NEBRASKA RETIREMENT SYSTEMS COMMITTEE

2010
SUMMARY AND DISPOSITION OF BILLS

NEBRASKA LEGISLATURE
One Hundred First Legislature, Second Session

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Senator Jeremy Nordquist, Vice Chairperson
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I. Numerical Bill Index

LB 140 *(Avery)*	Provide duties relating to investment of state funds in Sudan-related companies **[Died in committee at the end of session]**
LB 205 *(Nordquist)*	Require education and ethics training for board members of certain retirement systems **[Failed to Advance from General File]**
LB 242 *(Karpisek)*	Increase the mandatory retirement age under the Nebraska State Patrol Retirement Act **[Died in committee at the end of session]**
LB 365 *(Pankonin)*	Change retirement annuity provisions under the Judges Retirement Act **[Died in committee at the end of session]**
LB 366 *(Pankonin)*	Increase the mandatory contribution rate under the State Employees Retirement Act **[Died in committee at the end of session]**
***LB 373** *(Lautenbaugh)*	Change death and disability-related provisions pertaining to emergency response personnel **[Enacted]** ***LB 373 was referred to, and advanced from, the Judiciary Committee.***
LB 426 *(Pankonin)*	Change provisions relating to the Police Officers Retirement Act **[Died in committee at the end of session]**
LB 427 *(Pankonin)*	Adopt the County Law Enforcement Officers Retirement Act **[Died in committee at the end of session]**
LB 612 *(Avery)*	Prohibit school districts from making contributions or reimbursements relating to retirement benefits **[Died in committee at the end of session]**
LB 899 *(Nordquist)*	Change retirement benefit adjustment provisions **[Revised, incorporated into LB 950 and enacted]**
LB 927 *(Committee)*	Change employee deposit requirements under the School Employees Retirement Act **[Died in committee at the end of session]**

LB 928 *(Committee)*	Change contribution rates under the State Patrol Retirement Act **[Died in committee at the end of session]**
LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted; includes LB 899 as revised]**
LB 979 *(Committee)*	Provide for the transition of certain employees to the State Employees Retirement System **[Advanced to General File]**

II. Bills Listed by Subject Matter

CLASS V (OMAHA) SCHOOL EMPLOYEES RETIREMENT ACT

LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted]**

COUNTY EMPLOYEES RETIREMENT ACT

LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted]**

COUNTY LAW ENFORCEMENT RETIREMENT

LB 427 *(Pankonin)*	Adopt the County Law Enforcement Officers Retirement Act **[Died in committee at the end of session]**

DEFERRED COMPENSATION PLAN

LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted]**

JUDGES RETIREMENT ACT

LB 365 *(Pankonin)*	Change retirement annuity provisions under the Judges Retirement Act **[Died in committee at the end of session]**
LB 899 *(Nordquist)*	Change retirement benefit adjustment provisions **[Revised, incorporated into LB 950 and enacted]**
LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted; includes LB 899 as revised]**

MUNICIPAL RETIREMENT SYSTEMS

LB 205 *(Nordquist)* — Require education and ethics training for board members of certain retirement systems
[Failed to Advance from General File]

MUNICIPAL POLICE OFFICERS

***LB 373** *(Lautenbaugh)* — Change death and disability-related provisions pertaining to emergency response personnel
[Enacted]

**LB 373 was referred to, and advanced from, the Judiciary Committee.*

LB 426 *(Pankonin)* — Name and change provisions relating to the Police Officers Retirement Act
[Died in committee at the end of session]

MUNICIPAL FIREFIGHTERS

***LB 373** *(Lautenbaugh)* — Change death and disability-related provisions pertaining to emergency response personnel
[Enacted]

**LB 373 was referred to, and advanced from, the Judiciary Committee.*

NEBRASKA INVESTMENT COUNCIL

LB 140 *(Avery)* — Provide duties relating to investment of state funds in Sudan-related companies
[Died in committee at the end of session]

NEBRASKA STATE PATROL RETIREMENT ACT

LB 242 *(Karpisek)* — Increase the mandatory retirement age under the Nebraska State Patrol Retirement Act
[Died in committee at the end of session]

LB 899 *(Nordquist)* — Change retirement benefit adjustment provisions
[Revised, incorporated into LB 950 and enacted]

LB 928 *Committee)*	Change contribution rates under the Nebraska State Patrol Retirement Act **[Died in committee at the end of session]**
LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted; includes LB 899 as amended]**

PUBLIC EMPLOYEES RETIREMENT BOARD (PERB)

LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted]**

SCHOOL EMPLOYEES RETIREMENT ACT

LB 612 *(Avery)*	Prohibit school districts from making contributions or reimbursements relating to retirement benefits **[Died in committee at the end of session]**
LB 899 *(Nordquist)*	Change retirement benefit adjustment provisions **[Revised, incorporated into LB 950 and enacted]**
LB 927 *(Committee)*	Change employee deposit requirements under the School Employees Retirement Act **[Died in committee at the end of session]**
LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted; includes LB 899 as amended]**

STATE EMPLOYEES RETIREMENT ACT

LB 366 *(Pankonin)*	Increase the mandatory contribution rate under the State Employees Retirement Act **[Died in committee at the end of session]**
LB 950 *(Committee)*	Change provisions relating to retirement **[Enacted]**
LB 979 *(Committee)*	Provide for the transition of certain employees to the State Employees Retirement System **[Advanced to General File]**

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III. Status of Retirement Bills

2009 CARRYOVER LEGISLATION

LB 140 *(Avery)*	Provide duties relating to investment of state funds in Sudan-related companies
LB 205 *(Nordquist)*	Require education and ethics training for board members of certain retirement systems
LB 242 *(Karpisek)*	Increase the mandatory retirement age under the Nebraska State Patrol Retirement Act
LB 365 *(Pankonin)*	Change retirement annuity provisions under the Judges Retirement Act
LB 366 *(Pankonin)*	Increase the mandatory contribution rate under the State Employees Retirement Act
*LB 373 *(Lautenbaugh)*	Change death and disability-related provisions pertaining to emergency response personnel
	**LB 373 was referred to, and advanced from, the Judiciary Committee.*
LB 426 *(Pankonin)*	Name and change provisions relating to the Police Officers Retirement Act
LB 427 *(Pankonin)*	Adopt the County Law Enforcement Officers Retirement Act
LB 612 *(Avery)*	Prohibit school districts from making contributions or reimbursements relating to retirement benefits

LEGISLATION INTRODUCED IN 2010

LB 899 *(Nordquist)*	Change retirement benefit adjustment provisions
LB 927 *(Committee)*	Change employee deposit requirements under the School Employees Retirement Act
LB 928 *(Committee)*	Change contribution rates under the Nebraska State Patrol Retirement Act
LB 950 *(Committee)*	Change provisions relating to retirement
LB 979 *(Committee)*	Provide for the transition of certain employees to the State Employees Retirement System

ENACTED

*LB 373 *(Lautenbaugh)*	Change death and disability-related provisions pertaining to emergency response personnel
	****LB 373 was referred to, and advanced from, the Judiciary Committee.**
LB 950 *(Committee)*	Change provisions relating to retirement [**Includes LB 899 as revised]**

ADVANCED TO GENERAL FILE

LB 979 *(Committee)*	Provide for the transition of certain employees to the State Employees Retirement System

FAILED TO ADVANCE FROM GENERAL FILE

LB 205 *(Nordquist)*	Require education and ethics training for board members of certain retirement systems

INDEFINITELY POSTPONED
[DIED IN COMMITTEE AT THE END OF SESSION]

LB 140 *(Avery)*	Provide duties relating to investment of state funds in Sudan-related companies
LB 242 *(Karpisek)*	Increase the mandatory retirement age under the Nebraska State Patrol Retirement Act
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LB 366 *(Pankonin)*	Increase the mandatory contribution rate under the State Employees Retirement Act
LB 426 *(Pankonin)*	Name and change provisions relating to the Police Officers Retirement Act

LB 427 *(Pankonin)*	Adopt the County Law Enforcement Officers Retirement Act
LB 612 *(Avery)*	Prohibit school districts from making contributions or reimbursements relating to retirement benefits
LB 899 *(Nordquist)*	Change retirement benefit adjustment provisions **[Revised, incorporated into LB 950 and enacted]**
LB 927 *(Committee)*	Change employee deposit requirements under the School Employees Retirement Act
LB 928 *(Committee)*	Change contribution rates under the Nebraska State Patrol Retirement Act

(See Appendix A -- Bill Status Chart)

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IV. Summary of Retirement Bills

ENACTED

LB 373

Status: Approved by the Governor April 7, 2010

Operative Date: July 15, 2010

Plans: Municipal paid firefighter and police officers

Amends: 18-1723 and 35-1001

LB 373 was referred to, and advanced from, the Judiciary Committee.

As introduced, the bill primarily amends statutes relating to litigation undertaken to establish rights pursuant to deceased or disabled firefighters' retirement and disability plans. It makes the burden of proof for plaintiffs easier in cases in which a firefighter dies or becomes disabled due to certain diseases* by establishing the type of evidence that will set forth a prima facie case that the death or disability was related to something that happened on the job. At the same time, it leaves in place existing statutory language relating to what constitutes prima facie evidence that a firefighter's death or disability from cancer was related to something that happened on the job.

The bill, as introduced, would have:

1. Specifically defined the period of time during which the death or disability of a firefighter or firefighter-paramedic resulting from cancer could be attributed to causes that occurred on the job (under existing law, there is no apparent limit on the time period in question insofar as cancer is the cause of disability or death);

2. Added blood-borne infectious diseases, TB, meningococcal meningitis, and methicillin-resistant Staphylococcus aureus to the causes of death or disability covered by the act;

3. Provided a time period during which death or disability from causes specified in #s 1 and 2, above, could be deemed to have been caused by something that happened on the job; the time period would be 3 months from the time the individual left his/her job multiplied by the number of years the person had been on the job;

4. Provided that the time period allowed under #3, above, could not exceed 5 years;

5. Added a limitation on the time during which the death or disability of a firefighter or police officer who died or was disabled by hypertension or heart-lung disease prior to December 25, 1969, could be attributed to on-the-job causes; the limit imposed would have been 3 months from the date of separation from employment; and

6. Added municipalities created by home rule charter that have their own paid fire departments to the provisions of the act generally.

*Blood-borne diseases, TB, meningococcal meningitis, and methicillin-resistant Staphylococcus aureus.

