

SENATE BILL NO. 434—SENATOR NEAL

MARCH 27, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions related to retirement. (BDR 23-16)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to retirement; revising provisions governing eligibility for membership in the Public Employees' Retirement System; revising provisions governing the options for service retirement allowances under the System; revising provisions relating to the granting of a divorce; revising provisions governing the disposition of certain pension or retirement benefits upon dissolution of marriage; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Eligible retired public employees receive retirement allowances through
- 2 membership in and contributions to the Public Employees' Retirement System.
- 3 (Chapter 286 of NRS) Under existing law, certain persons are not eligible to be
- 4 members of the System, including substitute teachers. (NRS 286.297) **Section 1** of
- 5 this bill makes substitute teachers eligible for membership in the System.
- 6 Existing law provides several different alternative options to an unmodified
- 7 retirement allowance under the Public Employees' Retirement System that
- 8 members are authorized to elect upon retirement. (NRS 286.590) **Section 2** of this
- 9 bill provides the additional alternative option of a reduced service retirement
- 10 allowance with a benefit paid for 6 months to a designated beneficiary or an
- 11 alternate beneficiary.
- 12 Existing law specifies certain powers and duties of courts in granting a divorce.
- 13 One such power is modifying an adjudication of property rights or an agreement
- 14 settling property rights upon written stipulation by the parties to the action. (NRS
- 15 125.150) **Section 2.5** of this bill requires a court, in granting a divorce, to provide
- 16 an explanation, or ensure that an explanation has been provided, to the parties of
- 17 any provision relating to the disposition of pension or retirement benefits that will
- 18 be included in the decree of divorce or any related order. **Section 2.5** also
- 19 authorizes a court to modify the adjudication of or an agreement settling property



20 rights as a result of the filing of a motion to amend the adjudication or agreement
21 relating to the disposition of pension or retirement benefits by the parties to the
22 action.

23 Existing law provides for the disposition of pension or retirement benefits
24 provided by the Public Employees' Retirement System or the Judicial Retirement
25 Plan upon dissolution of marriage. Existing law codifies the "time rule," whereby
26 the community interest in such retirement benefits is calculated by dividing an
27 employee's length of service during marriage by his or her total length of service.
28 (NRS 125.155) **Section 3** of this bill replaces the "time rule" with the "frozen
29 benefit rule," whereby the community interest in such retirement benefits is
30 "frozen" at the salary base and years of service of the party participating in the
31 retirement system on the date on which the decree of legal separation or divorce is
32 entered. The "frozen benefit rule" currently applies to military pensions under the
33 Uniformed Services Former Spouses' Protection Act. (10 U.S.C. § 1408(a)(4)(B))

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 286.297 is hereby amended to read as follows:
2 286.297 The following persons are not eligible to become
3 members of the System:

4 1. Inmates of state institutions even though they may be
5 receiving compensation for services performed for the institution.

6 2. Independent contractors or persons rendering professional
7 services on a fee, retainer or contract basis.

8 3. Except as otherwise provided in NRS 286.525, persons
9 retired under the provisions of this chapter who are employed by a
10 participating public employer.

11 4. Members of boards or commissions of the State of Nevada
12 or of its political subdivisions when such boards or commissions are
13 advisory or directive and when membership thereon is not
14 compensated except for expenses incurred. Receipt of a fee for
15 attendance at official sessions of a particular board or commission
16 does not constitute compensation for the purpose of this subsection.

17 5. ~~Substitute teachers and students~~ *Students* who are
18 employed by the institution which they attend.

19 6. District judges, judges of the Court of Appeals and justices
20 of the Supreme Court first elected or appointed on or after July 1,
21 1977, who are not enrolled in the System at the time of election or
22 appointment.

23 7. Members of the professional staff of the Nevada System of
24 Higher Education who are employed on or after July 1, 1977.

25 8. Persons employed on or after July 1, 1979, under the
26 Comprehensive Employment and Training Act.

27 9. Except as otherwise provided in NRS 286.293, persons
28 assigned to intermittent or temporary positions unless the
29 assignment exceeds 6 consecutive months.



1 10. Persons employed on or after July 1, 1981, as part-time
2 guards at school crossings.

3 11. Nurses who:

4 (a) Are not full-time employees;

5 (b) Are paid an hourly wage on a daily basis;

6 (c) Do not receive the employee benefits received by other
7 employees of the same employer; and

8 (d) Do not work a regular schedule or are requested to work for
9 a shift at a time.

