

LEGISLATIVE BILL 1097

Approved by the Governor April 15, 2004

Introduced by Nebraska Retirement Systems Committee: Stuhr, 24, Chairperson;
Bourne, 8; Erdman, 47; Price, 26; Synowiecki, 7; Wehrbein, 2

AN ACT relating to retirement; to amend sections 16-1036, 24-714, 42-1102, 48-155.01, 79-916, 79-921, 79-942, 79-946, 79-947.01, 79-951, 79-966, 81-2026, 84-1325, 84-1501, and 84-1511.01, Reissue Revised Statutes of Nebraska, sections 23-2306, 23-2310.05, 24-701.01, 24-704.01, 24-710, 24-710.02, 24-710.07, 24-710.09, 24-713.01, 81-2027.03, 84-1307, and 84-1311.03, Revised Statutes Supplement, 2002, and sections 23-2301, 23-2320, 23-2321, 24-703, 24-707, 24-708, 84-1301, 84-1322, and 84-1323, Revised Statutes Supplement, 2003; to change provisions relating to retirement accounts, investment options, contributions, payment and repayment of benefits, annuities, disability and death benefits, medical examinations, cost-of-living adjustments, and retirement planning programs; to change funding provisions relating to the service annuity benefit; to change membership of the Public Employees Retirement Board; to create a fund and terminate a fund; to redefine terms; to provide duties; to eliminate obsolete provisions; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 16-1036, Reissue Revised Statutes of Nebraska, is amended to read:

16-1036. (1) The funds in the Firefighters Retirement System Fund shall be invested by the retirement committee. The city, subject to the approval of the retirement committee, shall contract with a funding agent or agents to hold or invest the assets of the retirement system and to provide for the benefits provided by sections 16-1020 to 16-1042. The retirement committee, subject to the approval of the city, may also select an investment manager. The city, subject to approval of the retirement committee, may contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the retirement system as may be assigned by the city or retirement committee.

(2) The retirement committee shall establish an investment plan which allows each member of the retirement system to allocate all contributions to his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account to the various investment options or combinations of investment options described in such plan. Each firefighter shall have the option of investing his or her employee account and, if he or she commenced his or her employment after January 1, 1984, his or her employer account in any proportion, including full allocation, in any investment option offered by the plan. Upon the direction of the city, firefighters employed on January 1, 1984, may have the option to allocate their employer account to various investment options or combinations of investment options in any proportion, including full allocation, in any investment option offered by the plan. Each firefighter shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

(3) The funds in the Firefighters Retirement System Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

Sec. 2. Section 23-2301, Revised Statutes Supplement, 2003, is amended to read:

23-2301. For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement

system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later;

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

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

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

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

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

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a another Nebraska governmental plan for purposes of determining membership in the retirement system and vesting the employer account;

(11) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Retirement System of the State of Nebraska;

(12) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(13) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

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

(15) Five-year break in service means a period of five consecutive one-year breaks in service;

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

(17) Future service means service following the date of adoption of

the retirement system;

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

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

(20) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(21) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account;

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

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

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

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

(26) Prior service means service prior to the date of adoption of the retirement system;

(27) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(28) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(29) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement system means the Retirement System for Nebraska Counties;

(32) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(33) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance

of the benefits; and

(34) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Sec. 3. Section 23-2306, Revised Statutes Supplement, 2002, is amended to read:

23-2306. (1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All full-time employees who have been employees for a period of twelve continuous months shall begin participation in the retirement system, except that full-time elected officials shall begin participation in the retirement system on taking office, (b) all full-time or part-time employees who have attained the age of twenty and have been employed for a total of twelve months within a five-year period may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) Within the first thirty days of employment, a full-time employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

(4) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(5) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive credit for his or her years of employment with the city, village, or township for purposes of the membership provisions of this section and shall receive eligibility and vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(6) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the membership provisions of this section.

(7) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system within sixty days under rules and regulations adopted and promulgated by the board. Information necessary to determine membership in the retirement system shall be provided by the employer.

Sec. 4. Section 23-2310.05, Revised Statutes Supplement, 2002, is

amended to read:

23-2310.05. (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options.

(a) Prior to the operative date of this section:

(i) Such investment options shall be limited to the following:

~~(a)~~ (A) An account which shall be invested by or under the direction of the state investment officer in approximately twenty-five percent equities and seventy-five percent fixed income instruments;

~~(b)~~ (B) An account which shall be invested by or under the direction of the state investment officer in approximately fifty percent equities and fifty percent fixed income instruments; and

~~(c)~~ (C) An account which shall be invested by or under the direction of the state investment officer in approximately seventy-five percent equities and twenty-five percent fixed income instruments; and -

(ii) If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in one of the options described in subdivision ~~(a)~~, ~~(b)~~, or ~~(c)~~ (a) (i) (A), (a) (i) (B), or (a) (i) (C) of this subsection as determined by the board. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(b) On and after the operative date of this section:

(i) Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01; and

(ii) If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(c) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Sec. 5. Section 23-2320, Revised Statutes Supplement, 2003, is amended to read:

23-2320. (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2) (a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall be reenrolled in the retirement system and resume making contributions within sixty days under rules and regulations adopted by the board. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the

termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. ~~In addition, the member may~~ A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Sec. 6. Section 23-2321, Revised Statutes Supplement, 2003, is amended to read:

23-2321. In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred twenty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Sec. 7. (1) This section only applies to a judge who first served as a judge on or after the operative date of this section and to a future member who elects to make contributions and receive benefits as provided in section 8 of this act.