Committee AM 1022

As amended and passed, the bill:

Retains all of the provisions described above, except that it reduces the time period during which death or disability must occur to 3 months following the individual's separation from the job. If death or disability occurs during the 3-month time period, the evidence described in the statutes (in the case of cancer) and the bill (in the case of blood-borne disease, TB, etc.) constitutes prima facie evidence that the death or disability was a result of an on-the-job incident or incidents.

Legislative Rule 5, Section 15 Challenge

On Final Reading Senator Pankonin, Chairman of the Retirement Committee, filed a challenge to LB 373 under Legislative Rule 5, Section 15. That rule provides that no bill proposing a structural change that impacts the benefits or funding status of a public retirement plan, and for which an actuarial study is necessary to determine the cost of proposed changes, shall be enacted until an actuarial study has been conducted and the results reported to the Legislature.

The full text of Rule 5, Section 15 is as follows:

> (a) Commencing with the 1997 legislative session, any bill proposing a structural change which impacts the benefits or funding status provided under a public retirement plan, or any bill proposing the creation of a new public retirement plan, shall be introduced only during the first ten days of a 90 day session.
>
> (b) No bill for which an actuarial study is necessary to determine the cost of such proposed changes shall be enacted until an actuarial study has been conducted and the results reported to the Legislature.

(c) (i) The Nebraska Retirement Systems Committee may introduce amendments to an appropriations bill to fund actuarial studies for only those retirement systems which are or would be administered by the state. If such amendments are enacted, the results of the actuarial studies shall be reported to the Legislature by November 15 of that calendar year.

(ii) Actuarial studies required for changes to other public systems under the jurisdiction of the Nebraska Retirement Systems Committee but not administered by the state shall not be funded by the state.

<u>City of Omaha Actuarial Study Results</u>

The City of Omaha provided an actuarial study by Milliman, Inc. of the cost to Omaha Police and Firefighters Retirement System if the changes under LB 373 were enacted. The study described two sets of assumptions as to the percentage of disabilities that would be duty-related under LB 373 as amended:

Assumption Set A assumed that 100% of non-duty disability retirements would become duty-related disabilities, i.e. all disabilities would be duty-related. This would be the high end of the cost spectrum.

Assumption Set B assumed 25% of current non-duty related disabilities for firefighter members would become duty related under the infectious disease presumption.

The results of the study indicated that the actuarial contribution rate would increase 0.15% under Assumption Set A and 0.04% under Assumption Set B. The actuary concluded that these costs were not significant.

[See *Appendix B – Actuarial Study of Cost Impacts of LB 373 conducted by Milliman, Inc. for the City of Omaha & March 25, 2010 Omaha Finance Department cover letter]*

LB 950

Status: Approved by the Governor April 13, 2010

Operative Date: July 1, 2010

Plans: County Employees Retirement
Judges Retirement
School Employees Retirement
Class V (Omaha) School Employees Retirement
State Patrol Retirement
State Employees Retirement
Deferred Compensation

Amends: 23-2310.04, 23-2315.01, 23-2319.02, 24-701.01, 24-710.07, 79-902, 79-910.01, 79-915, 79-920, 79-947.01, 79-951, 79-978, 79-990, 81-2016, 81-2027.03, 84-1310.01, 84-1311.03, 84-1314, 84-1321.01, 84-1323.01, and 84-1504, Reissue Revised Statutes of Nebraska, sections 23-2309.01 and 23-2310.05, Revised Statutes Cumulative Supplement, 2008, and sections 23-2306, 23-2308.01, 84-1307, and 84-1309.02, Revised Statutes Supplement, 2009

LB 950 was introduced on behalf of the Nebraska Public Employees Retirement System which administers the Deferred Compensation, County, State, Judges, State Patrol, School and State Employee Retirement Plans. It makes the following changes to the state-administered plans:

1. Clarifies in the County, State and School Employees Plans that a disability must have occurred while the member was a participant in the plan. In the County Employees Retirement Plan, a member who is retired due to disability may be required to have a follow-up disability examination until age 55 (instead of 65). All plan members are eligible for regular retirement at age 55. [Sections 6, 14, and 24];

2. Inserts the provision from last year's LB 403 into the statutory sections of each state-administered retirement plan – Deferred Compensation, Judges, State Patrol, County, School and State Employees Retirement. LB 403 limits participation in public retirement plans to those persons who are citizens or qualified aliens and who are lawfully present in the United States, [Sections 1, 9, 12, 17, 18, and 25];

3. In several sections of the County and State Employees Retirement Acts strikes language that prohibits use of forfeiture money to pay administrative costs. Permitted uses of forfeiture money are enumerated in section 23-2319.01 of the County Employees Retirement Act and section 84-1321.01 of the State Employees Retirement Act. Forfeiture funds consist of employer contribution funds that are forfeited by plan members who cease employment before they vest. [Sections 2, 3, 4, 5, 7, 19, 20, 21, 22, and 23]

4. Amends definitions in the School Employees Retirement Act to clarify when termination occurs and who qualifies as temporary, part-time, regular, and substitute employees; [Section 10]

5. Clarifies which Nebraska Department of Education employees are automatically enrolled in the State Employees Retirement System and which employees are eligible to become members of the School Employees Retirement System; [Section 13]

<u>Section by Section Summary of LB 950:</u>

Section 1. Inserts LB 403 language into the County Employees Retirement Act prohibiting payment of benefits to non-citizens or those not lawfully in the United States. (Amends 23-2306)

Section 2. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to employee cash balance accounts in the County Employees Retirement Plan. (Amends 23-2308.01)

Section 3. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to employee defined contribution accounts in the County Employees Retirement Plan. (Amends 23-2309.01)

Section 4. Strikes references to statutory sections in the County Employees Retirement Act regarding use of forfeiture funds to pay administrative costs. (Amends 23-2310.04)

Section 5. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to employer accounts in the County Employees Retirement Plan. (Amends 23-2310.05)

Section 6. Clarifies in the County Employees Retirement Act that a disability must have occurred while the member was a participant in the plan. It corrects the age from 65 to 55 at which a disability retiree may be required to undergo a medical examination. All plan members are eligible for regular retirement at age 55. (Amends 23-2315.01)

Section 7. Strikes language related to the State Employer Retirement Expense Fund and moves it to the State Employees Retirement Act. (Amends 23-2319.02

Section 8. Revisor technical change to federal citation. (Amends 24-701.01)

Section 9. Creates a new section in the Judges Retirement Act inserting LB 403 language prohibiting payment of benefits to non-citizens or those not lawfully in the United States.

Section 10. Amends several definitions in the School Employees Retirement Act: (Amends 79-902)

"State school official" includes certificated staff as defined in 79-807 which includes those who have been authorized by the Commissioner of Education as meeting the qualifications to engage in teaching, providing special services, or administering in prekindergarten through grade twelve in the elementary and secondary schools in this state;

"Termination" of employment does not occur if a member subsequently works in any capacity for an employer participating in the School Employees Retirement Plan within 180 days of ending employment, regardless of whether the service is provided on "a regular basis".

"Substitute employee" -- strikes "intermittent basis" from description of service provided by a temporary employee;

"Regular employee" is clarified to mean a person who works 15 hours or more per week or a part-time employee hired to work less than 15 hours a week who subsequently works 15 or more hours per week in any 3 calendar months;

"Temporary employee" is clarified to mean a person hired to provide service for a limited period of time to accomplish a specific task. Once the task is complete, employment ceases. Also clarifies that in no case may temporary employment exceed one year.

Section 11. Clarifies that only qualified school employees may participate in the School Employees Retirement System. (Amends 79-910.01)

Section 12. Inserts LB 403 language into the School Employees Retirement Act prohibiting payment of benefits to non-citizens or those not lawfully in the United States. (Amends 79-915)

Section 13. (1) Clarifies that only Department of Education employees who are state school officials (i.e. the Commissioner of Education and certificated staff) who fall into one of the categories below, may elect to become members of the School Employees Retirement System.

(a) Current or previous in-state school employees;
(b) Current or previous school employees of a Class V district (Omaha);
(c) Current or previous out-of-state school employees;

All other employees are automatically enrolled in the State Employees Retirement System.

(2) Requires an individual who has: (a) terminated employment from a school participating in the School Employees Retirement System; and (b) retired pursuant to that Act, to participate in the State Employees Retirement System if the employment with the Department of Education begins within 180 days of ceasing employment with the school. (Amends 79-920)

Section 14. Clarifies in the School Employees Retirement Act that a disability must have occurred while the member was a participant in the plan. (Amends 79-951)

Section 15. Revisor technical change to federal citation. (Amends 79-978)

Section 16. Revisor technical change to federal citation. (Amends 79-990)

Section 17. Inserts LB 403 language into the State Patrol Retirement Act prohibiting payment of benefits to non-citizens or those not lawfully in the United States. (Amends 81-2016)

Section 18. Inserts LB 403 language into the State Employees Retirement Act prohibiting payment of benefits to non-citizens or those not lawfully in the United States. (Amends 84-1307)

Section 19. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to state employee cash balance accounts. (Amends 84-1309.02)

Section 20. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to state employee defined contribution accounts. (Amends 84-1310.01)

Section 21. Strikes language prohibiting use of forfeiture money to pay for administrative costs related to state employer accounts. (Amends 84-1311.03)

Section 22. Strikes references to statutory sections in the State Employees Retirement Act regarding use of forfeiture funds to pay administrative costs. (Amends 84-1314)

Section 23. Inserts language stricken from 23-2319.02 regarding the State Employer Retirement Expense Fund and moves it to the State Employees Retirement Act. (Amends 84-1321.01)

Section 24. Clarifies in the State Employees Retirement Act that a disability must have occurred while the member was a participant in the plan. (Amends 84-1323.01)

Section 25. Inserts LB 403 language in the Public Employees Retirement Board statutes that prohibits payment of deferred compensation benefits to non-citizens or those not lawfully in the United States. (Amends 84-1504)

Section 26. Operative date of the Act is July 1, 2010.

Section 27. Repeals original sections.

Section 28. Emergency clause.

