

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 598**

Introduced by Groene, 42.

Read first time January 18, 2017

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Industrial Relations Act; to amend
- 2 section 48-818, Revised Statutes Cumulative Supplement, 2016; to
- 3 require consideration of certain factors by the Commission of
- 4 Industrial Relations when establishing wage rates; and to repeal the
- 5 original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-818, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 48-818 (1)(a) ~~(1)~~ Except as provided in the State Employees  
4 Collective Bargaining Act, the findings and order or orders may establish  
5 or alter the scale of wages, hours of labor, or conditions of employment,  
6 or any one or more of the same. In making such findings and order or  
7 orders, the commission shall establish rates of pay and conditions of  
8 employment which are comparable to the prevalent wage rates paid and  
9 conditions of employment maintained for the same or similar work of  
10 workers exhibiting like or similar skills under the same or similar  
11 working conditions. In establishing wage rates the commission shall take  
12 into consideration:

13 (i) The the overall compensation presently received by the  
14 employees, having regard not only to wages for time actually worked but  
15 also to wages for time not worked, including vacations, holidays, and  
16 other excused time, and all benefits received, including insurance and  
17 pensions, and the continuity and stability of employment enjoyed by the  
18 employees; -

19 (ii) Local factors for the area, including the latest estimates and  
20 data from the United States Bureau of the Census and the American  
21 Community Survey regarding individual family incomes for the region and  
22 local areas within a metropolitan statistical area or within fifty miles  
23 for an industrial dispute not in a metropolitan statistical area;

24 (iii) Economic trends based on the latest data available from the  
25 United States Department of Labor and the Nebraska Department of Labor  
26 regarding the local area and regional consumer price indices;

27 (iv) The latest information from the Nebraska Department of Labor  
28 regarding employer benefits in the regional business community; and

29 (v) Any other relevant information regarding private employer  
30 benefit packages the commission deems necessary to establish comparable  
31 benefit standards.

1           (b) Any order or orders entered may be modified on the commission's  
2 own motion or on application by any of the parties affected, but only  
3 upon a showing of a change in the conditions from those prevailing at the  
4 time the original order was entered.

5           (2) For purposes of industrial disputes involving public employers  
6 other than school districts, educational service units, and community  
7 colleges with their certificated and instructional employees and public  
8 employers subject to the State Employees Collective Bargaining Act:

9           (a) Job matches shall be sufficient for comparison if (i) evidence  
10 supports at least a seventy percent match based on a composite of the  
11 duties and time spent performing those duties and (ii) at least three job  
12 matches per classification are available for comparison. If three job  
13 matches are not available, the commission shall base its order on the  
14 historic relationship of wages paid to such position over the last three  
15 fiscal years, for which data is available, as compared to wages paid to a  
16 position for which a minimum of three job matches are available;

17           (b) The commission shall adhere to the following criteria when  
18 establishing an array:

19           (i) Geographically proximate public employers and Nebraska public  
20 employers are preferable for comparison;

21           (ii) The preferred size of an array is seven to nine members. As few  
22 as five members may be chosen if all array members are Nebraska  
23 employers. The commission shall include members mutually agreed to by the  
24 parties in the array;

25           (iii) If more than nine employers with job matches are available,  
26 the commission shall limit the array to nine members, based upon  
27 selecting array members with the highest number of job matches at the  
28 highest job match percentage;

29           (iv) Nothing in this subdivision (2)(b) of this section shall  
30 prevent parties from stipulating to an array member that does not  
31 otherwise meet the criteria in such subdivision, and nothing in such

1 subdivision shall prevent parties from stipulating to less than seven or  
2 more than nine array members;

3 (v) The commission shall not require a balanced number of larger or  
4 smaller employers or a balanced number of Nebraska or out-of-state  
5 employers;

6 (vi) If the array includes a public employer in a metropolitan  
7 statistical area other than the metropolitan statistical area in which  
8 the employer before the commission is located, only one public employer  
9 from such metropolitan statistical area may be included in the array;