(2) In the event of the death of a judge subsequent to retirement, his or her surviving spouse, if any, shall be entitled to receive, if the surviving spouse was born not more than five years subsequent to the birth of the deceased judge, a monthly benefit payable for life equal to fifty percent of the monthly benefit the retired judge was entitled to receive under the normal form of payment. Such benefit to the surviving spouse shall be provided without actuarial reduction or other assessment to the retired judge in determining his or her benefits. The entire cost of such a benefit shall be assumed by the fund. This benefit value may be applied on an actuarially equivalent basis to any joint and survivor benefit elected by a retiring judge with the surviving spouse as named beneficiary.

(3) In the event that the spouse of a retiring judge was born more than five years subsequent to the birth of the judge, such benefit to the judge described under subsection (2) of this section shall be reduced by the actuarial cost of providing a benefit to the surviving spouse equal to fifty

percent of the benefit the retired judge was entitled to receive. The reduction to the retired judge's benefit shall be limited to that portion of the actuarial cost that exceeds the actuarial cost if the spouse was born five years subsequent to the judge. In the event of the death of a retired judge as described by this subsection, his or her surviving spouse shall receive a monthly benefit payable for life equal to fifty percent of the monthly benefit received by the deceased judge.

(4) This section shall not prevent a retiring judge from contracting to provide a larger percentage of benefit for a surviving spouse under other applicable statutes.

Sec. 8. Any future member who has not previously retired prior to the operative date of this section may elect to make contributions as provided in subdivision (2) (b) of section 24-703 and receive benefits as described in section 24-708 and section 7 of this act. Such election shall be made by written notice delivered to the board not later than ninety days after the operative date of this section.

Sec. 9. Any changes made to the Judges Retirement Act affecting retirement benefits shall be so interpreted as to effectuate their general purpose to provide, in the public interest, adequate retirement benefits for judges and to permit a change in such retirement benefits as soon as the same may become operative under the Constitution of Nebraska.

Sec. 10. Section 24-701.01, Revised Statutes Supplement, 2002, is amended to read:

24-701.01. Sections 24-701 to 24-714 and sections 7 to 9 of this act shall be known and may be cited as the Judges Retirement Act.

Sec. 11. Section 24-703, Revised Statutes Supplement, 2003, is amended to read:

24-703. (1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2) (a) Beginning on the operative date of this section, each future member who has not elected to make contributions and receive benefits as provided in section 8 of this act shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that Prior to July 1, 2003, each future member shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Prior to July 1, 2003, any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned.

(b) Beginning on the operative date of this section, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 8 of this act shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service. Beginning July 1, 2003, each future member shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Beginning July 1, 2003, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, a future member shall contribute monthly four percent of his or her

~~monthly compensation to the fund.~~

(c) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) A Nebraska Retirement Fund for Judges fee of five dollars shall be taxed as costs in each civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts and the county courts. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and

amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 12. Section 24-704.01, Revised Statutes Supplement, 2002, is amended to read:

24-704.01. (1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the ~~statutory provisions of sections 24-701 to 24-714~~ Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

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

Sec. 13. Section 24-707, Revised Statutes Supplement, 2003, is amended to read:

24-707. (1) In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of creditable service, the surviving spouse of such judge shall at his or her option be immediately entitled to receive those benefits which the surviving spouse would have been entitled to under subsection (3) of section 24-710 had the judge elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the judge or the judge's surviving spouse should survive and had the judge retired ~~(1)~~ (a) on the date of death if his or her age at death is sixty-five or more or ~~(2)~~ (b) at age sixty-five if his or her age at death is less than sixty-five. If such option is not exercised by such surviving spouse within one hundred twenty days of the judge's death, if there is no surviving spouse, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such judge plus regular interest. ~~In~~

(2) Except as provided in subsection (1) of this section, in the event of the death of a judge subsequent to retirement, if such judge has not filed a statement of intent with the board to elect to receive any other form of annuity which may be provided for by section 24-710 or elected to make contributions and receive benefits as provided in section 8 of this act, the amount of annuities such judge has received under the provisions of the Judges Retirement Act shall be computed and, if such amount shall be less than the contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate.