Summary of Committee Amendment AM 2087:

Committee Amendment AM 2087 provides further clarification of definitions and termination provisions in the School Employees Retirement Act as follows:

1. The definition of "school employee" clarifies that temporary and substitute employees are not plan members; (Amends section 10 -- 79-902 (10)

2. Clarifies termination provisions in the School Employees Retirement Act. Termination for retirement purposes will not have occurred if a member subsequently provides service for an employer participating in the School Employees Retirement System within 180 days after ceasing employment unless such service is:

    a. voluntary or substitute service provided on an intermittent basis;

    b. as provided in 79-920 (2) i.e. – works for the Department of Education in a certificated position;

    The Public Employee Retirement Board may also determine that a termination was not a bona fide separation from service. (Amends section 10 -- 79-902 (36)

3. Clarifies in the School Employees Retirement Act when an employee working part-time becomes a regular employee and must begin contributing to the retirement plan. A part-time employee becomes a regular employee if he or she works an average of 15 hours per week within each calendar month of at least 3 calendar months of a plan year; (Amends section 10 -- 79-902 (40)

4. Strikes redundant language describing which employees are considered "school employees"; (Amends section 11 -- 79-910.01)

5. Inserts "public" before "school" in order to utilize the current definition of "public school". (Amends section 13 -- 79-920)

LB 899 – Purchasing Power Cost-of-living adjustments (COLAs)

The Committee revised LB 899 and incorporated it into AM 2087 to LB 950. As revised, LB 899 continues state annual level dollar payments to the Judges, State Patrol and School Employees Retirement defined benefit plans for purchasing power COLAs through the end of fiscal year 2012-2013. Under current state law, state annual level dollar payments are scheduled to sunset at the end of fiscal year 2010-2011.

Background and Legislative History of Purchasing Power COLAs

In 1989 the Legislature passed the Help Education Lead to Prosperity (HELP) Act to provide state sponsored supplemental pay to Nebraska teachers. The original appropriation was $20 million. The amount was gradually reduced due to fiscal concerns until 1995 when the appropriation was approximately $6.9 million.

In 1992 the Retirement Committee conducted a Benefit Adequacy Interim Study (LR 328) in which Buck Consultants identified the lack of COLAs as a major weakness of each of the five Nebraska retirement systems. The report also identified three different COLA programs that could be implemented in the defined benefit plans: 1) duration based; 2) Consumer Price Index based; and 3) restoration of purchasing power. Due to the cost estimates of the first two options, the Retirement Committee focused on the implementation of the third option – the restoration of purchasing power COLA.

In 1996, Senator Bob Wickersham, Chairman of the Retirement Committee, introduced LB 700 which among other benefit enhancements, included a provision to establish a 50% purchasing power COLA for the three defined benefit plans (Schools, Judges and State Patrol). Under LB 700, the COLA is activated automatically when the value of each member's retirement benefit drops below 50% (as measured by the Consumer Price Index). In order to fund these COLAs, LB 700 proposed to dissolve the HELP Act and divert the appropriations to the three defined benefit plans.

The $6,985,000 remaining HELP appropriation was divided based on total membership and retirement ratios in each of the retirement systems. Below is a table which includes: the plan, statutory section containing the formula language, the percentage each plan receives, and the dollar amount that equates to the formula percentage of $6,985,000. Class V (Omaha) School Employees Retirement (OSERS) was included in the formula because a portion of the original HELP funds was also distributed to Omaha teachers.

Plan	Statutory Section	Formula Percentage	State Annual Contribution
Judges	§24-710.07	1.03778%	$ 72,244
State Patrol	§81-2027.03	3.04888%	$ 210,220
Schools	§79-947.01	81.7873%	$5,638,937
Omaha Schools	§79-988.01	14.11604%	$ 973,300*

*Omaha Schools (OSERS) was not included in LB 899 because no sunset provision was attached to the annual level dollar amount paid by the state to OSERS under LB 700 as enacted in 1996.

ADVANCED TO GENERAL FILE

LB 979

LB 979 was introduced on behalf of the Nebraska Department of Labor. In 1961 the Legislature authorized the Commissioner of Labor to establish an independent retirement plan for employees of the Department of Labor employed in the unemployment insurance and job service programs. By statute those employees were prohibited from becoming members of the State Employees Retirement System. In 1984 the Legislature closed the independent retirement plan to new membership.

Under LB 979, if the independent retirement plan were terminated by the Department of Labor, any active participants employed by the Department would have immediately become members of, and vested in, the State Employees Retirement System, and would have continued to accrue retirement benefits while employed with the state. **LB 979 advanced to General File but was not scheduled for debate and died at the end of session.**

[See Appendix C -- "A History of the Nebraska Department of Labor Independent Retirement Plan" prepared by John Albin, Legal Counsel for the Nebraska Department of Labor]

FAILED TO ADVANCE FROM GENERAL FILE

LB 205

Under LB 205, beginning January 1, 2010 each member of a pension board, council or committee that supervises a retirement plan for a metropolitan, primary, first, and second class city, and village would have been required to obtain at least 3 hours of ethics training every 4 years, and at least 6 hours each year of educational training in the management of public employee retirement pension systems, actuarial analysis, or employee benefits. Members would have been reimbursed for their expenses.

Committee amendment AM 689 made several changes to the bill.

- The training and education requirements would have been limited to metropolitan and primary class cities.

- The annual 6 hour training requirement on retirement issues would have been reduced to 6 hours of training in every even-numbered year.

- A three-fifths majority vote of the board would have been required to authorize reimbursement of member training expenses.

INDEFINITELY POSTPONED
[DIED IN COMMITTEE AT THE END OF SESSION]

LB 140

Under LB 140, within 90 days after the effective date of the act, the state investment office would have been required to identify all companies that have business operations that contract with or provide supplies or services to the government of Sudan, in which the state has direct or indirect holdings as a result of its investments. LB 140 outlined the state investment officer's duties, responsibilities and reporting requirements, established conditions for re-engagement with scrutinized companies, and exempted the state investment officer and Nebraska Investment Council from conflicting statutory obligations for investment decisions.

LB 242

LB 242 would have increased the mandatory retirement age for state patrol officers from the current retirement age of 60 to age 65.

LB 365

LB 365 would have created two benefit enhancements for judges under the Judges Retirement Act. It would have "frontloaded" the retirement annuity computation for judges who retire after July 1, 2010. Currently, under the Judges Retirement Act, each judge receives a monthly annuity payment equal to 3 ½% of his or her final average compensation. Under LB 365, each judge who worked 20 years or less, would have been entitled to receive a monthly annuity payment equal to:

3 ¾% of final average compensation multiplied by the first 10 years of creditable service;
3 ¼% of final average compensation multiplied by the next ten years of creditable service.

LB 365 would have created an additional benefit for judges who work more than 20 years by providing an increased benefit of 1% each year for years 21 through 25. Currently judges' monthly benefits may not exceed 70% of final average compensation. Under LB 365, the monthly benefits could not have exceeded 75% of final average compensation.

LB 366

Beginning July 1, 2009 the employee contribution rate under the State Employees Retirement Act would have been increased from the current rate of 4.8% to 5% of employees' monthly compensation. The 156% state match would have remained unchanged.

LB 426

LB 426 would have amended existing retirement statutes for peace officers of cities of the first class and would have created the Police Officers Retirement Act. The goal of LB 426 was to provide comparability of police officer pensions in all cities of the first class. As introduced, the bill included the following:

- Would have provided unspecified contribution rates for peace officer employees with matching contributions for employers, a five-year vesting period, and portability of pension contributions from one city of the first class to another;
- Peace officers could have continued to participate in deferred compensation programs as might have been available in their respective cities;
- Existing death and survivor benefits would have remained unchanged; and
- Cities of the first class payments for increases in contributions under LB 426 would have been outside lid and levy restrictions.

Section by Section Summary of LB 426

Section 1. Would have created the Police Officers Retirement Act which amended existing statutes. The Act would have applied to all police officers in first class cities. (Amended sections 16-1001 to 16-1019)

Section 2. Technical changes. Would have stricken obsolete language and references to statutory sections and would have inserted the name of the Act. (Amended section 16-1002)

Section 3. Technical changes. Would have stricken obsolete language and references to statutory sections and would have inserted the name of the Act. (Amended section 16-1003)

Section 4. Technical changes. Would have stricken obsolete language and references to statutory sections and would have inserted the name of the Act. (Amended section 16-1004)

Section 5. Would have established an unspecified employee contribution rate beginning January 1, 2010. (Amended section 16-1005)

Section 6. Would have established an unspecified city matching contribution rate beginning January 1, 2010. (Amended 16-1006)

Section 7. Would have inserted Revisor's technical changes. (Amended section 16-1007)

Section 8. Would have inserted Revisor's technical changes. (Amended section 16-1009)

Section 9. Would have inserted Revisor's technical changes. (Amended section 16-1010)

Section 10. Would have established a new vesting schedule beginning January 1, 2010. (Amended section 16-1013)

0 - 2 years	no vesting
2 - 3 years	40% vested
3 - 4 years	60% vested
4 - 5 years	80% vested
5 + years	100% vested

Section 11. Would have stricken references to statutory sections and would have inserted the name of the Act. (Amended section 16-1014)

Section 12. Retirement committee members who are not plan participants would not have been required to have a general knowledge of retirement plans. (Amended section 16-1015)

Section 13. Would have stricken references to statutory sections and would have inserted the name of the Act. (Amended section 16-1016)

Section 14. Beginning December 31, 2010 and each December 31 thereafter, the chairperson of the municipal retirement committee would have been required to file with the Public Employees Retirement Board and Legislative Nebraska Retirement Systems Committee a report detailing current information on the Police Officers Retirement Plan. (Amended section 16-1017)

Section 15. Contributions to fund the Police Officers Retirement Plan would not have been subject to levy restrictions of 77-3442. (Amended section 16-1019)

Section 16. Cities of the first class that levy taxes under the Act would not have been subject to the levy limitations contained in section 77-3442. (Amended section 18-1221)

Section 17. Would have stricken references to statutory sections and would have inserted the name of the Act. (Amended section 18-1723)

Section 18. Would have exempted first class cities from the levy lid for purposes of funding the Police Officers Retirement Plan under the Act. (Amended section 77-3442)

Section 19. Operative date of the Act would have been January 1, 2010.

Section 20. Would have repealed original sections.

AM 373

AM 373 was introduced by Senator Pankonin at the hearing as a white copy of LB 426. AM 373 proposed several changes to the original bill:

- The amount of the contribution rates were specified as follows: (sections 5 and 6)

  October 1, 2009 employee and city contribution rates would have increased to 8% of pay
  October 1, 2012 employee and city contribution rates would have increased to 9% of pay

- The new vesting schedule would have begun on October 1, 2009 (section 10); and

- The operative date for implementation of the new Act would have been changed to October 1, 2009.

