to compel the attendance
18 of witnesses and the production of books, papers, records, and documents,
19 whether in hardcopy, electronic form or otherwise, and issue subpoenas
20 for such purposes. Such subpoenas shall be served in the same manner and
21 have the same effect as subpoenas from district courts.

22 (2) The board shall adopt and promulgate rules and regulations
23 implementing this section, which shall include, but not be limited to,
24 the following: (a) The procedures for refunding contributions, adjusting
25 future contributions or benefit payments, and requiring additional
26 contributions or repayment of benefits; (b) the process for a member,
27 member's beneficiary, employee, or employer to dispute an adjustment of
28 contributions or benefits; and (c) notice provided to all affected
29 persons. All notices shall be sent prior to an adjustment and shall
30 describe the process for disputing an adjustment of contributions or
31 benefits.

1 Sec. 6. Section 84-1503, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 84-1503 (1) It shall be the duty of the Public Employees Retirement
4 Board:

5 (a) To administer the retirement systems provided for in the County
6 Employees Retirement Act, the Judges Retirement Act, the Nebraska State
7 Patrol Retirement Act, the School Employees Retirement Act, and the State
8 Employees Retirement Act. The agency for the administration of the
9 retirement systems and under the direction of the board shall be known
10 and may be cited as the Nebraska Public Employees Retirement Systems;

11 (b) To appoint a director to administer the systems under the
12 direction of the board. The appointment shall be subject to the approval
13 of the Governor and a majority of the Legislature. The director shall be
14 qualified by training and have at least five years of experience in the
15 administration of a qualified public or private employee retirement plan.
16 The director shall not be a member of the board. The salary of the
17 director shall be set by the board. The director shall serve without term
18 and may be removed by the board;

19 (c) To provide for an equitable allocation of expenses among the
20 retirement systems administered by the board, and all expenses shall be
21 provided from the investment income earned by the various retirement
22 funds unless alternative sources of funds to pay expenses are specified
23 by law;

24 (d) To administer the deferred compensation program authorized in
25 section 84-1504;

26 (e) To hire an attorney, admitted to the Nebraska State Bar
27 Association, to advise the board in the administration of the retirement
28 systems listed in subdivision (a) of this subsection;

29 (f) To hire an internal auditor to perform the duties described in
30 section 84-1503.04 who meets the minimum standards as described in
31 section 84-304.03;

1 (g) To adopt and implement procedures for reporting information by
2 employers, as well as testing and monitoring procedures in order to
3 verify the accuracy of such information. The information necessary to
4 determine membership shall be provided by the employer. The board shall
5 adopt and promulgate rules and regulations and prescribe such forms
6 necessary to carry out this subdivision. Nothing in this subdivision
7 shall be construed to require the board to conduct onsite audits of
8 political subdivisions for compliance with statutes, rules, and
9 regulations governing the retirement systems listed in subdivision (1)(a)
10 of this section regarding membership and contributions; and

11 (h) To prescribe and furnish forms for the public retirement system
12 plan reports required to be filed pursuant to sections 2-3228, 12-101,
13 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118,
14 23-3526, 71-1631.02, and 79-987.

15 (2) In administering the retirement systems listed in subdivision
16 (1)(a) of this section, it shall be the duty of the board:

17 (a) To determine, based on information provided by the employer, the
18 prior service annuity, if any, for each person who is an employee of the
19 county on the date of adoption of the retirement system;

20 (b) To determine the eligibility of an individual to be a member of
21 the retirement system and other questions of fact in the event of a
22 dispute between an individual and the individual's employer;

23 (c) To adopt and promulgate rules and regulations for the management
24 of the board;

25 (d) To keep a complete record of all proceedings taken at any
26 meeting of the board;

27 (e) To obtain, by a competitive, formal, and sealed bidding process
28 through the materiel division of the Department of Administrative
29 Services, actuarial services on behalf of the State of Nebraska as may be
30 necessary in the administration and development of the retirement
31 systems, including, but not limited to, preparation of an annual

1 actuarial valuation report of each of the defined benefit and cash
2 balance plans administered by the board. Such annual valuation reports
3 shall be presented by the actuary to the Nebraska Retirement Systems
4 Committee of the Legislature at a public hearing or hearings. Any
5 contract for actuarial services shall contain a provision allowing the
6 actuary, without prior approval of the board, to perform actuarial
7 studies of the systems as requested by entities other than the board, if
8 notice, which does not identify the entity or substance of the request,
9 is given to the board, all costs are paid by the requesting entity,
10 results are provided to the board, the Nebraska Retirement Systems
11 Committee of the Legislature, and the Legislative Fiscal Analyst upon
12 being made public, and such actuarial studies do not interfere with the
13 actuary's ongoing responsibility to the board. The term of the contract
14 shall be for up to three years. A competitive, formal, and sealed bidding
15 process shall be completed at least once every three years, unless the
16 board determines that such a process would not be cost effective under
17 the circumstances and that the actuarial services performed have been
18 satisfactory, in which case the contract may also contain an option for
19 renewal without a competitive, formal, and sealed bidding process for up
20 to three additional years. An actuary under contract for the State of
21 Nebraska shall be a member of the American Academy of Actuaries and meet
22 the academy's qualification standards to render a statement of actuarial
23 opinion;