(3) Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

Sec. 14. Section 24-708, Revised Statutes Supplement, 2003, is amended to read:

24-708. (1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) Except as provided in section 24-721, a judge may retire upon reaching the attainment of age of fifty-five years and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date and shall be reduced when the payments commence prior to the normal retirement date to an amount that is actuarially equivalent to the deferred vested annuity payable at the normal retirement date.

(3) Payment of any benefit provided under the Judges Retirement Act may not be deferred later than April 1 of the year following the year in which the judge has both attained at least age seventy and one-half years and terminated his or her employment as a judge.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

Sec. 15. Section 24-710, Revised Statutes Supplement, 2002, is amended to read:

24-710. (1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, any form of annuity which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board shall (a) adopt and promulgate appropriate rules and regulations establishing joint and survivorship annuities, with and

without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in section 24-707 and section 7 of this act, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Sec. 16. Section 24-710.02, Revised Statutes Supplement, 2002, is amended to read:

24-710.02. All annuities or benefits which any person shall be entitled to receive under ~~sections 24-701 to 24-714~~ the Judges Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Sec. 17. Section 24-710.07, Revised Statutes Supplement, 2002, is amended to read:

24-710.07. (1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted ~~to equal so that the purchasing power of the benefit being paid is not less than seventy-five percent of the annuity which results when the initial benefit that was paid to the member or beneficiary (before any cost-of-living adjustments or supplemental retirement benefit adjustments pursuant to the Judges Retirement Act) is adjusted by the increase in the purchasing power of the initial benefit.~~ The amount of the adjustment shall be equal to the difference in the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between the commencement date of the annuity and July 1 of each year the adjustment is made during the benefit payment period and one hundred thirty-three and one-third percent, such percentage times the initial benefit, less the total of all previous supplemental benefit and cost-of-living adjustments granted. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2)(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent.

(b) Beginning July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) ~~The Judges Purchasing Power Stabilization Fund is created. The purpose of the fund shall be to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement and that have reduced the purchasing power of retirement benefits provided under the retirement system. Commencing with the 1996-97 fiscal year through the 1999-00 fiscal year, the state shall contribute to the Judges Purchasing Power Stabilization Fund an annual level dollar payment certified by the board. After the 1999-00 fiscal year, the~~ The state shall contribute to the Nebraska Retirement Fund for Judges an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2010-11 fiscal year, the annual level dollar payment certified by the board shall equal 1.04778 percent of six million eight hundred ninety-five thousand dollars. Until July 1, 2000, any money in the Judges Purchasing Power Stabilization Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. On July 1, 2000, the Judges Purchasing Power Stabilization Fund shall terminate and all money in the fund shall be transferred to the Nebraska Retirement Fund for Judges.

(4) The board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics for

the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

Sec. 18. Section 24-710.09, Revised Statutes Supplement, 2002, is amended to read:

24-710.09. For purposes of this section and sections 24-710.10 and 24-710.11:

(1) Eligible retiree means (a) a member or beneficiary who has been receiving a retirement benefit for at least five years, which member had at least twenty-five years of creditable service; (b) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709; or (c) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or section 7 of this act for at least five years, and which member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by section 24-710.10;

(2) Monthly accrual rate means the eligible retiree's total monthly benefit divided by the number of years of creditable service earned by the retiree or deceased member; and

(3) Total monthly benefit means the total benefit received by an eligible retiree pursuant to the Judges Retirement Act, previous adjustments made pursuant to section 24-710.11, or any other provision of Nebraska law which grants a benefit or cost-of-living increase within the act, but total monthly benefit does not include sums received by an eligible retiree from federal sources.

Sec. 19. Section 24-713.01, Revised Statutes Supplement, 2002, is amended to read:

24-713.01. Every claim and demand under ~~sections 24-701 to 24-714~~ the Judges Retirement Act and against the retirement system or the board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

Sec. 20. Section 24-714, Reissue Revised Statutes of Nebraska, is amended to read:

24-714. When the Chief Justice or a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, or a judge of the Nebraska Workers' Compensation Court becomes retired under the ~~provisions of sections 24-701 to 24-714~~ Judges Retirement Act, he or she shall be relieved of further active duties on the court. The Governor may fill the vacancy caused by such retirement the same as when a vacancy exists on that court for any other reason. When a judge of the county court or judge of a separate juvenile court becomes retired under the provisions of such sections, he or she shall also be relieved of further active duties and a vacancy shall be deemed to exist, which vacancy shall be filled as provided by law.