10 **Sec. 2.** NRS 286.590 is hereby amended to read as follows:

11 286.590 The alternatives to an unmodified service retirement
12 allowance are as follows:

13 1. Option 2 consists of a reduced service retirement allowance
14 payable monthly during the retired employee's life, with the
15 provision that it continue after the retired employee's death for the
16 life of the beneficiary whom the retired employee nominates by
17 written designation acknowledged and filed with the Board at the
18 time of retirement should the beneficiary survive the retired
19 employee.

20 2. Option 3 consists of a reduced service retirement allowance
21 payable monthly during the retired employee's life, with the
22 provision that it continue after the retired employee's death at one-
23 half the rate paid to the retired employee and be paid for the life of
24 the beneficiary whom the retired employee nominates by written
25 designation acknowledged and filed with the Board at the time of
26 retirement should the beneficiary survive the retired employee.

27 3. Option 4 consists of a reduced service retirement allowance
28 payable monthly during the retired employee's life, with the
29 provision that it continue after the retired employee's death for the
30 life of the retired employee's beneficiary, whom the retired
31 employee nominates by written designation acknowledged and filed
32 with the Board at the time of the election, should the retired
33 employee's beneficiary survive the retired employee, beginning on
34 the attainment by the surviving beneficiary of age 60. If a
35 beneficiary designated under this option dies after the date of the
36 retired employee's death but before attaining age 60, the
37 contributions of the retired employee which have not been returned
38 to the retired employee or the retired employee's beneficiary must
39 be paid to the estate of the deceased beneficiary.

40 4. Option 5 consists of a reduced service retirement allowance
41 payable monthly during the retired employee's life, with the
42 provision that it continue after the retired employee's death at one-
43 half the rate paid to the retired employee and be paid for the life of
44 the retired employee's beneficiary whom the retired employee
45 nominates by written designation acknowledged and filed with the



1 Board at the time of the election, should the retired employee's
2 beneficiary survive the retired employee, beginning on the
3 attainment by the surviving beneficiary of age 60. If a beneficiary
4 designated under this option dies after the date of the retired
5 employee's death but before attaining age 60, the contributions of
6 the retired employee which have not been returned to the retired
7 employee or the retired employee's beneficiary must be paid to the
8 estate of the deceased beneficiary.

9 5. Option 6 consists of a reduced service retirement allowance
10 payable monthly during the retired employee's life, with the
11 provision that a specific sum per month, which cannot exceed the
12 monthly allowance paid to the retired employee, be paid after
13 the retired employee's death to the beneficiary for the life of the
14 beneficiary whom the retired employee nominates by written
15 designation acknowledged and filed with the Board at the time of
16 retirement, should the beneficiary survive the retired employee.

17 6. Option 7 consists of a reduced service retirement allowance
18 payable monthly during the retired employee's life, with the
19 provision that a specific sum per month, which cannot exceed the
20 monthly allowance paid to the retired employee, be paid after
21 the retired employee's death to the beneficiary for the life of the
22 beneficiary whom the retired employee nominates by written
23 designation acknowledged and filed with the Board at the time of
24 election, should the beneficiary survive the retired employee,
25 beginning on the attainment by the surviving beneficiary of age 60
26 years. If a surviving beneficiary dies after the date of the retired
27 employee's death, but before attaining age 60, all contributions of
28 the retired employee which have not been returned to the retired
29 employee or the retired employee's beneficiary must be paid to the
30 estate of the beneficiary.

31 *7. Option 8 consists of a reduced service retirement allowance*
32 *payable monthly during the retired employee's life, with the*
33 *provision that a specific sum per month, which cannot exceed the*
34 *monthly allowance paid to the retired employee, be paid for 6*
35 *months after the retired employee's death to the beneficiary whom*
36 *the retired employee nominates by written designation*
37 *acknowledged and filed with the Board at the time of retirement,*
38 *should the beneficiary survive the retired employee. The retired*
39 *employee may also designate at the time of retirement one*
40 *alternate beneficiary should the initial designated beneficiary not*
41 *survive the retired employee. Except as otherwise provided in this*
42 *subsection, if the designated beneficiary dies less than 6 months*
43 *after the date of the retired employee's death, any amount which*
44 *has not been paid to the designated beneficiary pursuant to this*
45 *subsection must be paid to the estate of the designated beneficiary.*



1 *If the retired employee designated an alternate beneficiary, any*
2 *amount which has not been paid pursuant to this subsection to the*
3 *initial designated beneficiary before the initial designated*
4 *beneficiary's death must be paid to the alternate designated*
5 *beneficiary. If the alternate designated beneficiary also later dies*
6 *less than 6 months after the date of the retired employee's death,*
7 *any amount which has not been paid to the alternate designated*
8 *beneficiary pursuant to this subsection must be paid to the estate*
9 *of the alternate designated beneficiary. If the initial designated*
10 *beneficiary and, if applicable, the alternate designated beneficiary*
11 *do not survive the retired employee, any amount which is required*
12 *to be paid pursuant to this subsection to a beneficiary must be paid*
13 *to the estate of the retired employee.*