LB 427

LB 427 would have created a new defined contribution plan for county commissioned law enforcement officers. The proposed plan would have tracked many of the provisions of the current County Employees Retirement Act found in sections 23-2301 through 23-2334. As introduced, LB 427 contained the following provisions:

- The employee and employer contribution rates were not specified;

- The new plan would have provided vesting in five years if the employee had not already been vested in his or her current plan;

- Pension contributions would have been portable from one county to another;

- County law enforcement officers could have been able to continue to participate in deferred compensation programs that might have been available in their respective counties;

- Existing death and survivor benefits would have remained unchanged; and

- County retirement contributions would have been outside lid and levy restrictions.

Existing additional contribution rates for county law enforcement officers

The existing County Employees Retirement Plan includes additional contribution rates for county law enforcement officers. In counties with population over 85,000, there is an additional contribution rate of 2% for law enforcement officers (section 23-2332); the county matches the additional rate. The contribution rate is increased by 1% for law enforcement officers in counties with population under 85,000; the county matches the supplemental rate (section 23-2332.01).

Existing Contribution Rates for Counties,
County Employees and County Law Enforcement Officers

	County Employees (Except law enforcement officers)	Law enforcement officers in counties OVER 85,000	Law enforcement officers in counties UNDER 85,000
EMPLOYEE Contribution rate	4.5%	4.5% + 2.0% = 6.5%	4.5% + 1.0% = 5.5%
COUNTY Contribution rate	150% of employee rate = 6.75%	150% + 100% 6.75 + 2.0 = 8.75%	150% + 100% 6.75 + 1.0 = 7.75%
TOTAL CONTRIBUTIONS (employee + county rates)	11.25%	15.25%	13.25%

<u>Section by Section Summary of LB 427:</u>

Section 1. The County Law Enforcement Officer Retirement Act included sections 1 through 46 of LB 427.

Section 2. Definitions.

Section 3. Would have created the County Law Enforcement Officer Retirement Act; described its purpose and process for acceptance of contributions. (Tracked County Employees Retirement Act – section 23-2302)

Section 4. Public Employee Retirement Board would have administered the Act. (Tracked County Employees Retirement Act – section 23-2305)

Section 5. Would have authorized the Public Employee Retirement Board to adjust contribution and benefits. (Tracked County Employees Retirement Act – section 23-2305.01)

Section 6. Would have established vesting credit for retirement plan members for participation in another governmental plan. (Tracked County Employees Retirement Act – section 23-2306)

Section 7. Beginning January 1, 2010, would have granted full-time employees one year to apply for eligibility and vesting credit for participation in another plan.

Section 8. Would have established transferability of employee to another retirement system. (Tracked County Employees Retirement Act – section 23-2306.02)

Section 9. Would have established transfer and participation requirements for municipal county employees who might have become members in another governmental retirement plan. (Tracked County Employees Retirement Act – section 23-2306.03)

Section 10. Would have established an unspecified employee contribution rate of compensation. (Tracked County Employees Retirement Act – section 23-2307)

Section 11. Would have established an unspecified county contribution rate match of employee contributions; would have authorized the Public Employees Retirement Board to charge fees for late filing of reports to the Board. (Tracked County Employees Retirement Act – section 23-2308)

Section 12. Would have established employee defined contribution account and interest credited to account. (Tracked County Employees Retirement Act – section 23-2309)

Section 13. Would have established employee investment options, procedures, and administration of accounts. (Tracked County Employees Retirement Act – section 23-2309.01)

Section 14. Would have established employee defined contribution benefit account and duties of the state investment officer. (Tracked County Employees Retirement Act – section 23-2310)

Section 15. Would have established State Treasurer duties. (Tracked County Employees Retirement Act – section 23-2310.03)

Section 16. Would have created the County Law Enforcement Officer Defined Contribution Retirement Expense Fund and authorized use of account forfeitures to pay administrative expenses. (Tracked County Employees Retirement Act – section 2310.04)

Section 17. Would have established allocation of contributions in defined contribution account. The state, Public Employees Retirement Board, Nebraska Investment Council, and county would not have been liable for investment results of members' choices. (Tracked County Employees Retirement Act – section 23-2310.05)

Section 18. Would have required the Director of the Nebraska Public Employees Retirement Systems to maintain records of the retirement system and to establish an employer education program. (Tracked County Employees Retirement Act – section 23-2312)

Section 19. Would have required the Auditor to conduct an annual audit of the County Law Enforcement Retirement System and report to the Public Employees Retirement Board and the Legislature. (Tracked County Employees Retirement Act – section 23-2313)

Section 20. Would have authorized the County Law Enforcement Retirement System (retirement system) to sue and be sued and would have required the Attorney General to represent the retirement system. (Tracked County Employees Retirement Act – section 23-2314)

Section 21. County Law Enforcement Retirement System members would have been able to retire at age 55 or as a result of disability at any age. Requirements would have been established for application for benefits and deferment of payment. (Tracked County Employees Retirement Act – section 23-2315)

Section 22. Would have established application and medication examination requirements for retirement due to a disability. (Tracked County Employees Retirement Act – section 23-2315.01)

Section 23. Described how the retirement value of a retiree's account would have been established. (Tracked County Employees Retirement Act – section 23-2316)

Section 24. Described how the future service retirement benefit would have been determined, when benefits would have been payable, how benefits would have been computed, and what options would have been available for selection of annuity. Would have established the Public Employee Retirement Board's responsibility to provide tax information. (Tracked County Employees Retirement Act – section 23-2317)

Section 25. Would have created the County Law Enforcement Officer Equal Retirement Benefit Fund and described the use of Fund. (Tracked County Employees Retirement Act – section 23-2317.01)

Section 26. Described what would have constituted termination of employment and termination benefits. (Tracked County Employees Retirement Act – section 23-2319)

Section 27. Described what would have constituted termination of employment and conditions for forfeiture of retirement account. Would have created the County Law Enforcement Officer Employer Retirement Expense Fund. (Tracked County Employees Retirement Act – section 23-2319.01)

Section 28. Would have established the use of County Law Enforcement Officer Employer Retirement Expense Fund. (Tracked County Employees Retirement Act – section 23-2319.02)

Section 29. Would have established how reemployment is treated. (Tracked County Employees Retirement Act – section 23-2320)

Section 30. Would have established death benefits upon the death of an employee before retirement. (Tracked County Employees Retirement Act – section 23-2321)

Section 31. Would have determined that retirement benefits would be exempt from legal process. (Tracked County Employees Retirement Act – section 23-2322)

Section 32. Described what would have constituted reemployment after military service and treatment of contributions. (Tracked County Employees Retirement Act – section 23-2323.01)

Section 33. Would have authorized direct rollover to an eligible retirement plan. (Tracked County Employees Retirement Act – section 23-2323.02)

Section 34. Would have authorized retirement system acceptance of payments and rollovers. (Tracked County Employees Retirement Act – section 23-2323.03)

Section 35. Would have established limitations on acceptance of transfers. (Tracked County Employees Retirement Act – section 23-2323.04)

Section 36. Would have established that members of the County Law Enforcement Retirement System would not have lost status as long as the member remained an employee. (Tracked County Employees Retirement Act – section 23-2324)

Section 37. Would have established the effect of false or fraudulent actions of members, prohibited acts, penalties, and denial of benefits. (Tracked County Employees Retirement Act – section 23-2325)

Section 38. Would have clarified that retirement benefits would have been additional to benefits under the federal Social Security Act. (Tracked County Employees Retirement Act – section 23-2326)

Section 39. Would have provided that provisions of the Act pertaining to elected officials and employees having regular term in office would have taken effect as soon as the Act would have become operative. (Tracked County Employees Retirement Act – section 23-2328)

Section 40. Would have required the county clerk prior to the operative date of the Act, to submit to the Public Employees Retirement Board a list of all eligible employees including name, address and monthly wage. (Tracked County Employees Retirement Act – section 23-2330)

Section 41. Would have established a two-year statute of limitations on actions and claims filed against the Public Employees Retirement Board. (Tracked County Employees Retirement Act – section 23-2330.01)

Section 42. Would have clarified that all retirement system contributions, property and rights would have been held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and might only have been used to pay benefits to such persons and administrative expenses according to the Act. (Tracked County Employees Retirement Act – section 23-2330.02)

Section 43. Would have clarified that upon termination from the system or discontinuance of contributions, the rights of all affected members to their member accounts would have been nonforfeitable. (Tracked County Employees Retirement Act – section 23-2330.03)

Section 44. Would have established duties and authorities of municipal counties under the Act. (Tracked County Employees Retirement Act – section 23-2330.04)

Section 45. Would have established that the county contributions would not have been subject to the levy restrictions of section 77-3442.

Section 46. Would have established the computation of prior service annuity. (Tracked County Employees Retirement Act – sections 23-2333 and 23-2334)

Section 47. Would have exempted law enforcement officers from any county with a population in excess of 150,000 from the definition of employee under the County Employees Retirement Act. (Amended County Employees Retirement Act--section 23-2301)

Section 48. Would have exempted counties from the levy lid under section 77-3442.

Section 49. Would have added a duty to the Public Employees Retirement Board to administer the County Law Enforcement Officer Retirement Act. (Amended Public Employee Retirement Board statute -- 84-1503)

Section 50. Would have required the Public Employees Retirement Board to establish pre-retirement planning program for County Law Enforcement Officer Retirement members. (Amended Public Employee Retirement Board statute 84-1511)

Section 51. Would have established January 1, 2010 as the operative date of Act.

Section 52. Would have repealed original sections.

LB 612

LB 612 would have restricted school districts from making or reimbursing an employee's retirement contributions unless the employer did so for all employees. The proposed changes would have applied to the School Employees Retirement Act and the Class V (Omaha) School Employees Retirement Act.

LB 899

LB 899 as introduced would have stricken the sunset provision in the Judges, State Patrol and School Employees Retirement Acts on the state contributions to funds associated with the purchasing power cost-of-living adjustment (COLA) within each plan. LB 899 was revised in Committee to extend the current fiscal year 2010-2011 sunset provisions to fiscal year 2012-2013. **LB 899, as revised was incorporated into LB 950 and enacted.**

Background and History of Purchasing Power Cost-of-living adjustments (COLAs)

In 1989 the Legislature passed the Help Education Lead to Prosperity (HELP) Act to provide state sponsored supplemental pay to Nebraska teachers. The original appropriation was $20 million. The amount was gradually reduced due to fiscal concerns until 1995 when the appropriation was approximately $6.9 million.