Sec. 21. Section 42-1102, Reissue Revised Statutes of Nebraska, is amended to read:

42-1102. For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 42-1103;

(6) Segregated amounts means the amounts which would have been

payable to the alternative payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the ~~retirement system for judges provided in sections 24-701 to 24-714~~ Nebraska Judges Retirement System, the School Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

Sec. 22. Section 48-155.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-155.01. When any judge of the Nebraska Workers' Compensation Court shall be disqualified from acting in any case or matter before him or her, is temporarily absent from the state, or shall be temporarily unable to act in any cause or matter before him or her because of sickness or other emergency, the Governor may appoint a competent and disinterested person to act in place of such judge in such case or other matter during such disqualification, absence, or emergency. The person so appointed shall possess the same powers and be subject to the duties, restrictions, and liabilities as are prescribed by law respecting judges of the compensation court. The Governor may, in his or her discretion, by a single order, appoint some competent and disinterested person to act as acting judge in the place of any judge of the compensation court during all such disqualifications, absences, and emergencies. Such appointment shall be for a period of two years from July 1 of each odd-numbered year. The acting judge shall be paid a salary per diem at the same rate and in the same manner as the regularly appointed judges and expenses as provided in sections 81-1174 to 81-1177 which shall be paid by the compensation court in the same manner as other compensation court expenses, except that such acting judge shall not pay into the Nebraska Retirement Fund for Judges nor be eligible for retirement benefits under ~~sections 24-701 to 24-714~~ the Judges Retirement Act. The acting judge shall be subject to call by the presiding judge.

Sec. 23. Section 79-916, Reissue Revised Statutes of Nebraska, is amended to read:

79-916. (1)(a) ~~Beginning July 1, 2002, and each fiscal year thereafter, and until June 30, 2004,~~ the board shall transfer the actuarial value of the service annuity liability accrued within the prior fiscal year of the employees who serve a Class V school district and participate in the retirement system established pursuant to the Class V School Employees Retirement Act upon receipt of a certification from the school district as to the number of employees who have accrued a service annuity benefit for such fiscal year. Upon receipt of the certification, the board shall cause to be transferred to the funds of the retirement system of which such employees are members the actuarial value, as determined pursuant to section 79-966.01, of the service annuities to be paid by the state for the years of service thus certified in the same amount and basis as provided for members of the School Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such transfer of actuarial value to the Class V School Employees Retirement System shall be in lieu of the payment of the service annuity to which such employees would be otherwise entitled. The Class V school district which such employees serve shall furnish to the retirement board all information required by the retirement board regarding service records of its employees.

(b) On July 1, 2004, the board shall transfer from the School Retirement Fund to the Service Annuity Fund an amount equal to the funded ratio of the retirement system which is equal to the market value of the retirement system assets divided by the actuarial accrued liability of the retirement system, times the actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Such actuarial accrued liability shall be determined for each employee on a level dollar basis. On or before July 1 of each fiscal year thereafter, the state shall deposit into the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, as of the end of the previous fiscal year of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Based on the fiscal year of the retirement system established pursuant to the Class V School Employees Retirement Act, the administrator of such system shall provide all membership information needed for the actuary engaged by the retirement board to determine the normal cost and the amortization payment of the unfunded actuarial accrued liability, as determined pursuant to section 79-966.01, to

be paid by the state to the Service Annuity Fund each fiscal year as required by this subdivision.

(c) At the time of retirement of any employee who is a member of the retirement system established pursuant to the Class V School Employees Retirement Act, the retirement board shall, upon receipt of a certification of the administrator of such retirement system of the name, identification number, date of birth, retirement date, last date of employment, type of retirement, and number of years of service credited to such eligible employee at the date of retirement, transfer to such retirement system from the Service Annuity Fund the actuarial accrued liability of the service annuity to be paid by the state to the eligible employee for the years of service thus certified as provided for members of the School Employees Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such transfer of the actuarial accrued liability to the retirement system established pursuant to the Class V School Employees Retirement Act shall be in lieu of the payment of the service annuity to which the employee would be entitled.

(d) The Service Annuity Fund is created. The fund shall consist of the amounts paid by the state and transferred from the School Retirement Fund pursuant to this section to pay the service annuity to be paid by the state to employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) In addition to the transfer of the actuarial value accrued liability of the service annuity to be paid by the state, the state shall also transfer to the funds of the Class V school district's retirement system an amount determined by multiplying the compensation of all members of such retirement system by the percent specified in subsection (2) of section 79-966 for determining the amount of the state's payment to the School Retirement Fund. The transfer shall be made annually on or before July 1 of each fiscal year.

Sec. 24. Section 79-921, Reissue Revised Statutes of Nebraska, is amended to read:

79-921. (1) The membership of any person in the retirement system shall cease only if he or she (a) withdraws his or her accumulated contributions under section 79-955, (b) retires on a school or formula or disability retirement allowance, or (c) dies.

(2) The retirement board shall reinstate to membership, with the same status as when such membership ceased, a school employee who has withdrawn his or her accumulated contributions under the following conditions:

(a) If he or she again becomes an employee and if such employee chooses within three years after rejoining the system to repay, within five years after the date on which he or she rejoins the retirement system or prior to termination of employment, whichever is first, to the retirement board part or all of the amount he or she has withdrawn plus interest which would have accrued on that amount under the retirement system; or

(b)(i) If, more than three years after again becoming an employee and rejoining the system but prior to termination of employment, he or she chooses to repay part or all of the amount he or she has withdrawn, plus an amount ~~as determined in subdivision (2)(b)(ii) of this section~~ equal to the actuarial assumed rate of return for the period repaid. Payment must be completed within five years after electing to repay or prior to termination, whichever is earlier.