10 (vii) Arrays for public utilities with annual revenue of five  
11 hundred million dollars or more shall include both comparable public and  
12 privately owned utilities. Arrays for public utilities with annual  
13 revenue of less than five hundred million dollars may include both  
14 comparable public and privately owned utilities. Public utilities that  
15 produce radioactive material and energy pursuant to section 70-627.02  
16 shall have at least four members in its array that produce radioactive  
17 material and energy when employees directly involved in this production  
18 are included in the bargaining unit. For public utilities that generate,  
19 transmit, and distribute power, the array shall include members that also  
20 perform these functions. For a public utility serving a city of the  
21 primary class, the array shall only include public power districts in  
22 Nebraska that generate, transmit, and distribute power and any out-of-  
23 state utilities whose number of meters served is not more than double or  
24 less than one-half of the number of meters served by the public utility  
25 serving a city of the primary class unless evidence establishes that  
26 there are substantial differences which cause the work or conditions of  
27 employment to be dissimilar;

28 (viii) In constructing an array for a public utility, the commission  
29 shall use fifty-mile concentric circles until it reaches the optimum  
30 array pursuant to subdivision (2)(b)(ii) of this section; and

31 (ix) For a statewide public utility that provides service to a

1 majority of the counties in Nebraska, any Nebraska public or private job  
2 match may be used without regard to the population or full-time  
3 equivalent employment requirements of this section, and any out-of-state  
4 job match may be used if the full-time equivalent employment of the out-  
5 of-state employer is no more than double and no less than one-half of the  
6 full-time equivalent employment of the bargaining unit of the statewide  
7 public utility in question;

8 (c) In determining same or similar working conditions, the  
9 commission shall adhere to the following:

10 (i) Public employers in Nebraska shall be presumed to provide same  
11 or similar working conditions unless evidence establishes that there are  
12 substantial differences which cause the work or conditions of employment  
13 to be dissimilar;

14 (ii) Public employers shall be presumed to provide the same or  
15 similar working conditions if (A) for public employers that are counties  
16 or municipalities, the population of such public employer is not more  
17 than double or less than one-half of the population of the public  
18 employer before the commission, unless evidence establishes that there  
19 are substantial differences which cause the work or conditions of  
20 employment to be dissimilar, (B) for public employers that are public  
21 utilities, the number of such public employer's employees is not more  
22 than double or less than one-half of the number of employees of the  
23 public employer before the commission, unless evidence establishes that  
24 there are substantial differences which cause the work or conditions of  
25 employment to be dissimilar, or (C) for public employers that are school  
26 districts, educational service units, or community colleges with  
27 noncertificated and noninstructional school employees, the student  
28 enrollment of such public employer is not more than double or less than  
29 one-half of the student enrollment of the public employer before the  
30 commission, unless evidence establishes that there are substantial  
31 differences which cause the work or conditions of employment to be

1 dissimilar;

2 (iii)(A) Public employers located within a metropolitan statistical  
3 area who meet the population requirements of subdivision (2)(c)(ii)(A) of  
4 this section, if the public employer is a county or municipality, or the  
5 student enrollment requirements of subdivision (2)(c)(ii)(C) of this  
6 section, if the public employer is a school district or an educational  
7 service unit, shall be presumed to provide the same or similar working  
8 conditions if the metropolitan statistical area population in which they  
9 are located is not more than double or less than one-half the  
10 metropolitan statistical area population of the public employer before  
11 the commission, unless evidence establishes that there are substantial  
12 differences which cause the work or conditions of employment to be  
13 dissimilar.

14 (B) The presumption created by subdivision (2)(c)(iii)(A) of this  
15 section may be overcome in situations where evidence establishes that  
16 there are substantial similarities which cause the work or conditions of  
17 employment to be similar, allowing the commission to consider public  
18 employers located within a metropolitan statistical area even if the  
19 metropolitan statistical area population in which that employer or  
20 employers are located is more than double or less than one-half the  
21 metropolitan statistical area population of the public employer before  
22 the commission. The burden of establishing sufficient similarity is on  
23 the party seeking to include a public employer pursuant to this  
24 subdivision (2)(c)(iii)(B) of this section; and

25 (iv) Public employers other than public utilities which are not  
26 located within a metropolitan statistical area shall not be compared to  
27 public employers located in a metropolitan statistical area. For purposes  
28 of this subdivision, metropolitan statistical area includes  
29 municipalities with populations of fifty thousand inhabitants or more;

