

LEGISLATIVE BILL 92

Approved by the Governor February 28, 1986

Introduced by Schmit, 23

AN ACT relating to the judges' retirement system; to amend section 24-706, Reissue Revised Statutes of Nebraska, 1943, and sections 24-701, 24-703, 24-707, 24-710, and 24-710.01, Revised Statutes Supplement, 1984; to redefine terms; to change provisions relating to certain contributions; to eliminate certain funds as prescribed; to change provisions relating to termination of service; to change provisions relating to certain retirement annuities as prescribed; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 24-701, Revised Statutes Supplement, 1984, be amended to read as follows:

24-701. As used in sections 24-701 to 24-714, unless the context otherwise requires:

(1) Fund shall mean the Nebraska Retirement Fund for Judges;

(2) Judge shall mean and include (a) all duly elected or appointed Chief Justices or Judges of the Supreme Court and judges of the district courts of Nebraska, who shall serve in such capacity on and after January 3, 1957, (b) all duly appointed judges of the Nebraska Workmen's Compensation Court who shall serve in such capacity on and after September 20, 1957, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties, who shall serve in such capacity on and after January 5, 1961, except acting judges of the county court appointed pursuant to section 24-507, (e) judges of the county court and associate county judges, except (i) associate county judges serving on a pro tempore basis as designated by the Supreme Court or (ii) associate county judges appointed after August 26, 1983, and (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985;

(3) Prior service shall mean all the periods of time any person has served as a (a) Judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(4) Current service shall mean the period of service (a) any Judge of the Supreme Court or judge of the district court shall serve in such capacity from and after January 3, 1957, (b) any judge of the Nebraska Workmen's Compensation Court shall serve in such capacity from and after September 20, 1957, (c) any county judge shall serve in such capacity from and after January 5, 1961, (d) any judge of a separate juvenile court shall have served in such capacity, (e) any judge of the municipal court shall serve in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, and (f) any judge of the county court or associate county judge shall serve in such capacity subsequent to January 4, 1973;

(5) Military service shall mean active service of (a) any Judge of the Supreme Court or district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, (b) any judge of the Nebraska Workmen's Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, and (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Total years of service shall mean the total number of years served as a judge, including prior service, military service, and current service as defined in this section computed to the nearest one-twelfth year;

(7) Salary shall mean the statutory salary of

a judge or the salary being received by such judge pursuant to law;

(8) Beneficiary shall mean a person so designated by a judge in the last written designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Annuity Single life annuity shall mean a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge. The first payment shall be made as of the end of the calendar month in which such annuity was awarded and the last payment shall be at the end of the calendar month in which such judge shall die. The first payment shall include all amounts accrued since the effective date of the award of annuities, including a pro rata portion of the monthly amount of any fraction of a month elapsing between the effective date of such annuity and the end of the calendar month in which such annuity began;

(10) Board shall mean the Public Employees Retirement Board;

(11) Member shall mean a judge, as defined in subdivision (2) of this section, eligible to participate in the retirement system established under the provisions of sections 24-701 to 24-714;

(12) Original member shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, prior to December 25, 1969, and who does not elect to become a future member on or before June 30, 1970 pursuant to subsection (8) of section 24-703 or section 24-710.01;

(13) Future member shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, on or after December 25, 1969, or shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average salary shall mean the average monthly salary for the last four years' service as a judge or, in the event of a judge serving less than four years, the average monthly salary for such judge's period of service. The final average salary of any judge who has retired or who will retire during or at the end of the presently current judicial term shall mean the average monthly salary for his or her last year of service before retirement;

(15) Regular interest shall mean the rate of

interest earned each fiscal year commencing July 1, 1974, as determined by the retirement board in conformity with actual and expected earnings on its investments; and

(16) Normal retirement date shall mean the first day of the month following attainment of age sixty-five.

Sec. 2. That section 24-703, Revised Statutes Supplement, 1984, be amended to read as follows:

24-703. (1) ~~Except as provided in subsection (2) of this section; each~~ Each original member shall contribute monthly four per cent of his or her monthly salary 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 ~~(11)~~ (10) of this section to make a deduction of four per cent on the monthly payroll of each original member who is a Judge of the Supreme Court, ~~or~~ a judge of the district court, ~~or~~ a judge of a separate juvenile court, ~~or~~ a judge or associate judge of the county court, or a judge of the Nebraska Workmen's 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 per cent as shown on the payroll and the amounts received from the various counties and cities to the fund and remit the same to the executive officer in charge of the judges' retirement system who shall keep an accurate record of the contributions of each judge.