In 1992 the Retirement Committee conducted a Benefit Adequacy Interim Study (LR 328) in which Buck Consultants identified the lack of COLAs as a major weakness of each of the five Nebraska retirement systems. The report also identified three different COLA programs that could be implemented in the defined benefit plans: 1) duration based; 2) Consumer Price Indexed-based; and 3) restoration of purchasing power. Due to the cost estimates of the first two options, the Retirement Committee focused on the implementation of the third option – the restoration of purchasing power COLA.

In 1996, Senator Bob Wickersham, Chairman of the Retirement Committee, introduced LB 700 which among other benefit enhancements, included a provision to establish a 50% purchasing power COLA for the three defined benefit plans (Schools, Judges and State Patrol). Under LB 700, the COLA is activated automatically when the value of each member's retirement benefit drops below 50% (as measured by the Consumer Price Index). In order to fund these COLAs, LB 700 proposed to dissolve the HELP Act and divert the appropriations to the three defined benefit plans.

The $6,985,000 remaining HELP appropriation was divided based on total membership and retirement ratios in each of the retirement systems. Below is a table which includes: the plan, statutory section containing the formula language, the percentage each plan receives, and the dollar amount that equates to the formula percentage of $6,985,000. Class V (Omaha) School Employees Retirement System (OSERS) was included in the formula because a portion of the original HELP funds was also distributed to Omaha teachers. Omaha teachers are not included in the School Employees Retirement System.

Plan	Statutory Section	Formula Percentage	State Annual Contribution
Judges	§24-710.07	1.03778%	$ 72,244
State Patrol	§81-2027.03	3.04888%	$ 210,220
Schools	§79-947.01	81.7873%	$5,638,937
Omaha Schools	§79-988.01	14.11604%	$ 973,300*

* Class V (Omaha) School Employees Retirement System (OSERS) was not included in LB 899 because no sunset provision was attached to the annual level dollar amount paid by the state to OSERS under LB 700 as enacted in 1996.

LB 927

LB 927 was introduced as a "place-holder" bill in the event a contribution adjustment would have been necessary to the School Employees Retirement System plan this year. It would have maintained the current 8.28% contribution rate for school employees through August 31, 2010 and changed the school employee rate to an unspecified amount beginning September 1, 2010.

LB 928

LB 928 was introduced as a "place-holder" bill in the event a contribution adjustment would have been necessary to the State Patrol Retirement plan this year. Under the bill, State Patrol officers' contribution rates would have increased to an unspecified amount beginning July 1, 2010.

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V. Bill Activity Summaries

LB 140 - Provide duties relating to investment of state funds in Sudan-related companies

Introduced by: *Avery*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	10
February 10, 2009	Notice of hearing for March 04, 2009	430
January 14, 2009	Nordquist name added	138
January 13, 2009	Nantkes name added	121
January 13, 2009	Referred to Nebraska Retirement Systems Committee	110
January 09, 2009	Date of introduction	67

LB 205 - Require educational and ethics training for board members of certain retirement systems

Introduced by: *Nordquist*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 13, 2010	Failed to advance to Enrollment and Review Initial	208
January 13, 2010	Nordquist AM1550 adopted	207
January 13, 2010	Nordquist AM1550 filed	207
January 13, 2010	Nebraska Retirement Systems AM689 adopted	207
January 06, 2010	Title printed. Carryover bill	13
March 17, 2009	Nebraska Retirement Systems AM689 filed	744
March 17, 2009	Placed on General File with AM689	744
January 28, 2009	Notice of hearing for February 05, 2009	310
January 14, 2009	Referred to Nebraska Retirement Systems Committee	124
January 12, 2009	Date of introduction	107

LB 242 - Increase the mandatory retirement age under the Nebraska State Patrol Retirement Act

Introduced by: *Karpisek*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	16
February 10, 2009	Notice of hearing for February 25, 2009	430
January 15, 2009	Referred to Nebraska Retirement Systems Committee	150
January 13, 2009	Date of introduction	120

LB 365 - Change retirement annuity provisions under the Judges Retirement Act

Introduced by: *Pankonin*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	25
February 10, 2009	Notice of hearing for February 18, 2009	430
January 21, 2009	Referred to Nebraska Retirement Systems Committee	219
January 16, 2009	Date of introduction	177

LB 366 - Increase the mandatory contribution rate under the State Employees Retirement Act

Introduced by: *Pankonin*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	25
February 03, 2009	Notice of hearing for February 11, 2009	352
January 21, 2009	Referred to Nebraska Retirement Systems Committee	219
January 16, 2009	Date of introduction	177

LB 373 - Change death and disability-related provisions pertaining to emergency response personnel

Introduced by: *Lautenbaugh*

History

Date	Action	Journal Page
April 07, 2010	Approved by Governor on April 07, 2010	1341
April 01, 2010	Presented to Governor on April 01, 2010	1277
April 01, 2010	President/Speaker signed	1275
April 01, 2010	Passed on Final Reading 38-0-11	1274
April 01, 2010	Pankonin FA64 withdrawn	1273
April 01, 2010	Motion to Return to Select File withdrawn	1273
February 09, 2010	Placed on Final Reading	499
February 08, 2010	Pankonin FA64 filed	498
February 08, 2010	Advanced to Enrollment and Review for Engrossment	492
January 21, 2010	Placed on Select File	284
January 19, 2010	Advanced to Enrollment and Review Initial	244
January 19, 2010	Price AM1577 lost	243
January 19, 2010	Price AM1577 filed	243
January 19, 2010	Judiciary AM1022 adopted	243
January 06, 2010	Title printed. Carryover bill	25
April 15, 2009	Judiciary AM1022 filed	1037
April 15, 2009	Placed on General File with AM1022	1037
February 19, 2009	Notice of hearing for February 26, 2009	489
January 21, 2009	Referred to Judiciary Committee	220
January 16, 2009	Date of introduction	178

LB 426 - Name and change provisions relating to the Police Officers Retirement Act

Introduced by: *Pankonin*

History

Date	Action	Journal
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	30
March 11, 2009	Nebraska Retirement Systems priority bill	699
February 10, 2009	Notice of hearing for March 18, 2009	430
January 22, 2009	Referred to Nebraska Retirement Systems Committee	261
January 20, 2009	Date of introduction	204

LB 427 - Adopt the County Law Enforcement Officer Retirement Act

Introduced by: *Pankonin*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	30
February 27, 2009	Notice of hearing for March 18, 2009 (cancel)	599
February 27, 2009	Notice of hearing for March 25, 2009 (reschedule)	599
February 10, 2009	Notice of hearing for March 18, 2009	430
January 22, 2009	Referred to Nebraska Retirement Systems Committee	261
January 20, 2009	Date of introduction	204

LB 612 - Prohibit school districts from making contributions or reimbursements relating to retirement benefits

Introduced by: *Avery*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 06, 2010	Title printed. Carryover bill	44
February 10, 2009	Notice of hearing for February 18, 2009	430
January 23, 2009	Referred to Nebraska Retirement Systems Committee	273
January 21, 2009	Date of introduction	245

LB 899 - Change retirement benefit adjustment provisions

Introduced by: *Nordquist*

History

Date	Action	Journal Page
April 14, 2010	Provisions/portions of LB889 amended into LB950 by AM2087	0
April 14, 2010	Indefinitely postponed	1467
January 22, 2010	Notice of hearing for February 16, 2010	325
January 13, 2010	Referred to Nebraska Retirement Systems Committee	209
January 12, 2010	Date of introduction	186

LB 927 - Change employee deposit requirements under the School Employees Retirement Act

Introduced by: *Nebraska Retirement Systems Committee*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 22, 2010	Notice of hearing for February 16, 2010	325
January 19, 2010	Referred to Nebraska Retirement Systems Committee	235
January 13, 2010	Date of introduction	202

LB 928 - Change contribution rates under the Nebraska State Patrol Retirement Act

Introduced by*: Nebraska Retirement Systems Committee*

History

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
January 22, 2010	Notice of hearing for February 16, 2010	325
January 19, 2010	Referred to Nebraska Retirement Systems Committee	235
January 13, 2010	Date of introduction	202

LB 950 - Change provisions relating to retirement

Introduced by: *Nebraska Retirement Systems Committee*

Date	Action	Journal Page
April 14, 2010	Provisions/portions of LB899 amended into LB950 by AM2087	0
April 13, 2010	Approved by Governor on April 13, 2010	1458
April 12, 2010	Nordquist explanation of the vote	1430
April 09, 2010	Flood explanation of vote	1419
April 09, 2010	Christensen explanation of vote	1419
April 09, 2010	Presented to Governor on April 09, 2010	1385
April 09, 2010	President/Speaker signed	1383
April 08, 2010	Passed on Final Reading with Emergency Clause 42-0-7	1372
April 08, 2010	Dispensing of reading at large approved	1372
April 06, 2010	Placed on Final Reading	1307
March 31, 2010	Advanced to Enrollment and Review for Engrossment	1260
March 31, 2010	Pankonin AM2353 adopted	1260
March 31, 2010	Enrollment and Review ER8219 adopted	1260
March 29, 2010	Pankonin AM2353 filed	1131
March 25, 2010	Enrollment and Review ER8219 filed	1049
March 25, 2010	Placed on Select File with ER8219	1049
March 23, 2010	Advanced to Enrollment and Review Initial	1005
March 23, 2010	Nebraska Retirement Systems AM2087 adopted	1005
March 12, 2010	Nebraska Retirement Systems AM2087 filed	872
March 12, 2010	Placed on General File with AM2087	872
February 17, 2010	Nebraska Retirement Systems priority bill	543
January 22, 2010	Notice of hearing for February 02, 2010	325
January 20, 2010	Referred to Nebraska Retirement Systems Committee	260
January 14, 2010	Date of introduction	230

LB 979 - Provide for the transition of certain employees to the State Employees Retirement System

Introduced by: *Nebraska Retirement Systems Committee*

Date	Action	Journal Page
April 14, 2010	Indefinitely postponed	1467
March 12, 2010	Nebraska Retirement Systems AM1878 filed	876
March 12, 2010	Placed on General File with AM1878	876
February 17, 2010	Nebraska Retirement Systems priority bill	543
January 22, 2010	Notice of hearing for February 09, 2010	325
January 21, 2010	Referred to Nebraska Retirement Systems Committee	284
January 19, 2010	Date of introduction	252

VI. Interim Study Resolutions

Prioritization

Resolution No.	Subject	Priority Ranking
LR 477	Interim study to examine issues related to the sustainability of public retirement plans.	1
LR 422	Interim study to review and update the General Principles of Sound Retirement Planning.	2
LR 421	Interim study to examine the employee retirement systems administered by the Public Employees Retirement Board.	3

LR 477

PURPOSE: The purpose of this study is to examine issues related to the sustainability of public retirement plans.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, SECOND SESSION

1. That the Nebraska Retirement Systems Committee is designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

LR 422

PURPOSE: The purpose of this study is to review and update the General Principles of Sound Retirement Planning. The General Principles of Sound Retirement Planning are utilized by the Nebraska Retirement Systems Committee as a guide to evaluate proposed legislation and issues regarding Nebraska's public retirement systems. The General Principles are also used by the Legislature as a guide on each of the retirement systems administered by the Public Employees Retirement Board and those systems not administered by the board.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, SECOND SESSION

1. That the Nebraska Retirement Systems Committee is designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

LR 421

PURPOSE: The purpose of this study is to examine the public employees retirement systems administered by the Public Employees Retirement Board, including the State Employees Retirement System, the County Employees Retirement System, the School Employees Retirement System, the Nebraska State Patrol Retirement System, and the Judges Retirement System. The study may also examine the Class V School Employees Retirement System administered under the Class V School Employees Retirement Act.