14 **Sec. 2.5.** NRS 125.150 is hereby amended to read as follows:

15 125.150 Except as otherwise provided in NRS 125.155 and
16 125.165, and unless the action is contrary to a premarital agreement
17 between the parties which is enforceable pursuant to chapter 123A
18 of NRS:

19 1. In granting a divorce, the court:

20 (a) May award such alimony to either spouse, in a specified
21 principal sum or as specified periodic payments, as appears just and
22 equitable; ~~and~~

23 (b) Shall, to the extent practicable, make an equal disposition of
24 the community property of the parties, including, without limitation,
25 any community property transferred into an irrevocable trust
26 pursuant to NRS 123.125 over which the court acquires jurisdiction
27 pursuant to NRS 164.010, except that the court may make an
28 unequal disposition of the community property in such proportions
29 as it deems just if the court finds a compelling reason to do so and
30 sets forth in writing the reasons for making the unequal disposition
31 ~~and~~; and

32 *(c) Shall provide an explanation, or ensure that an*
33 *explanation has been provided, to the parties of any provision*
34 *relating to the disposition of pension or retirement benefits that*
35 *will be included in the decree of divorce or any related order.*

36 2. Except as otherwise provided in this subsection, in granting
37 a divorce, the court shall dispose of any property held in joint
38 tenancy in the manner set forth in subsection 1 for the disposition of
39 community property. If a party has made a contribution of separate
40 property to the acquisition or improvement of property held in joint
41 tenancy, the court may provide for the reimbursement of that party
42 for his or her contribution. The amount of reimbursement must not
43 exceed the amount of the contribution of separate property that can
44 be traced to the acquisition or improvement of property held in joint
45 tenancy, without interest or any adjustment because of an increase in



1 the value of the property held in joint tenancy. The amount of
2 reimbursement must not exceed the value, at the time of the
3 disposition, of the property held in joint tenancy for which the
4 contribution of separate property was made. In determining whether
5 to provide for the reimbursement, in whole or in part, of a party who
6 has contributed separate property, the court shall consider:

7 (a) The intention of the parties in placing the property in joint
8 tenancy;

9 (b) The length of the marriage; and

10 (c) Any other factor which the court deems relevant in making a
11 just and equitable disposition of that property.

12 ↪ As used in this subsection, "contribution" includes, without
13 limitation, a down payment, a payment for the acquisition or
14 improvement of property, and a payment reducing the principal of a
15 loan used to finance the purchase or improvement of property. The
16 term does not include a payment of interest on a loan used to finance
17 the purchase or improvement of property, or a payment made for
18 maintenance, insurance or taxes on property.

19 3. A party may file a postjudgment motion in any action for
20 divorce, annulment or separate maintenance to obtain adjudication
21 of any community property or liability omitted from the decree or
22 judgment as the result of fraud or mistake. A motion pursuant to this
23 subsection must be filed within 3 years after the discovery by the
24 aggrieved party of the facts constituting the fraud or mistake. The
25 court has continuing jurisdiction to hear such a motion and shall
26 equally divide the omitted community property or liability between
27 the parties unless the court finds that:

28 (a) The community property or liability was included in a prior
29 equal disposition of the community property of the parties or in an
30 unequal disposition of the community property of the parties which
31 was made pursuant to written findings of a compelling reason for
32 making that unequal disposition; or

33 (b) The court determines a compelling reason in the interests of
34 justice to make an unequal disposition of the community property or
35 liability and sets forth in writing the reasons for making the unequal
36 disposition.

37 ↪ If a motion pursuant to this subsection results in a judgment
38 dividing a defined benefit pension plan, the judgment may not be
39 enforced against an installment payment made by the plan more
40 than 6 years after the installment payment.

41 4. Except as otherwise provided in NRS 125.141, whether or
42 not application for suit money has been made under the provisions
43 of NRS 125.040, the court may award a reasonable attorney's fee to
44 either party to an action for divorce.



1 5. In granting a divorce, the court may also set apart such
2 portion of the separate property of either spouse for the other
3 spouse's support or the separate property of either spouse for the
4 support of their children as is deemed just and equitable.

5 6. In the event of the death of either party or the subsequent
6 remarriage of the spouse to whom specified periodic payments were
7 to be made, all the payments required by the decree must cease,
8 unless it was otherwise ordered by the court.