~~(ii) The additional amount required pursuant to subdivision (2)(b)(i) of this section shall be equal to the total actual annual return that was earned on assets of the system from the time the amounts were withdrawn until the fiscal year in which the employee makes the election to repay. The actual annual return shall be reported by the Nebraska Investment Council to the board on June 30 of each year.~~

(3) Prior creditable service shall be restored in proportion to the amounts repaid. A member's prior creditable service shall be fully restored only if the member has repaid all accumulated withdrawals in accordance with either subdivision (2)(a) or (2)(b) of this section, as applicable. Repayment may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization. If the school employee chooses not to repay such withdrawals with interest, the school employee shall enter the system as a new member with no prior rights.

Sec. 25. Section 79-942, Reissue Revised Statutes of Nebraska, is amended to read:

79-942. For each person who qualifies under sections 79-940 to 79-946, the retirement board shall determine the value of the total monthly benefit being received from the School Retirement System of the State of

Nebraska or from the retirement system for Class V districts as provided by the Class V School Employees Retirement Act. From one hundred fifty-five dollars, the retirement board shall subtract the total monthly benefit. Such difference, if positive, shall be the supplemental benefit and shall be paid to the retired person each month until July 1, 2004, from the Retired Teachers Supplementary Benefits Fund and on and after July 1, 2004, from the School Retirement Fund, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person. ~~Such fund shall be separate and not commingled with any other state funds allocated to the School Retirement System of the State of Nebraska or to the retirement system for Class V districts as provided by the Class V School Employees Retirement Act.~~

Sec. 26. Section 79-946, Reissue Revised Statutes of Nebraska, is amended to read:

79-946. (1) The Retired Teachers Supplementary Benefits Fund is created. The fund shall be administered by the retirement board. This fund shall be considered an express obligation of the state. The appropriation for such fund shall be determined by the retirement board as of January 1 of each odd-numbered year and included in the biennial budget to be adopted by the regular session of the Legislature held in each odd-numbered year.

(2) On June 30, 2004, the Retired Teachers Supplementary Benefits Fund shall terminate and all assets of the fund shall be transferred to the School Retirement Fund. All obligations of the Retired Teachers Supplementary Benefits Fund shall be paid thereafter from the School Retirement Fund. The appropriation to provide supplementary benefits to retired teachers shall be determined as provided in subsection (1) of this section and shall be made to the School Retirement Fund in the same manner and amounts as had been made to the Retired Teachers Supplementary Retirement Fund.

Sec. 27. Section 79-947.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-947.01. (1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted ~~to equal so~~ that the purchasing power of the benefit being paid is not less than seventy-five percent of the annuity which results when the initial benefit that was paid to the member or beneficiary (before any cost-of-living adjustments or supplemental retirement benefit adjustments pursuant to the School Employees Retirement Act) is adjusted by the increase in the purchasing power of the initial benefit. The amount of the adjustment shall be equal to the difference in the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between the commencement date of the annuity and July 1 of each year the adjustment is made during the benefit payment period and one hundred thirty-three and one-third percent, such percentage times the initial benefit, less the total of all previous supplemental benefit and cost-of-living adjustments granted. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2)(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent.

(b) Beginning July 1, 2001, the current benefit to a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) ~~The School Employees Purchasing Power Stabilization Fund is created. The purpose of the fund shall be to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement and that have reduced the purchasing power of retirement benefits provided under the retirement system. Commencing with the 1996-97 fiscal year through the 1999-00 fiscal year, the state shall contribute to the School Employees Purchasing Power Stabilization Fund an annual level dollar payment certified by the board. After the 1999-00 fiscal year, the The state shall contribute to the Annuity Reserve Fund an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2010-11 fiscal year, the annual level dollar payment certified by the board shall equal 81.7873 percent of six million eight hundred ninety-five thousand dollars. Until July 1, 2000, any money in the School Employees Purchasing Power Stabilization Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. On July 1, 2000, the School Employees Purchasing Power~~

~~Stabilization Fund shall terminate and all money in the fund shall be transferred to the Annuity Reserve Fund.~~

(4) The retirement board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

Sec. 28. Section 79-951, Reissue Revised Statutes of Nebraska, is amended to read:

79-951. (1) A member shall be retired on account of disability, either upon his or her own application or the application of his or her employer or a person acting in his or her behalf, if a medical examination, made at the expense of the retirement system and conducted by a competent disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, selected by the retirement board, shows and the physician certifies to the retirement board that the member is unable to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury.