The study will examine issues as they relate to the funding needs, benefits, contributions, and the administration of each retirement system.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, SECOND SESSION

1. That the Nebraska Retirement Systems Committee is designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

APPENDIX A

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Bill Status – April 14, 2010 Sine die

2009 Carryover Legislation

LB #	Primary Introducer	One-Line Description	Disposition	Comments
140	Avery	Provide duties relating to investment of state funds in Sudan-related companies	Died in Committee at the end of session	
205	Nordquist	Require education and ethics training for board members of certain retirement systems	Failed to advance from General File	
242	Karpisek	Increase the mandatory retirement under the Nebraska State Patrol Retirement Act	Died in Committee at the end of session	
365	Pankonin	Change retirement annuity provisions in Judges Retirement Act	Died in Committee at the end of session	
366	Pankonin	Increase the mandatory contribution rate under the State Employees Retirement Act	Died in Committee at the end of session	
373*	Lautenbaugh	Change death and disability-related provisions pertaining to emergency response personnel	Enacted	* LB 373 was referred to, and advance from, the Judiciary Committee
426	Pankonin	Name and change provisions relating to the Police Officers Retirement Act	Died in Committee at the end of session	
427	Pankonin	Adopt the County Law Enforcement Officer Retirement Act	Died in Committee at the end of session	
612	Avery	Prohibit school districts from making contributions or reimbursements relating to retirement benefits	Died in Committee at the end of session	

Legislation Introduced in 2010

LB #	Primary Introducer	One-Line Description	Disposition	Comments
899	Nordquist	Change retirement benefit adjustment provisions	Revised in Committee and amended into LB 950 which was enacted	Sunset provisions were extended to FY 2012-2013
927	Committee	Change employee deposit requirements under the School Employees Retirement Act	Died in Committee at the end of session	
928	Committee	Change contribution rates under the Nebraska State Patrol Retirement Act	Died in Committee at the end of session	
950	Committee	Change provisions relating to retirement	Enacted	Includes LB 899 as revised
979	Committee	Provide for transition of certain employees to the State Employees Retirement System	Advanced to General File -- Died at the end of session	

APPENDIX B

City of Omaha
Jim Suttle, Mayor

Finance Department
Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1004
Omaha, Nebraska 68183-1004
(402) 444-5416
Telefax (402) 546-1150

Pam Spaccarotella
Director

Allen R. Herink
City Comptroller

March 25, 2010

Senator Dave Pankonin
State Capitol, Room 1529
Lincoln, NE 68509

Dear Senator Pankonin,

Pursuant to your request, the City of Omaha hereby grants your office permission to use and distribute the actuarial analysis of the proposed legislative bill LB373 by Milliman dated March 12, 2010.

In addition, you had asked for clarification regarding the results indicated on page 3 of the analysis. Per our conversation, the impact indicated on page three is an increase of 0.15% of annual payroll, which for 2010 is budgeted at $46,394,502. Thus, the potential impact in 2010 would be $69,592. Please note that as the impact is calculated as a percentage of payrolls, the dollar amount of cost will increase as payroll increases in future years.

Finally, as we discussed, the unfunded actuarial liability (UAL) of the City of Omaha Police and Fire Pension system is currently estimated at $519 million. Recent estimates based on year end numbers indicate the UAL is increasing. While the impact of LB373 does not appear significant on its face, any further drain to the pension system must be avoided. We cannot overemphasize that point.

We appreciate your support in opposing this legislation. If there is anything further you need, please do not hesitate to call.

Sincerely,

Pam Spaccarotella
Finance Director
City of Omaha

cc: Jim Suttle, Mayor
Paul Kratz, Ciry Attorney
Sack Cheloha, City Lobbyist
Gary Gernandt, City Council Present

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March 12, 2010

Ms. Pamela Spaccarotella
Finance Director
City of Omaha
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183

Re: Infectious Disease Presumption Cost **Study**

Dear Pam:

At your request, Milliman, Inc. has completed an actuarial study to estimate the cost impact of adding a presumption of infectious disease for duty-related death or disability benefits for firefighters that are employed by the City of Omaha and are, therefore, members of the City of Omaha Police and Firefighters Retirement System (OPFRS). It is our understanding that a presumption already exists in current law for hypertension and heart or respiratory disease. LB373 would extend the presumption to include infectious diseases, which includes human immunodeficiency virus, acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, tuberculosis, methicillian-resistant staphylococcus aureus. As we understand the proposed legislation, any death or disability that occurs as a resulr ot infectious disease (as defined above) would automatically be considered a duty related death or disability.

Under the current provisions higher benefits are payable for death or disability that occurs in the line of duty as outlined below:

	Duty	Non-Duty
Pte-retirement Death:	Monthly pension of 52% of final average compensation is paid to surviving spouse if less than 25 years of service. Pension is 72% if more than 25 years of service.	Monthly pension paid to spouse varies with years of service from 3 to 25:

Years of Service	Percent of Final Averaee Comp
0-3	0%
3-10	**38%**
15	45%
20-25	52%
25+	72%

	Duty	Non-Duty	
Disability	55% of final average compensation if less than 25 years. Service retirement if 25 or more years of service.	Years of Service	Percent of Final Average Comp
		<10	10%
		10 but <15	20%
		15 but <20	30%
		20 or more	Service Retirement Pension

In the annual valuation process, assumptions are used to anticipate that current active members may die or become disabled in future years. There are separate assumptions for duty and non-duty disabilities because different benefits may be payable under the two types of retirement. The pre-retirement death assumption is not split into duty and non-duty since the probability of occurrence is so small. Our current disability assumptions, along with the alternate assumptions used in the study, are shown in Exhibit A.

Data

The size of the active fire membership is relatively small and there are few disabled retirees and pre-retirement death beneficiaries, so there is very little data available to study the potential impact of this benefit enhancement. Furthermore, we had no information regarding the specific diagnosis for the current non-duty related deaths and disabilities so it is not possible to evaluate how many of those might have been considered duty related under the proposed legislation. In analyzing the experience of other retirement systems that cover public safety personnel where similar presumptive language has been added to the law, the number of deaths or disability retirements that fall into the infectious disease presumption is small.

There are many unknowns as to how this proposed change may impact the OPFRS. Our expectation is that the total number of deaths and disabilities will not change significantly, but that some of the deaths and disabilities that are now classified as non-duty will instead be considered duty-related. Since it is not possible to know exactly how the number of deaths or disabilities will be impacted or the percentage of that will be classified as duty related, we have provided results using two sets of assumptions as to the percentage of disabilities that will be duty-related. Assumption Set A assumes that 100% of non-duty disability retirements become duty related disabilities, i.e. all disabilities are duty related. This is the high end of cost spectrum. Assumption Set B assumes 25% of current non-duty related disabilities for Fire members will become duty related under the infectious disease presumption. It is difficult to develop costs with any degree of confidence because there really is no data upon which to base our analysis. It should he recognized that actual experience, and therefore costs, could deviate significantly from those anticipated by either Assumptlon Set A or B.

Results

The results of our study indicate that the actuarial contribution rate would increase 0.15% under Assumption Set A and 0.04% under Assumption Set B. The cost impact of adding the cancer and Infections disease presumption is not significant due to two factors:

- The probability of a member dying or becoming disabled is relatively small and the likelihood that the disability falls under the infectious disease category is even smaller. Few occurrences are expected to occur in future years. Furthermore, 85% of all disabilities are already assumed to be duty related
- The higher benefit payable for a duty disability retirement is not significantly larger than the benefit payable under an non-duty retirement and for members with higher years of service (when disability rates are higher) there may be no difference, i.e. the full retirement benefit is paid in either scenario. The cost of members becoming disabled and drawing a non-duty related disability benefit is already included in the contribution rate developed in the actuarial valuation. Only the cost associated with paying a higher duty-related benefit results in an additional cost to the system.

Caveats and Assumptions

The cost estimates contained in this letter are based on the membership data used in the January 1, 2009 actuarial valuation. To the extent that any of that data is inaccurate, our calculations may need to be revised. In general, the assumptions and methods used in the cost study are the same as those used in the January 1, 2009 actuarial valuation and are shown in Appendix B of that report, unless otherwise noted.

These cost estimates are subject to the uncertainties of a regular actuarial valuation; the costs are inexact because they are based on assumptions that are themselves necessarily inexact, even though we consider them reasonable. Thus, the emerging costs may vary from those presented in this letter to the extent actual experience differs from that projected by the actuarial assumptions.

This information is for the exclusive use of the City of Omaha for the purposes stated herein. It is a complex technical analysis that assumes a high level of knowledge concerning the Retirement System's operations, and uses the System's data which Milliman has not audited. It is not for the use or benefit of any third party for any purpose. Any third party recipient of Milliman's work product who desires professional guidance should not rely upon Milliman's work product, but should engage qualified professionals for advice appropriate to its own specific needs. Any distribution of this report must be in its entirety, unless prior written consent from Milliman is obtained. We have not explored any legal issues with respect to the proposed plan changes. We are not attorneys and cannot give legal advice on such issues. We suggest that you review this proposal with legal counsel.