~~(2) Each original member who has made the election provided for in section 24-710-01 shall contribute monthly six per cent of his or her monthly salary to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Such contributions shall be made in the manner provided by subsection (1) of this section.~~

~~(3) (2)~~ Each future member shall contribute monthly six per cent of his or her monthly salary to the fund until the maximum benefit as limited in subsection ~~(3)~~ (2) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services to make a deduction of six per cent on the monthly payroll of each such future member who is a Judge of the Supreme Court, ~~or~~ a judge of the district court, ~~or~~ a judge of a separate juvenile court, ~~or~~ a judge or associate judge of the county court, or a judge of the Nebraska Workmen's 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 six per cent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the executive officer in charge of the judges' retirement system who shall keep an accurate record of the contributions of each judge.

(4) (3) A Nebraska Retirement Fund for Judges fee of one dollar shall be taxed as costs in each civil and criminal cause of action or proceeding filed in the district courts and the county courts, and in county courts a sum shall be charged which is equal to ten per cent of each fee provided by sections 33-125, 33-126, and 33-126.02, except on the fees provided for in section 33-125 for the dismissal of a cause, and in sections 33-126 and 33-126-02 for filing of a report pursuant to sections 33-126 and 33-126.02. A similar fee shall be charged for prosecutions of any city ordinance regulating nonmoving traffic violations, to be credited to the costs of a violations bureau when established by a local governing body, except when such cause, proceeding, or defendant has been dismissed by the court. When collected by the clerk of the district or county court, such fees shall be paid to the executive officer 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 executive officer shall promptly thereafter remit the same to the state treasury. Upon the receipt thereof, the State Treasurer shall credit the same to the Nebraska Retirement Fund for Judges.

(5) (4) The Nebraska Retirement Fund for Judges shall be divided into two separate funds- (a) The Original Members' Fund, and (b) the Future Members' Fund. All expenditures from the funds must Nebraska Retirement Fund for Judges shall be authorized by voucher in the manner prescribed in section 24-713. The funds fund shall be used for the payment of all annuities and other benefits, and for the expenses of administration.

(6) (5) The Original Members' Fund fund shall consist of be the fund into which shall be paid the total fund as of December 25, 1969, the contributions of original members as provided in subsections (1) and (2) of this section, all supplementary court fees as provided in subsection (4) (3) of this section, until such time as the assets in such fund equal the accrued liabilities of such fund, and any required contributions of the state.

(7) (6) The Future Members' Fund shall be the

fund into which shall be paid the contributions of future members as provided in subsection (3) of this section, all supplementary court fees as provided in subsection (4) of this section after such time as the assets in the Original Members' Fund equal the accrued liabilities of such fund, and any required contributions of the state. Not later than January 1 of each year, the State Treasurer shall transfer to the Future Members' 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 future member contributions for that fiscal year and court fees as described above, if any, for that fiscal year plus any required contributions of the state, as provided in subsection (10) (9) of this section.

(8) (7) Except as provided in subsection (9) of this section, benefits Benefits under the retirement system to original members or to their beneficiaries shall be paid from the Original Members' Fund fund. All benefits under the retirement system to future members or to their beneficiaries shall be paid from the Future Members' Fund.

(9) (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. The board shall thereupon direct the State Treasurer to transfer all contributions of such judge to the Future Members' Fund and such judge shall thereafter participate only in the Future Members' Fund.

(10) (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 system by level payments up to January 1, 2000. Such required state contribution shall be divided each year between the Original Members' Fund and the Future Members' Fund in the ratio of the remaining unfunded accrued liability of each fund.

(11) (10) The state or municipality 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 United States Internal Revenue Code, except that the state or municipality 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 United States Internal Revenue 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 municipality county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or municipality county shall pick up these contributions by a salary deduction either through a reduction in the salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated for all purposes of sections 24-701 to 24-714 in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 3. That section 24-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-706. (1) Any original member whose service is terminated prior to retirement, for any cause other than death, and whose total service as a judge at the time of termination of service is less than ten years, may, upon written request to the board, (a) have returned to him the total amount of contributions which he has made to the fund, plus regular interest and the return of such contributions to said judge shall preclude said judge from any benefits hereunder unless and until said judge again serves in such capacity, or (b) leave his contributions in the fund and receive retirement annuity, starting at age sixty-five, as provided in section 24-710. Any original member whose service is terminated prior to retirement, for any cause other than death, and whose total service as a judge is ten or more years, shall not be entitled to have returned contributions to the fund made by him but shall receive retirement annuities as provided in sections 24-708 to 24-710.

(2) Any future member whose service is terminated prior to age sixty-five, for any cause other than death, may, upon written request to the board, (a) (1) have returned to him or her the total amount of contributions which he or she has made to the fund, plus regular interest, and the return of such contributions to such judge shall preclude such judge from any benefits hereunder unless and until such judge again serves in such capacity, or (b) (2) leave his or her contributions in the fund and receive retirement annuity starting at age sixty-five as provided in section

24-710. Any ~~future~~ member whose service is terminated at or subsequent to age sixty-five but prior to age seventy shall be considered as a normal retirement and annuity payments shall begin as provided in section 24-710.