(2) The member shall have five years from the date he or she terminates employment in a public school located in Nebraska in which to make application for disability retirement benefits if the disability is related to employment in a public school located in Nebraska. If the disability is not related to a public school located in Nebraska, the member shall have one year from the date he or she terminates employment in which to make application for disability retirement benefits. Any application for retirement on account of disability shall be made on a retirement application provided by the retirement system. Upon approval by the board, benefits shall begin on the disability retirement date.

Sec. 29. Section 79-966, Reissue Revised Statutes of Nebraska, is amended to read:

79-966. (1) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall annually, on or before July 1, determine the state deposit to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01. The retirement board shall thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(2) In addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system for each fiscal year on or after July 1, 1984.

(3) ~~In addition to the state deposits required by subsections (1) and (2) of this section, beginning on or after July 1, 2011, and each fiscal year thereafter, the state shall deposit in the School Retirement Fund an amount equal to the normal cost of the service annuity benefit established pursuant to section 79-933 which had accrued during the prior fiscal year for members of both the retirement system and the retirement system established pursuant to the Class V School Employees Retirement Act. The retirement board shall immediately transfer the money deposited to pay the normal cost for members of the Class V School Employees Retirement System to the administrators of that retirement system.~~ In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of

the retirement system established pursuant to the Class V School Employees Retirement Act.

Sec. 30. Section 81-2026, Reissue Revised Statutes of Nebraska, is amended to read:

81-2026. (1)(a) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of creditable service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

(b) For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of creditable service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

(c) For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of creditable service. If the officer has completed more than seventeen years of creditable service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of creditable service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) ~~Upon the death of an officer after retirement for reasons other than disability, the officer's surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries. If the surviving spouse has a dependent child or children of the officer under the age of nineteen years in his or her care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest such dependent child attains the age of nineteen years, after which time the benefit shall be reduced to seventy-five percent of the amount of such officer's annuity. If there is no surviving spouse living at the date of the officer's death, the officer's child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest such child attains the age of nineteen years. If there is more than one such child under the age of nineteen years at such time, the amount thereof shall be divided equally among such children under such age and, as they attain the age of nineteen years, only the other child or children under such age shall participate therein. If there is no surviving spouse or no child of the officer under the age of nineteen years at the date of the officer's death, the amount of annuities such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate. Upon the death of an officer after retirement for reasons other than disability, benefits shall be provided as a percentage of the amount of the officer's annuity, calculated as follows:~~

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse

shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If there is no surviving spouse or no dependent child or children of the officer under nineteen years of age, the amount of benefit such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate.

(4) Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability.

(5) Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with

such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If no benefits are paid to a surviving spouse or dependent child or children of the officer, benefits will be paid as described in subsection (1) of section 81-2031. as follows: (a) To the surviving spouse, regardless of the length of time the spouse and officer had been married, and dependent child or children of the officer under the age of nineteen years in such spouse's care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest dependent child attains the age of nineteen years after which time the benefit shall be reduced to seventy-five percent of the officer's annuity for the remainder of his or her life or until he or she remarries; (b) if there is no spouse living at the date of the officer's death, his or her child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest child attains the age of nineteen years; (c) if there is more than one child of the officer under the age of nineteen years at the date of the officer's death, the benefit shall be divided equally among such children and, as they attain the age of nineteen years, only the child or children under the age of nineteen years shall participate therein; and (d) if there is no child or children of the officer under the age of nineteen years living at the date of the officer's death, the surviving spouse, regardless of the length of time the spouse and officer had been married, shall receive seventy-five percent of the amount of such officer's annuity for the remainder of his or her life or until he or she remarries. If no benefits are paid to a surviving spouse or dependent children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(4) (6) Any changes made to this section by this legislative bill shall apply only to retirements, disabilities, and deaths occurring on or after the operative date of this section. Any benefits provided in subsections (1), (2), and (3) of this section shall apply only to retirements, disabilities, and deaths occurring on or after September 2, 1977. No benefits being paid under the system on September 2, 1977, shall be modified, in any way, by the enactment of Laws 1977, LB 347.

Sec. 31. Section 81-2027.03, Revised Statutes Supplement, 2002, is amended to read:

81-2027.03. (1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted ~~to equal~~ so that the purchasing power of the benefit being paid is not less than sixty percent of the annuity which results when the initial benefit that was paid to the member or beneficiary ~~(before any cost-of-living adjustments or supplemental retirement benefit adjustments pursuant to the Nebraska State Patrol Retirement Act)~~ is adjusted by the increase in the purchasing power of the initial benefit. The amount of the adjustment shall be equal to the difference in the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between the commencement date of the annuity and July 1 of each year the adjustment is made during the benefit payment period and one hundred sixty-six and two-thirds percent, such percentage times the initial benefit, less the total of all previous supplemental benefit and cost-of-living adjustments granted. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2)(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent.