On the basis of the foregoing, I hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board (ASB) and the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

Milliman

I, Gregg Rueschhoff A.S.A., am a member of the American Academy of Actuaries and an Associate of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Patrice A. Beckham F.S.A., am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

Sincerely,

Gregg Rueschhoff

Gregg Rueschhoff, A.S.A.
Principal and Consulting Actuary

Patrice Beckham

Patrice A. Beckham
Principal and Consulting Actuary

EXHIBIT A

Disability Assumptions

	Current		Alternative A		Alternative B	
Age	Non Duty	Duty	Non Duty	Duty	Non Duty	Duty
20	.04%	.22%	.00%	.26%	.03%	.23%
30	.04	.26	.00	.30	.03	.27
40	.08	.44	.00	.52	.06	.46
50	.14	.81	.00	.95	.10	.85
60	.22	1.23	.00	1.45	.16	1.29

APPENDIX C

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State of Nebraska
Department of Labor

January 15,2010

A History of the Nebraska Department of Labor Independent Retirement Plan

As a result of a benefits survey done in 1957, the United States Department of Labor (USDOL) began to encourage those states without retirement plans for the workers in their State Employment Security Agency (SESA) programs (state unemployment and employment service programs) to establish retirement plans for those employees.[1] [Note: Source documents referenced in the footnotes are contained in a single binder in the office of the NDOL General Counsel and are available for viewing.] At the time of the 1957 survey, only ten states lacked retirement plans that applied to SESA employees. By 1961, only six states did not provide retirement plans for their SESA employees, Nebraska, Idaho, Utah, Oklahoma, North Dakota and South Dakota.[2] Each of those six states eventually enacted legislation providing for independent retirement plans for their SESA employees. In 1961, the Nebraska Legislature amended ***Neb. Rev.*** *Stat.* §48-609 to authorize the Commissioner of Labor to establish an independent retirement plan (IRP) for employees of "the division [of employment]" paid with federal funds under Title III of the Social Security Act and other federal acts.[3] Employees working in the Unemployment Insurance and Wagner-Peyser (employment service) programs or providing administrative support to such programs comprised the employees of the NDOL eligible to enroll in the IRP. Although other federally funded programs were later added to the administrative responsibilities of the NDOL, eligibility for participation in the IRP was never extended beyond the original group of eligible participants.

Neb. Rev. *Stat.* §48-609 gives the Commissioner the option of contracting with an insurance company licensed in Nebraska to administer the IRP. After bids were solicited, Bankers Life of Des Moines, Iowa (now Principal Financial Group) was selected to administer the IRP. The contract entered into with Bankers Life provided for the establishment of a defined benefit plan.[4] When an employee participating in the IRP retired, Bankers Life purchased a retirement annuity on behalf of the employee. At least as early as 1968, Article VIB of the IRP provided for the termination of the IRP with the assets of the IRP to be distributed to the active and retired plan participants according to a formula set forth in the IRP.[5] Employee contributions were initially set at three percent of wages with the NDOL responsible for the employer's normal cost contribution. The normal cost contribution cost was funded through a combination of administrative grants and supplemental budget requests (SBR) to USDOL.[6] The initial employee

[1] History of the Negotiations: Independent Retirement Plans in State Employment Security Agencies between 1957 and 1981 by Sandra L. Benbrook (1983).
[2] Id.
[3] Laws 1961, c. 240, §1, page 715.
[4] Bankers Life of Iowa Group Contract No. GA 3987 (1981 Restatement)
[5] Id.
[6] History of the Negotiations: Independent Retirement Plans in State Employment Security Agencies between 1957 and 1981 by Sandra L. Benbrook (1983).

contribution rate of three percent was subsequently increased over the years with the employee contribution rate ultimately rising to seven percent in February 1978.[7]

When the state retirement system was created in 1963, employees in the IRP were specifically excluded from the state retirement system in the enacting legislation.[8] Exclusion of SESA employees from state retirement systems was encouraged by the USDOL.[9] The remaining NDOL employees have been included in the state retirement plan since its inception. Despite the creation of the state retirement system in 1963, the responsibility for the administration of the IRP and the investment of its assets was left with the Commissioner of Labor and was not transferred to the newly created state retirement system.

The original IRP did not provide for a cost of living adjustment (COLA) for retirees. Because the IRPs in the six states were patterned after other existing retirement plans in those states, the six IRPs differed in the six states. During the 1970's, the USDOL, ETA encouraged the SESAs to revise their independent plans, for consistency, to coincide with the Federal Civil Service Retirement Plan. The Federal Civil Service Retirement planned contained a COLA. The Nebraska IRP was amended to more closely model the federal retirement in 1978 when employee contributions were increased and again in 1980 with the institution of a COLA. In Field Memorandum 140-80 the USDOL agreed to fund a COLA in the six states with independent retirement plans retroactive to November 1, 1979.[10] The COLA was applicable to all retirees of the NDOL even those retiring prior to 1979 and employee contributions were increased to seven percent. The COLA is an unlimited COLA tied to the same CPI as Social Security Benefits and the adjustment is made on December 1st of each year. The COLAs are funded through the purchase of additional annuities for the retirees each year. The 2008 restatement of the IRP specifically provides that in the event of termination of the plan, no further COLAs will occur.[11] The December 1, 1995 COLA was delayed to March 1, 1996 with no retroactivity to the previous December and without amendment of the IRP because federal law delayed payment of the December 1, 1995 COLA to Social Security Recipients[12]. The July 1, 2009 actuarial valuation of the IRP shows an actuarial valuation of plan liabilities of $90,851,827 and a market value of plan assets of $68,615,648.[13] The actuarial assumptions behind that $22,236,179 shortfall are predicated upon a three percent average inflation rate. While historically accurate, a three percent average inflation rate may understate the potential shortfall if an inflationary cycle follows the current recession.

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[7] Bankers Life of Iowa Group Contract No. GA 3987 (1984 Reissue)
[8] LB 512 (Laws 1963, c. 532, $1, page 1667)
[9] History of the Negotiations: Independent Retirement Plans in State Employment Security Agencies between 1957 and 1981 by Sandra L. Benbrook (1983).
[10] Id at Exhibit 9.
[11] State of Nebraska, Department of Labor, Retierment (sic) Plan, Restated July 1,2008, Article 4.06.
[12] Letter from Kay Marti to Retirees (March 4, 1996).
[13] State of Nebraska, Department of Labor, Division of Employment Retirement Plan 4-33761 Actuarial Valuation Report for the plan year July 1,2009 through June 30,2010, page IV-1

Even after the six states with an IRP for SESA employees adopted retirement plans covering all state employees, the IRP plans of the six states remained in place and were generally considered to be more beneficial to the employees than the retirement plans that applied to other state employees.[14] On November 2, 1983 the USDOL announced final regulations which provided that a state SESA must comply with the retirement benefit provisions of OMB Circular A-87 as to all employees hired by the SESA after October 1, 1983.[15] Because the Nebraska IRP was substantially more beneficial and more expensive than the retirement program provided to employees of the NDOL paid from state funds, the NDOL IRP did not conform to OMB Circular A-87 and NDOL needed to close off membership to its IRP.[16] Since Nebraska's IRP was authorized in statute, it could not immediately comply with the new federal regulations. Negotiations with USDOL ensued and it was eventually agreed that a July 1, 1984 cutoff of membership to the NDOL IRP would be acceptable. During the 1984 legislative session, ***Neb. Rev.*** *Stat.* $48-609 was amended to limit participation in the IRP to those employees of the Division of Employment first employed prior to July 1, 1984.[17] LB 747 further amended ***Neb. Rev.*** *Stat.* $84-1301 to provide that employees of the NDOL employed on or after July 1, 1984 would be placed in the state employees' retirement system. With the closing of the state SESA IRPs to new members in 1984, it created a substantial unfunded liability on the part of the states. The states made demand upon USDOL for assistance in addressing the unfunded liability issue. Although neither the original demand letter nor the ultimate agreement has been located, the USDOL eventually agreed to continue to fund the state SESA IRPs until they were fully funded, an estimated 30 year process.[18] The unfunded liability issue was to be addressed through SBRs and SBRs were submitted to USDOL from 1984 through 1992. The actual date the state IRPs were expected to be fully funded is not set forth in any document that has been found at NDOL, but from various documents and statements from participants in the process it appears that the final contribution by USDOL was expected to occur in 2014.

In the early 1990's, Principal began to report to NDOL that the IRP was nearing fully-funded status.[19] The Commissioner of Labor appointed a "task force" to review the IRP and "make a recommendation on how to proceed with future contributions."[20] In a June 28, 1994 letter to the Commissioner of Labor, the USDOL Grant Officer states that the prior agreement of USDOL to be responsible for unfunded liabilities of the Nebraska IRP was contingent upon NDOL's agreement to continue

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[14] History of the Negotiations: Independent Retirement Plans in State Employment Security Agencies between 1957 and 1981 by Sandra L. Benbrook (1983).
[15] 48 FR 50662-01 (November 2, 1983).
[16] Legislative History of Laws 1984, LB 747, Testimony of Pam Mattson, NDOL Legislative Liaison (XXXXX, Commissioner of Labor)
[17] Laws 1984, LB 747.
[18] History of the Negotiations: lndependent Retirement Plans in Stale Employment Security Agencies between 1957 and 1981 by Sandra L. Benbrook (1983); DE Retirement Task Force "Memorandum" to DE Retirement Plan Participants (June 22, 1994).
[19] Letter from Dan Dolan, Commissioner of Labor to William Hood, Acting Regional Administrator, Region VII, USDOL (April 22, 1994).
[20] Memorandum of Dan Dolan, Commissioner of Labor to Department of Labor Employees (March 3, 1994).

employee contributions of 7% of their salaries."[21] The Grant Officer further informed the Commissioner that if NDOL ended employee contributions, USDOL would no longer be responsible for any future unfunded liabilities of the IRP. The Grant Officer's correspondence was faxed to the NDOL Controller on June 28, 1994.[22] On September 30, 1994, the Task Force recommended to the Commissioner that employee contributions be suspended immediately and that a variable rate of contributions "based upon needs of the plan to be equally matched by the employer and employees."[23] The Task Force specifically rejected suggestions from USDOL that an outside actuary evaluate the plan, believing that a second actuarial valuation would be a waste of money.[24] On October 28, 1994 the Commissioner of Labor submitted amendments of the IRP to the Regional Administrator of Region VII for review and approval.[25] On October 31, 1994, the Regional Administrator acknowledged receipt of the October 28, 1994 letter from the Commissioner and suggested that the employee contribution rate only be reduced to three and one-half percent.[26] In the letter to the Commissioner the Regional Administrator further stated:

> [R]eduction of the contribution rate to zero could result in the loss of future special administrative financing from the Employment and Training Administration for the employer contribution. If that should happen any future employer contributions would have to come from the administrative funds of the Employment Security (Job Service and Unemployment Insurance) grants. We should also note that that an employer's contribution in excess of 7%, should the current actuarial projection prove to be seriously over optimistic, could probably not be allowed."

