LEGISLATIVE BILL 1068

Approved by the Governor April 19, 1994

Introduced by Nebraska Retirement Systems Committee:
Wickersham, 49, Chairperson; Crosby, 29; Day, 19; Fisher, 35;
Lynch, 13; Moore, 24; Robak, 22

AN ACT relating to retirement; to amend sections 16-1027, 16-1028, 16-1033, and 84-1301, Revised Statutes Supplement, 1993; to change provisions relating to retirement benefits for firefighters of cities of the first class; to redefine a term; to exclude certain employees of the Coordinating Commission for Postsecondary Education from the State Employees Retirement Act; 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. That section 16-1027, Revised Statutes Supplement, 1993, be amended to read as follows:

16-1027. (1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit at retirement either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. Such optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring firefighter and, after the death of the retiree, monthly payments, as elected by the retiring firefighter, of one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring firefighter during his or her life, to the beneficiary selected by the retiring firefighter at the time of the original application for an annuity. For any firefighter whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the firefighter's retirement value. For firefighters whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring firefighter may further elect to defer the date of the first payment or lump-sum distribution to the first day of any specified month prior to age seventy. In the event the retiring firefighter elects to receive his or her pension benefit in the form of an annuity, the amount of such annuity benefit shall be the amount provided by the annuity contract purchased or otherwise provided by the firefighter's retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the retiring firefighter. Upon the payment of a lump sum or the distribution of a paid-up annuity contract, all obligations of the retirement system to pay retirement benefits to the firefighter and his or her beneficiaries shall terminate, without exception.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit at the retirement date shall not be less than the following amounts:

(a) If retirement from the city occurs following age fifty-five with twenty-one years of service with the city, fifty percent of regular pay;

(b) If retirement from the city occurs following age fifty but before age fifty-five with at least twenty-one years of service with the city, such firefighter shall receive the actuarial equivalent of the benefit which would otherwise be provided at age fifty-five; ~~For terminations of employment from the city on or after~~ September ~~9, 1993, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;~~

(c) If retirement from the city occurs on or after age fifty-five with less than twenty-one years of service with the city, such firefighter shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

(d) For terminations of employment from the city on or after September 9, 1993, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;

(e) Unless an optional annuity benefit is selected by the retired firefighter, at the death of any such retired firefighter~~,~~ the same rate of pension as is provided for in this section shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased firefighter shall equally share such pension benefit during their minority, except that as soon as a child of such deceased firefighter ceases to be a minor, such pension as to such child shall cease; or

~~(e)~~ (f) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account, at the time of the first benefit payment~~,~~ the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's estate.

A firefighter entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the firefighter retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for firefighters retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in the form of an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the actuarial equivalent of the annuity that would otherwise be paid to the firefighter pursuant to this subsection.

If the firefighter chooses the single lump-sum payment option, the firefighter may request that the actuarial equivalent be equal to the average of the cost of ~~three~~ two annuity contracts purchased on the open market, if the difference between the cost of the two annuity contracts does not exceed five percent. Of the ~~three~~ two annuity contracts used for comparison, one shall be chosen by the firefighter~~, one shall be chosen by the retirement committee,~~ and one shall be chosen by the city. If the difference between the two annuity contracts exceeds five percent, the retirement committee shall review the costs of the two annuity contracts and make a recommendation to the city council as to the amount of the lump-sum payment to be made to the firefighter. The city council shall, after a hearing, determine the amount of the single lump-sum payment due the firefighter.

(3) If the retirement value of a firefighter entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit.

(4) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity and shall not be entitled to elect to receive annuity benefits.

Sec. 2. That section 16-1028, Revised Statutes Supplement, 1993, be amended to read as follows:

16-1028. (1) A firefighter of a city of the first class may:

(a) Retire or be retired and receive the applicable retirement pension benefit upon the attainment of age fifty-five while employed by the city as a firefighter;

(b) Elect to retire after he or she has attained the age of fifty and has completed at least twenty-one years of service with the city and receive the actuarial equivalent of the pension benefit he or she would otherwise receive upon the attainment of age fifty-five;

(c) After twenty-one years of service with the city, terminate employment with the city and, upon the attainment of age fifty-five, receive the applicable retirement pension benefit; or

~~(c)~~ (d) Retire or be retired as a result of disability while in the line of duty, as determined under section 16-1031, at any age and receive the applicable pension benefit provided in such section. ~~16-1031.~~

(2) A firefighter who is eligible to retire pursuant to subdivision (1)(a) of this section but does not~~,~~ shall continue to contribute to his or her employee account and the city shall continue to contribute to its employer account.

(3) For purposes of subdivisions (1)(a), (b), and ~~(c)~~ (d) of this section, the first of the month immediately following the last day of work

shall be the retirement date. For purposes of subdivision ~~(1)(b)~~ (1)(c) of this section, the first of the month immediately following the attainment of age fifty-five shall be the retirement date.