24 (f) To direct the State Treasurer to transfer funds, as an expense
25 of the retirement systems, to the Legislative Council Retirement Study
26 Fund. Such transfer shall occur beginning on or after July 1, 2005, and
27 at intervals of not less than five years and not more than fifteen years
28 and shall be in such amounts as the Legislature shall direct;

29 (g) To adopt and promulgate rules and regulations to carry out the
30 provisions of each retirement system described in subdivision (1)(a) of
31 this section, which includes, but is not limited to, the crediting of

1 military service, direct rollover distributions, and the acceptance of
2 rollovers;

3 (h) To obtain, by a competitive, formal, and sealed bidding process
4 through the materiel division of the Department of Administrative
5 Services, auditing services for a separate compliance audit of the
6 retirement systems to be completed by December 31, 2020, and from time to
7 time thereafter at the request of the Nebraska Retirement Systems
8 Committee of the Legislature, to be completed not more than every four
9 years but not less than every ten years. The compliance audit shall be in
10 addition to the annual audit conducted by the Auditor of Public Accounts.
11 The compliance audit shall include, but not be limited to, an examination
12 of records, files, and other documents and an evaluation of all policies
13 and procedures to determine compliance with all state and federal laws. A
14 copy of the compliance audit shall be given to the Governor, the board,
15 and the Nebraska Retirement Systems Committee of the Legislature and
16 shall be presented to the committee at a public hearing;

17 (i) To adopt and promulgate rules and regulations for the adjustment
18 of contributions or benefits, which includes, but is not limited to: (i)
19 The procedures for refunding contributions, adjusting future
20 contributions or benefit payments, and requiring additional contributions
21 or repayment of benefits; (ii) the process for a member, member's
22 beneficiary, employee, or employer to dispute an adjustment to
23 contributions or benefits; (iii) establishing materiality and de minimus
24 amounts for agency transactions, adjustments, and inactive account
25 closures; and (iv) notice provided to all affected persons. Following an
26 adjustment, a timely notice shall be sent that describes the adjustment
27 and the process for disputing an adjustment to contributions or benefits;
28 and

29 (j) To make a thorough investigation through the director or the
30 director's designee, of any overpayment of a benefit, when in the
31 judgment of the director such investigation is necessary, including, but

1 not limited to, circumstances in which benefit payments are made after
2 the death of a member or beneficiary and the retirement system is not
3 made aware of such member's or beneficiary's death. In connection with
4 any such investigation, the board, through the director or the director's
5 designee, shall have the power to compel the attendance of witnesses and
6 the production of books, papers, records, and documents, whether in
7 hardcopy, electronic form or otherwise, and issue subpoenas for such
8 purposes. Such subpoenas shall be served in the same manner and have the
9 same effect as subpoenas from district courts; and

10 (k j) To administer all retirement system plans in a manner which
11 will maintain each plan's status as a qualified plan pursuant to the
12 Internal Revenue Code, as defined in section 49-801.01, including:
13 Section 401(a)(9) of the Internal Revenue Code relating to the time and
14 manner in which benefits are required to be distributed, including the
15 incidental death benefit distribution requirement of section 401(a)(9)(G)
16 of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue
17 Code relating to the specification of actuarial assumptions; section
18 401(a)(31) of the Internal Revenue Code relating to direct rollover
19 distributions from eligible retirement plans; section 401(a)(37) of the
20 Internal Revenue Code relating to the death benefit of a member whose
21 death occurs while performing qualified military service; and section
22 401(a) of the Internal Revenue Code by meeting the requirements of
23 section 414(d) of the Internal Revenue Code relating to the establishment
24 of retirement plans for governmental employees of a state or political
25 subdivision thereof. The board shall adopt and promulgate rules and
26 regulations necessary or appropriate to maintain such status including,
27 but not limited to, rules or regulations which restrict discretionary or
28 optional contributions to a plan or which limit distributions from a
29 plan.

30 (3) By March 31 of each year, the board shall prepare a written plan
31 of action and shall present such plan to the Nebraska Retirement Systems

1 Committee of the Legislature at a public hearing. The plan shall include,
2 but not be limited to, the board's funding policy, the administrative
3 costs and other fees associated with each fund and plan overseen by the
4 board, member education and informational programs, the director's duties
5 and limitations, an organizational structure of the office of the
6 Nebraska Public Employees Retirement Systems, and the internal control
7 structure of such office to ensure compliance with state and federal
8 laws.

9 Sec. 7. Original sections 23-2305.01, 24-704.01, 79-904.01,
10 81-2019.01, 84-1305.02, and 84-1503, Reissue Revised Statutes of
11 Nebraska, are repealed.