(b) Beginning July 1, 2001, the current benefit of a member or the

beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) ~~The State Patrol Purchasing Power Stabilization Fund is created. The purpose of the fund shall be to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement and that have reduced the purchasing power of retirement benefits provided under the retirement system. Commencing with the 1996-97 fiscal year through the 1999-00 fiscal year, the state shall contribute to the State Patrol Purchasing Power Stabilization Fund an annual level dollar payment certified by the board. After the 1999-00 fiscal year, the~~ The state shall contribute to the State Patrol Retirement Fund an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2010-11 fiscal year, the annual level dollar payment certified by the board shall equal 3.04888 percent of six million eight hundred ninety-five thousand dollars. ~~Until July 1, 2000, any money in the State Patrol Purchasing Power Stabilization Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. On July 1, 2000, the State Patrol Purchasing Power Stabilization Fund shall terminate and all money in the fund shall be transferred to the State Patrol Retirement Fund.~~

(4) The board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

Sec. 32. Section 84-1301, Revised Statutes Supplement, 2003, is amended to read:

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

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later;

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

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits;

(5) (a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than

the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

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

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

(8) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(9) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a another Nebraska governmental plan for purposes of determining membership in the system and vesting the employer account;

(10) Employee means any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (k) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

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

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

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

(14) Five-year break in service means five consecutive one-year breaks in service;

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

(16) Fund means the State Employees Retirement Fund created by section 84-1309;

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

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue

Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account;

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

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

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

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

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

(26) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

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

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

(29) Retirement board or board means the Public Employees Retirement Board;

(30) Retirement system means the State Employees Retirement System of the State of Nebraska;

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

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

(33) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

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

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

Sec. 33. Section 84-1307, Revised Statutes Supplement, 2002, is amended to read:

84-1307. (1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees who have twelve continuous months of service shall begin participation in the retirement system; and (b) all permanent full-time or permanent part-time employees, who have twelve months of service within a five-year period and who have attained the age of twenty, may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(4) Within the first thirty days of employment, a full-time employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system within sixty days under rules and regulations adopted and promulgated by the board. Information necessary to determine membership in the retirement system shall be provided by the employer.

Sec. 34. Section 84-1311.03, Revised Statutes Supplement, 2002, is amended to read:

84-1311.03. (1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options.

(a) Prior to the operative date of this section:

(i) Such investment options shall be limited to the following:

~~(a)~~ (A) An account which shall be invested by or under the direction of the state investment officer in approximately twenty-five percent equities and seventy-five percent fixed income instruments;

~~(b)~~ (B) An account which shall be invested by or under the direction of the state investment officer in approximately fifty percent equities and fifty percent fixed income instruments; and

~~(c)~~ (C) An account which shall be invested by or under the direction of the state investment officer in approximately seventy-five percent equities and twenty-five percent fixed income instruments; and -

(ii) If a member fails to select an option or combination of

options, all of his or her funds in the employer account shall be placed in one of the options described in subdivision ~~(a), (b), or (c)~~ (a)(i)(A), (a)(i)(B), or (a)(i)(C) of this subsection as determined by the board. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(b) On and after the operative date of this section:

(i) Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 84-1310.01; and

(ii) If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(c) of section 84-1310.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Sec. 35. Section 84-1322, Revised Statutes Supplement, 2003, is amended to read:

84-1322. (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the State Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 84-1317 and again becomes a permanent full-time or permanent part-time state employee prior to having a five-year break in service shall be reenrolled in the retirement system and resume making contributions within sixty days under rules and regulations established by the board. For purposes of vesting employer contributions made prior to and after reentry into the retirement system under subsection (3) of section 84-1321, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 84-1321, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 84-1321. This subsection shall apply whether or not the person was a state employee on April 20, 1986, or July 17, 1986.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. ~~In addition, the member may~~ A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 84-1321 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer

cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Sec. 36. Section 84-1323, Revised Statutes Supplement, 2003, is amended to read:

84-1323. In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred twenty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Sec. 37. Section 84-1325, Reissue Revised Statutes of Nebraska, is amended to read:

84-1325. (1) Any employee who, while an employee, entered into and served ~~or shall enter into and serve~~ in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became ~~or becomes~~ an employee shall be credited, for the purposes of the provisions of section 84-1317, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, any employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this subsection, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (1) of section 84-1308.

Sec. 38. Section 84-1501, Reissue Revised Statutes of Nebraska, is amended to read:

84-1501. (1) The Public Employees Retirement Board is hereby established. ~~Such~~

(2) Prior to January 1, 2005, the board shall consist of seven appointed members and the state investment officer as a nonvoting, ex officio member. Three of the appointed members shall be participants in the retirement systems administered by the board, one of the appointed members shall be a participant in such retirement systems who has retired, and three of the appointed members shall not be employees of the State of Nebraska or any of its political subdivisions. Appointments to such board shall be made by the Governor subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska. The three appointed members who are not employees of the State of Nebraska or any of its political subdivisions shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. The members serving on March 27, 1997, shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective. For members whose terms begin on January 1, 2000, one shall serve a three-year term and one shall serve a four-year term or until a successor has been appointed and qualified. For members whose terms begin on January 1, 2001, one shall serve a four-year term and two shall serve five-year terms, or until a successor has been appointed and qualified.