30 (d) Prevalent shall be determined as follows: (i) For numeric  
31 values, prevalent shall be the midpoint between the arithmetic mean and

1 the arithmetic median. For fringe benefits, prevalent shall be the  
2 midpoint between the arithmetic mean and the arithmetic median as long as  
3 a majority of the array members provide the benefit; and (ii) for  
4 nonnumeric comparisons, prevalent shall be the mode that the majority of  
5 the array members provide if the compared-to benefit is similar in  
6 nature. If there is no clear mode, the benefit or working condition shall  
7 remain unaltered by the commission;

8 (e) For any out-of-state employer, the parties may present economic  
9 variable evidence and the commission shall determine what, if any,  
10 adjustment is to be made if such evidence is presented. The commission  
11 shall not require that any such economic variable evidence be shown to  
12 directly impact the wages or benefits paid to employees by such out-of-  
13 state employer;

14 (f) In determining total or overall compensation, the commission  
15 shall value every economic item even if the year in question has expired.  
16 The commission shall require that all wage and benefit levels be leveled  
17 over the twelve-month period in dispute to account for increases or  
18 decreases which occur in the wage or benefit levels provided by any array  
19 member during such twelve-month period;

20 (g) In cases filed pursuant to this subsection (2) of this section,  
21 the commission shall not be bound by the usual common law or statutory  
22 rules of evidence or by any technical or formal rules of procedure, other  
23 than those adopted by rule pursuant to section 48-809. The commission  
24 shall receive evidence relating to array selection, job match, and wages  
25 and benefits which have been assembled by telephone, electronic  
26 transmission, or mail delivery, and any such evidence shall be  
27 accompanied by an affidavit from the employer or any other person with  
28 personal knowledge which affidavit shall demonstrate the affiant's  
29 personal knowledge and competency to testify on the matters thereon. The  
30 commission, with the consent of the parties to the dispute, and in the  
31 presence of the parties to the dispute, may contact an individual

1 employed by an employer under consideration as an array member by  
2 telephone to inquire as to the nature or value of a working condition,  
3 wage, or benefit provided by that particular employer as long as the  
4 individual in question has personal knowledge about the information being  
5 sought. The commission may rely upon information gained in such inquiry  
6 for its decision. Opinion testimony shall be received by the commission  
7 based upon evidence provided in accordance with this subdivision.  
8 Testimony concerning job match shall be received if job match inquiries  
9 were conducted by telephone, electronic transmission, or mail delivery if  
10 the witness providing such testimony verifies the method of such job  
11 match inquiry and analysis;

12 (h) In determining the value of defined benefit and defined  
13 contribution retirement plans and health insurance plans or health  
14 benefit plans, the commission shall use an hourly rate value calculation  
15 as follows:

16 (i) Once the array has been chosen, each array member and the public  
17 employer of the subject bargaining unit shall provide a copy of its most  
18 recent defined benefit pension actuarial valuation report. Each array  
19 member and the public employer of the subject bargaining unit shall  
20 provide the most recent copy of its health insurance plans or health  
21 benefit plans, covering the preceding twelve-month period, with  
22 associated employer and employee costs, to the parties and the  
23 commission. Each array member shall also provide information concerning  
24 premium equivalent payments and contributions for health savings  
25 accounts. Each array member and the public employer of the subject  
26 bargaining unit shall indicate which plans are most used. The plans that  
27 are most used shall be used for comparison;

28 (ii) Once the actuarial valuation reports are received, the parties  
29 shall have thirty calendar days to determine whether to have the pensions  
30 actuarially valued at an hourly rate value other than equal. The hourly  
31 rate value for defined benefit plans shall be presumed to be equal to