Sec. 4. That section 24-707, Revised Statutes Supplement, 1984, be amended to read as follows:

24-707. In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of service, the spouse of such judge shall at his or her option be immediately entitled to receive those benefits which the spouse would have been entitled to under subsection ~~(5)~~ (4) of section 24-710; had the judge ~~retired on the date of death and elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the judge or the judge's spouse should survive and had the judge retired~~ (1) on the date of death, if his or her age at death is sixty-five or more, or (2) at age sixty-five, if his or her age at death is less than sixty-five. If such option is not exercised by such spouse within ninety days of the judge's death, if no spouse survives, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a written 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 the event of the death of a judge subsequent to retirement, if such a judge has not filed a written statement of intent with the board to elect to receive any other form of annuity which may be provided for by sections 24-707 and 24-710, the amount of annuities such judge has received under the provisions of sections 24-701 to 24-714 shall be computed and, if such amount shall be less than the contributions to the fund made by such judge, the difference shall be paid to the beneficiary.

Sec. 5. That section 24-710, Revised Statutes Supplement, 1984, be amended to read as follows:

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 the provisions of 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 per cent of his or her final average salary as such judge, multiplied by the number of his or her total years of

service, except ; PROVIDED; that any supplemental salary provided for in section 24-301.01 or 24-513 shall be excluded for purposes of computing such annuity. The ; PROVIDED FURTHER; that 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 survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the provisions of sections 24-701 to 24-714 shall not exceed sixty-five per cent of the final average salary such judge was receiving when he or she last served as such judge. The ; AND PROVIDED FURTHER; the amount of retirement annuity of a judge who retires under the provisions of 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 an original member, who has made the election provided for in section 24-710-01, and who retires under the provisions of 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 per cent of his or her final average salary as such judge, multiplied by the number of his or her total years of service; PROVIDED; that any supplemental salary provided for in section 24-301-01 or 24-513 shall be excluded for purposes of computing such annuity; AND PROVIDED FURTHER; that the monthly benefits received hereunder shall not exceed sixty per cent of the final average salary such judge was receiving when he or she last served as such judge-

(3) (2) The retirement annuity of a judge who is a future member and who retires after the operative date of this act under the provisions of 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 per cent of his or her final average salary as such judge, multiplied by the number of his or her total years of service, except that the monthly benefits received under this subsection shall not exceed sixty per cent of the final average salary such judge was receiving when he or she last served as such judge. Any supplemental salary provided for in section 24-301.01 or 24-513 shall be excluded for purposes of computing any annuity specified in this subsection.

(4) (3) Any member may, by filing with the board a written statement of intent before retirement,

elect to receive, in lieu of the single life annuity benefits to which the member or his or her beneficiary may otherwise be entitled under sections 24-701 to 24-714, 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 promptly after September 2, 1973, (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, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

~~(5)~~ (4) Notwithstanding anything to the contrary in Chapter 24, article 7, the annual benefit payable under such article shall not at any time exceed the lesser of (a) seventy-five thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, actuarially reduced to reflect distributions prior to age fifty-five, or (b) one hundred per cent of the member's average compensation for the highest three consecutive calendar years of service during which the member was an active member in the retirement system provided by Chapter 24, article 7. The maximum amount shall be adjusted, when necessary, as follows: (i) When the annual benefit is payable under this system to a member in a form other than a straight life annuity or a qualified joint and survivor annuity, the maximum amount shall be adjusted to the equivalent of a straight life annuity beginning at the same age on the basis of the actuarial assumptions referred to in subsection ~~(4)~~ (3) of this section; and (ii) when the annual benefit is payable under this system to a member who has less than ten years of service under the system, the maximum amount shall be multiplied by a fraction, the numerator of which is the member's number of years of service under the system, and the denominator of which is ten. For purposes of this subsection, qualified joint and survivor annuity means an annuity for the life of the member with not less than fifty per cent nor more than one hundred per cent of the amount the member was receiving being paid to the member's surviving spouse

for the life of the spouse following the death of the member.

Sec. 6. That section 24-710.01, Revised Statutes Supplement, 1984, be amended to read as follows:

24-710.01. Any original member, as defined in subdivision (12) of section 24-701, who has not previously retired, may elect to make contributions and receive benefits pursuant to subsection (2) of section 24-703 and subsection (2) of section 24-710, instead of those provided by subsection (1) of section 24-703 and subsection (1) of section 24-710. Such election shall be by written notice delivered to the board not later than November 1, 1981. Such member shall thereafter be considered a future member.

Sec. 7. This act shall become operative on July 1, 1986.

Sec. 8. That original section 24-706, Reissue Revised Statutes of Nebraska, 1943, and sections 24-701, 24-703, 24-707, 24-710, and 24-710.01, Revised Statutes Supplement, 1984, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.