(3)(a) Beginning January 1, 2005, the board shall consist of eight appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Six of the appointed members shall be participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be an employee of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. On and after January 1, 2005, any person who is appointed to the board and who is not an employee of the State of Nebraska or any of its political subdivisions shall not own any funds which are administered by the board.

(b) On January 1, 2005, the six appointed members who are participants in the systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Retirement System of the State of Nebraska and shall include one active administrator and one active teacher as provided in this subdivision. On January 1, 2005, the member of the board who had been a member of the School Retirement System of the State of Nebraska prior to such date shall continue in such position as the member representing the School Retirement System of the State of Nebraska until such member's term expires. A school administrator shall be appointed as a member of the board when the term of the first member of the board expires who was appointed prior to January 1, 2005, and who was not an employee of the State of Nebraska or any of its political subdivisions;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System, either as an active or retired member. On January 1, 2005, the member of the board who had been a member of the Nebraska Judges Retirement System prior to such date shall continue in such position as the member representing the Nebraska Judges Retirement System until such member's term expires;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System, either as an active or retired member. Such member's term shall begin on January 1, 2005;

(iv) One of the appointed members shall be an active participant in the Retirement System for Nebraska Counties. On January 1, 2005, the member of the board who had been a member of the Retirement System for Nebraska Counties prior to such date shall continue in such position as the member representing the Retirement System for Nebraska Counties until such member's term expires; and

(v) One of the appointed members shall be an active participant in the State Employees Retirement System of the State of Nebraska. On January 1, 2005, the member of the board who had been a member of the State Employees Retirement System prior to such date shall continue in such position as the member representing the State Employees Retirement System until such member's term expires.

(c) Appointments to the board on and after January 1, 2005, shall be

made by the Governor and shall be subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska.

(4) All members appointed on and after January 1, 2002, shall serve for terms of five years or until a successor has been appointed and qualified. The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

Sec. 39. Section 84-1511.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1511.01. (1) The Public Employees Retirement Board shall establish a comprehensive retirement education and financial planning program for all members of the State Employees Retirement System of the State of Nebraska, ~~and after September 9, 1995,~~ for all members of the Retirement System for Nebraska Counties, who are under age fifty and not eligible to attend the preretirement planning program established in section 84-1511. The program may be provided to members in a single-day format, or may be provided in equivalent partial-day segments.

(2) The retirement education and financial planning program shall include discussion on the retirement system, financial planning, and budgeting as well as any other planning information valuable to employees before they reach age fifty.

(3) The employer shall provide each eligible employee leave with pay to attend a retirement education and financial planning program twice prior to age fifty. For purposes of this subsection, leave with pay ~~shall mean a day means time off~~ paid by the employer and shall not mean vacation, sick, personal, or compensatory time. Leave with pay shall be provided to each eligible employee in order that the employee may attend the full retirement education and financial planning program, whether it is provided in a single-day program or in the equivalent partial-day segments. An employee may choose to attend a full program more than twice, but leave to attend a program any additional single-day programs or equivalent segments shall be at the expense of the employee and shall be at the discretion of the employer. An employee may not attend a full program more than once per fiscal year.

(4) Funding to cover the expense of the retirement education and financial planning program shall be charged proportionately to the State Employees Retirement Fund and the County Employees Retirement Fund.

(5) A nominal registration fee shall be charged each person attending a retirement education and financial planning program to cover the costs for meals or meeting rooms or other expenses incurred for the program.

Sec. 40. Sections 2, 3, 5 to 22, 24 to 28, 31 to 33, 35 to 37, 39, and 41 of this act become operative on July 1, 2004. Sections 1, 4, 30, 34, 38, and 42 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 41. Original sections 24-714, 42-1102, 48-155.01, 79-921, 79-942, 79-946, 79-947.01, 79-951, 84-1325, and 84-1511.01, Reissue Revised Statutes of Nebraska, sections 23-2306, 24-701.01, 24-704.01, 24-710, 24-710.02, 24-710.07, 24-710.09, 24-713.01, 81-2027.03, and 84-1307, Revised Statutes Supplement, 2002, and sections 23-2301, 23-2320, 23-2321, 24-703, 24-707, 24-708, 84-1301, 84-1322, and 84-1323, Revised Statutes Supplement, 2003, are repealed.

Sec. 42. Original sections 16-1036, 81-2026, and 84-1501, Reissue Revised Statutes of Nebraska, and sections 23-2310.05 and 84-1311.03, Revised Statutes Supplement, 2002, are repealed.

Sec. 43. Original sections 79-916 and 79-966, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 44. Since an emergency exists, this act takes effect when passed and approved according to law.