1 that of the array selected unless one or both of the parties presents  
2 evidence establishing that the actuarially derived annual normal cost of  
3 the pension benefit for each job classification in the subject bargaining  
4 unit is above or below the midpoint of the average normal cost.  
5 Consistent methods and assumptions are to be applied to determine the  
6 annual normal cost of any defined benefit pension plan of the subject  
7 bargaining unit and each array member. For this purpose, the entry age  
8 normal actuarial cost method is recommended. The actuarial assumptions  
9 that are selected for this purpose should reflect expectations for a  
10 defined benefit pension plan maintained for the employees of the subject  
11 bargaining unit and acknowledge the eligibility and benefit provisions  
12 for each respective defined benefit pension plan. In this regard,  
13 different eligibility and benefit provisions may suggest different  
14 retirement or termination of employment assumptions. The methods and  
15 assumptions shall be attested to by an actuary holding a current  
16 membership with the American Academy of Actuaries. Any party who requests  
17 or presents evidence regarding actuarial valuation of a defined benefit  
18 plan shall be responsible for costs associated with such valuation and  
19 testimony. The actuarial valuation is presumed valid, unless a party  
20 presents competent actuarial evidence that the valuation is invalid;

21 (iii) The hourly rate value for defined contribution plans shall be  
22 established upon comparison of employer contributions;

23 (iv) The hourly rate value for health insurance plans or health  
24 benefit plans shall be established based upon the public employer's  
25 premium payments, premium equivalent payments, and public employer and  
26 public employee contributions to health savings accounts;

27 (v) The commission shall not compare defined benefit plans to  
28 defined contribution plans or defined contribution plans to defined  
29 benefit plans; and

30 (vi) The commission shall order increases or decreases in wage rates  
31 by job classification based upon the hourly rate value for health-related

1 benefits, benefits provided for retirement plans, and wages;

2 (i) For benefits other than defined benefit and defined contribution  
3 retirement plans and health insurance plans or health benefit plans, the  
4 commission shall issue an order based upon a determination of prevalency  
5 as determined under subdivision (2)(d) of this section; and

6 (j) The commission shall issue an order regarding increases or  
7 decreases in base wage rates or benefits as follows:

8 (i) The order shall be retroactive with respect to increases and  
9 decreases to the beginning of the bargaining year in dispute;

10 (ii) The commission shall determine whether the hourly rate value of  
11 the bargaining unit's members or classification falls within a ninety-  
12 eight percent to one hundred two percent range of the array's midpoint.  
13 If the hourly rate value falls within the ninety-eight percent to one  
14 hundred two percent range, the commission shall order no change in wage  
15 rates. If the hourly rate value is less than ninety-eight percent of the  
16 midpoint, the commission shall enter an order increasing wage rates to  
17 ninety-eight percent of the midpoint. If the hourly rate value is more  
18 than one hundred two percent of the midpoint, the commission shall enter  
19 an order decreasing wage rates to one hundred two percent of the  
20 midpoint. If the hourly rate value is more than one hundred seven percent  
21 of the midpoint, the commission shall enter an order reducing wage rates  
22 to one hundred two percent of the midpoint in three equal annual  
23 reductions. If the hourly rate value is less than ninety-three percent of  
24 the midpoint, the commission shall enter an order increasing wage rates  
25 to ninety-eight percent of the midpoint in three equal annual increases.  
26 If the commission finds that the year in dispute occurred during a time  
27 of recession, the applicable range will be ninety-five percent to one  
28 hundred two percent. For purposes of this subdivision (2)(j) of this  
29 section, recession occurrence means the two nearest quarters in time,  
30 excluding the immediately preceding quarter, to the effective date of the  
31 contract term in which the sum of the net state sales and use tax,

1 individual income tax, and corporate income tax receipts are less than  
2 the same quarters for the prior year. Each of these receipts shall be  
3 rate and base adjusted for state law changes. The Department of Revenue  
4 shall report and publish such receipts on a quarterly basis;

5 (iii) The parties shall have twenty-five calendar days to negotiate  
6 modifications to wages and benefits. If no agreement is reached, the  
7 commission's order shall be followed as issued; and

8 (iv) The commission shall provide an offset to the public employer  
9 when a lump-sum payment is due because benefits were paid in excess of  
10 the prevalent as determined under subdivision (2)(d) of this section or  
11 when benefits were paid below the prevalent as so determined but wages  
12 were above prevalent.

13 Sec. 2. Original section 48-818, Revised Statutes Cumulative  
14 Supplement, 2016, is repealed.