Sec. 3. That section 16-1033, Revised Statutes Supplement, 1993, be amended to read as follows:

16-1033. In the event a firefighter quits or is discharged before his or her retirement date as defined in subsection (3) of section 16-1028, the firefighter may request and receive, as a lump-sum payment, an amount equal to the value of his or her employee account as determined at the valuation date preceding his or her termination of employment pursuant to subdivision (9) of section 16-1021. Such firefighter, if vested, may, in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by the vested retirement value at the date of retirement. The retirement value at such retirement date shall consist of the then-accumulated value of the firefighter's employee account at the date of the retirement as reduced by any lump-sum distributions received prior to retirement, together with a vested percentage of the accumulated value of the firefighter's employer account at the date of retirement. The vesting schedule ~~is~~ shall be as follows:

(1) If the terminating firefighter has been a member of the system for less than four years, ~~such~~ the vesting percentage shall be ~~nil~~ zero; and

(2) If the terminating firefighter has been a member of the paid department of the city for at least four years, ~~such~~ the vesting percentage shall be forty percent. ~~Such~~ The vesting percentage shall be ~~fifty~~ sixty percent after five years, ~~sixty~~ eighty percent after six years, ~~seventy percent after seven years, eighty percent after eight years, ninety percent after nine years,~~ and one hundred percent after ~~ten~~ seven years.

The deferred pension benefit shall be payable on the first of the month immediately following ~~his or her~~ the terminating firefighter's fifty-fifth birthday. At the option of the ~~terminating~~ firefighter, such pension benefit may be paid as of the first of the month after ~~such member~~ he or she attains the age of fifty. Such election may be made by the firefighter any time prior to the payment of the pension benefits.

The deferred pension benefit shall be paid in the ~~form of the benefit options~~ optional benefit forms specified at subsection (1) of section 16-1027 as elected by the firefighter. Notwithstanding anything in sections 16-1020 to 16-1042 to the contrary, if the firefighter's vested retirement value at the date of his or her termination of employment is less than three thousand five hundred dollars, such firefighter shall, upon request within one year of such termination, be paid his or her vested retirement value in the form of a single lump-sum payment.

Effective January 1, 1997, a firefighter may elect, upon his or her termination of employment, to receive his or her vested retirement value in the form of a single lump-sum payment. For a firefighter whose termination of employment is prior to January 1, 1997, this election shall be available only if the city has adopted a lump-sum distribution option for terminating firefighters in the funding medium established for the retirement system.

Upon any lump-sum payment of a terminating firefighter's retirement value under this section, such firefighter will not be entitled to any deferred pension benefit and the city and the retirement system shall have no further obligation to pay such firefighter or his or her beneficiaries any benefits under sections 16-1020 to 16-1042.

In the event that the terminating firefighter is not credited with one hundred percent of his or her employer account, the remaining nonvested portion of the account shall be forfeited and shall be deposited in the unallocated employer account. If the actuarial evaluation required by section 16-1026 shows that the assets of the unallocated employer account are sufficient to provide for the projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the city in connection with administering the retirement system, and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits.

Sec. 4. That section 84-1301, Revised Statutes Supplement, 1993, be amended to read as follows:

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

(1) Employee shall mean any employee of the State Board of Agriculture who is a member of the state retirement plan 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. Employees shall not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, (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 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 plan on July 1, 1982, (i) the Nebraska National Guard air and army technicians, ~~or~~ (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 79-1565 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 such retirement system;

(2) Part-time employee shall mean an employee who works less than one-half of the regularly scheduled hours;

(3) Retirement shall mean qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

(4) Retirement board or board shall mean the Public Employees Retirement Board;

(5) Retirement system shall mean the State Employees Retirement System of the State of Nebraska;

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

(7) Service shall mean the actual total length of employment as an employee and shall include leave of absence because of disability or military service when properly authorized by the retirement board but shall not include any period of disability for which disability retirement benefits are received under the provisions of section 84-1317;

(8) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind;

(9) Prior service shall mean service before January 1, 1964;

(10) Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323.01;

(11) Primary carrier shall mean the life insurance company or trust company designated as the administrator of the group annuity contract;

(12) State department shall mean any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the State Employees Retirement Act, the employees and officers of which are not already covered by a retirement plan;

(13) Disability shall mean 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;

(14) Date of disability shall mean the date on which a member is determined to be disabled by the board;

(15) Regular interest shall mean 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 its investments;

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

(17) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(18) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the fund.

Sec. 5. Sections 1 to 3 and 6 of this act shall become operative three calendar months after the adjournment of this legislative session. The other sections of this act shall become operative on their effective date.

Sec. 6. That original sections 16-1027, 16-1028, and 16-1033, Revised Statutes Supplement, 1993, are repealed.

Sec. 7. That original section 84-1301, Revised Statutes Supplement, 1993, is repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.