On November 3, 1994, the Commissioner informed the Regional Administrator that he was going forward with the amendments as originally submitted.[28] No formal response to the Commissioner from USDOL was found in the records of NDOL. On November 4, 1994, the Commissioner announced that he was terminating employee contributions to the IRP effective November 1, 1994.[29]

[21] Letter from William Hood, Grant Officer, to Dan Dolan, Commissioner of Labor (June 28,1994).
[22] Fax from Ray Moritz, OAS Director USDOL Region VII to Kay Marti, NDOL Controller (June 28, 1994).
[23] Memorandum from DE Retirement Task Force (Bob King, Gary Zook, Kay Marti, Leesa Anderson, Joyce Bennett, Jim Kozol, Larry Peterson, Betty Shrader, Carolyn Stuczyski, and Jolee Wheatley) to Commissioner of Labor, Dan Dolan (September 30, 1994).
[24] Id.
[25] Letter, Dan Dolan, Commissioner of Labor to William Hood, Regional Administrator, USDOL Region VII (October 28, 1994).
[26] Letter from William Hood, Regional Administrator, USDOL Region VII to Dan Dolan, Commissioner of Labor (October 31, 1994).
[27] Id.
[28] Letter, Dan Dolan, Commissioner of Labor to William Hood, Regional Administrator, USDOL Region VII (November 2, 1994).
[29] Memorandum from Dan Dolan, Commissioner of Labor to Division of Employment Retirement Plan Participants (November 3, 1994).

History of Department of Labor Independent Retirement Plan

Prior to November 1998, when an IRP plan participant retired, an annuity was purchased on the retiree's behalf from Principal. In 1998, the method for paying IRP plan participants was substantially changed. Rather than purchasing an annuity for those retiring on or after November 1, 1998, the retirement benefits of those retirees are paid from the assets of the plan. The assets of the plan are also used to purchase additional "COLA" annuities for those who retired prior to November 1, 1998. In effect, the IRP became self-funded relying upon the assets of the plan for the payment of future retirement benefits with no additional contributions from the NDOL or its employees. The revised IRP utilizes a "Benefit Index System" to "guarantee" the retirement benefits of the post November 1, 1998 retirees. The guarantee is a mechanism which authorizes Principal to liquidate IRP fund assets and use the proceeds to purchase annuities on behalf of those retirees paid directly from the assets of the IRP if the assets of the IRP drops below 110% of the projected liability to the current retirees paid directly from the assets of the IRP.[30]

In 1999, the IRP assets exceeded the present value of the plan benefits.[31] Consequently, in order to reduce the amount by which the IRP was overfunded, a decision was made to enhance benefits to Active Participants and retirees through the buyback of service year credits, the adjustment of benefit calculations for Active Participants and the payment of a "13" Check" to retirees on January 31, 2000.[32]

The actuarial value of the assets of the IRP exceeded the present value of plan benefits on July 1, 2001, but the market value of the assets did not.[33] The market value of the assets of the IRP continued to be less than the present value of plan benefits on July 1, 2002[34]. The gap between market value of the assets of the IRP and the present value of the plan benefits in these years was approximately $2 million in each of those years. Because of the declines in the market value of the assets of the IRP, discussions began as to whether the IRP could or should be terminated. Principal was asked to begin calculations as to what it would take to terminate the plan and provide benefits that approximated the level of benefits outlined in the IRP. With the stock market's recovery from the 9-11 recession, on July 1, 2003 both the market value and the actuarial value of the assets of the IRP exceeded the present value of IRP plan benefits.[35] However, the 2003 valuation report also contained a warning:

> Please note the upcoming retirement charges shown on the Emerging Retirement Liability page in Section VI. Assets may not be sufficient to cover future benefit index charges. You may need to consider making contributions to the plan or reducing future benefits.[36]

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[30] **Group Annuity Contract, Principal Life Insurance Company Group Contract No. GA 4-33761 (November 18, 1998).**
[31] **Actuarial Valuation Report [of the NDOL IRP] as of July 1, 1999 (Prepared by Principal Financial Group).**
[32] **Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2000 (Prepared by Principal Financial Group).**
[33] **Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2001 (Prepared by Principal Financial Group).**
[34] **Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2002 (Prepared by Principal Financial Group).**
[35] **Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2003 (Prepared by Principal Financial Group).**
[36] **Id. at page II-2**

History of Department of Labor Independent Retirement Plan

By July 1,2004 the market value of the assets of the IRP exceeded the present value of IRP benefits by over $7 million.[37] However, the 2004 report repeated the warning of the 2004 valuation report regarding the Emerging Retirement Liability issue.[38] Discussions within the NDOL intensified as to whether the IRP should be terminated and further discussions were had with Principal as to termination of the plan. The NDOL IRP advisory committee reviewed information from Principal in the fall of 2004 and recommended that the IRP be terminated as the assets appeared to be sufficient to purchase annuities for all retirees and Participants with a yearly 2% COLA. The advisory committee's recommendation was communicated to Principal. On December 20, 2004 Principal reported to the NDOL Controller that the assets of the IRP as of December 20, 2004 were in excess of $114 million and sufficient to terminate the IRP through the purchase of annuities for all past and future retirees, including death benefits, and a 2% yearly COLA.[39] In an email message sent to Principal that same day, the Controller advised the IRP Advisory Committee that the Commissioner had decided not to adopt its recommendation that the IRP be terminated.[40] Principal employees maintain that during telephone conversations with the Commissioner they recommended that he implement the recommendation of the IRP Advisory Committee to terminate the IRP. The IRP Advisory Committee was not consulted prior to the Commissioner's decision not to accept its recommendation. Reportedly the Commissioner's decision not to adopt the recommendation of the IRP Advisory Committee was made because some of the retirees threatened to sue the Commissioner if any limitations were placed upon the amount of the yearly COLA.

The Actuarial Valuation Reports for July 1, 2005, 2006, and 2007[41] continued to repeat the Emerging Retirement Liability warning that had first appeared in the 2003 Actuarial Valuation Report. On September 15, 2008 a new Commissioner[42] was appointed to head the Department of Labor. The new Commissioner was advised that the adequacy of the funding of the IRP was an issue that needed to be addressed and a copy of the July 1, 2007 report was provided to her. NDOL began to insist upon a meeting with Principal. The July 1, 2008 Actuarial valuation was received and showed that the assets of the plan had declined by approximately $7 million and were now slightly less than the present value of IRP benefits.[43]

For a variety of reasons including meetings cancelled due to road conditions, the meeting with Principal did not occur until mid-January 2009 and then, only by telephone conference call. As of January 12, 2009, the value of the IRP assets was $69 million[44] as compared to the present value of plan benefits

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[37] Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2004 (Prepared by Principal Financial Group).
[38] Id, at page II-2
[39] Email from Mary Draayer to Kay Marti (December 20, 2004).
[40] Email from Kay Marti to Gary Zook, Bonnie McPhillips, John Albin and Bill Ellingrud, copy to Fernando Lecuona 11, Commissioner of Labor (December 20,2004).
[41] Actuarial Valuation Reports [of the NDOL IRP] as of July 1, 2005, 2006 and 2007 (Prepared by Principal Financial Group).
[42] Catherine D. Lang
[43] Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2008 (Prepared by Principal Financial Group).
[44] Email from Mary Draayer to John Albin (January 12, 2009).

which exceeded $90 million as of the July 1, 2008 valuation date.[45] During the January 13, 2009 conference call Principal confirmed that the market value of the assets of the IRP remained substantially below the July 1, 2008 present value of plan benefits and options for addressing the shortfall were addressed.

After meeting with Principal, the Commissioner asked Principal to conduct a special review of the status of the plan and what it would cost to terminate the plan with at least some COLA provision included. The Actuarial Funding Projection report was provided to the Commissioner on April 29, 2009. The projections showed that even with a 2% COLA, the then current market value of the assets of the IRP was $55,027,491 less than the cost of purchasing annuities with a COLA for present and future retirees covered by the IRP.[46]

On March 19,2009, because the provisions of the "Benefit Index System" required certain levels of assets to be in Fixed assets under the then current market conditions, more IRP assets had to be shifted from Equity to Fixed assets in order to retain that guarantee.[47] The only other alternatives for the Commissioner were to either make an immediate employer contribution of more than $1.5 million to the IRP[48] or face the liquidation of most of the assets of the IRP in order to cover the Benefit Index requirements of the annuity contract. At present the minimum IRP asset level to continue the Benefits Index guarantee is in excess of $63 million and the market value of the assets of the IRP is just under $74 million.[49] Any substantial number of retirements or further stock market declines could trigger an additional shift of assets to fixed assets or additional contributions to the IRP. In order to maximize returns when the stock market begins to recover, it will be necessary to have as much of the IRP assets in equity assets as is possible, but the Benefit Index provisions will make that option difficult to pursue.

With only a little more than 60 active employees still covered by the IRP, it is not possible to bring the plan back through employee contributions at even a 7% contribution rate with an appropriate employer match. The normal cost employer contribution suggested in the July 1, 2009 Actuarial Valuation Report is in excess of $2 million.[50] Reed Act funds may be used to pay the normal cost contribution but it will require approval by the Governor and is subject to review by USDOL.

The Commissioner has consulted the Nebraska Public Employee Retirement System (December 24, 2008) and the Attorney General's Office (December 22, 2008) for guidance. Both recommended that an

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[45] Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2008 (Prepared by Principal Financial Group).
[46] State of Nebraska, Department of Labor, Division of Employment Retirement Plan 4-33761, Actuarial Funding Projection, Prepared (by Principal Financial Group) April 2009.
[47] Letter from Catherine Lang, Commissioner of Labor to Mary Drayer, Principal Financial Group (March 19, 2009).
[48] Id.
[49] Email from Mary Draayer to John Albin (December 17,2009).
[50] Actuarial Valuation Report [of the NDOL IRP] as of July 1, 2009 (Prepared by Principal Financial Group).

outside actuarial audit be obtained and the outside actuarial audit has been completed.[51] In addition, outside legal counsel has been retained upon the recommendation of the Attorney General to determine options available to the Commissioner. His report is considered confidential and subject to attorney/client privilege.

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[51] State of Nebraska, Department of Labor, Division of Employment Retirement Plan, Actuarial Audit Report (Milliman, November 20,2009).