9 7. If the court adjudicates the property rights of the parties, or
10 an agreement by the parties settling their property rights has been
11 approved by the court, whether or not the court has retained
12 jurisdiction to modify them, the adjudication of property rights, and
13 the agreements settling property rights, may nevertheless at any time
14 thereafter be modified by the court *as a result of the filing of a*
15 *motion to amend the adjudication or agreement relating to the*
16 *disposition of pension or retirement benefits by the parties to the*
17 *action or* upon written stipulation signed and acknowledged by the
18 parties to the action, and in accordance with the terms thereof.

19 8. If a decree of divorce, or an agreement between the parties
20 which was ratified, adopted or approved in a decree of divorce,
21 provides for specified periodic payments of alimony, the decree or
22 agreement is not subject to modification by the court as to accrued
23 payments. Payments pursuant to a decree entered on or after July 1,
24 1975, which have not accrued at the time a motion for modification
25 is filed may be modified upon a showing of changed circumstances,
26 whether or not the court has expressly retained jurisdiction for the
27 modification. In addition to any other factors the court considers
28 relevant in determining whether to modify the order, the court shall
29 consider whether the income of the spouse who is ordered to pay
30 alimony, as indicated on the spouse's federal income tax return for
31 the preceding calendar year, has been reduced to such a level that
32 the spouse is financially unable to pay the amount of alimony the
33 spouse has been ordered to pay.

34 9. In addition to any other factors the court considers relevant
35 in determining whether to award alimony and the amount of such an
36 award, the court shall consider:

- 37 (a) The financial condition of each spouse;
38 (b) The nature and value of the respective property of each
39 spouse;
40 (c) The contribution of each spouse to any property held by the
41 spouses pursuant to NRS 123.030;
42 (d) The duration of the marriage;
43 (e) The income, earning capacity, age and health of each spouse;
44 (f) The standard of living during the marriage;



1 (g) The career before the marriage of the spouse who would
2 receive the alimony;

3 (h) The existence of specialized education or training or the
4 level of marketable skills attained by each spouse during the
5 marriage;

6 (i) The contribution of either spouse as homemaker;

7 (j) The award of property granted by the court in the divorce,
8 other than child support and alimony, to the spouse who would
9 receive the alimony; and

10 (k) The physical and mental condition of each party as it relates
11 to the financial condition, health and ability to work of that spouse.

12 10. In granting a divorce, the court shall consider the need to
13 grant alimony to a spouse for the purpose of obtaining training or
14 education relating to a job, career or profession. In addition to any
15 other factors the court considers relevant in determining whether
16 such alimony should be granted, the court shall consider:

17 (a) Whether the spouse who would pay such alimony has
18 obtained greater job skills or education during the marriage; and

19 (b) Whether the spouse who would receive such alimony
20 provided financial support while the other spouse obtained job skills
21 or education.

22 11. If the court determines that alimony should be awarded
23 pursuant to the provisions of subsection 10:

24 (a) The court, in its order, shall provide for the time within
25 which the spouse who is the recipient of the alimony must
26 commence the training or education relating to a job, career or
27 profession.

28 (b) The spouse who is ordered to pay the alimony may, upon
29 changed circumstances, file a motion to modify the order.

30 (c) The spouse who is the recipient of the alimony may be
31 granted, in addition to any other alimony granted by the court,
32 money to provide for:

33 (1) Testing of the recipient's skills relating to a job, career or
34 profession;

35 (2) Evaluation of the recipient's abilities and goals relating to
36 a job, career or profession;

37 (3) Guidance for the recipient in establishing a specific plan
38 for training or education relating to a job, career or profession;

39 (4) Subsidization of an employer's costs incurred in training
40 the recipient;

41 (5) Assisting the recipient to search for a job; or

42 (6) Payment of the costs of tuition, books and fees for:

43 (I) The equivalent of a high school diploma;

44 (II) College courses which are directly applicable to the
45 recipient's goals for his or her career; or



1 (III) Courses of training in skills desirable for
2 employment.

3 12. For the purposes of this section, a change of 20 percent or
4 more in the gross monthly income of a spouse who is ordered to pay
5 alimony shall be deemed to constitute changed circumstances
6 requiring a review for modification of the payments of alimony. As
7 used in this subsection, "gross monthly income" means the total
8 amount of income received each month from any source of a person
9 who is not self-employed or the gross income from any source of a
10 self-employed person, after deduction of all legitimate business
11 expenses, but without deduction for personal income taxes,
12 contributions for retirement benefits, contributions to a pension or
13 for any other personal expenses.

14 **Sec. 3.** NRS 125.155 is hereby amended to read as follows:

15 125.155 Unless the action is contrary to a premarital agreement
16 between the parties which is enforceable pursuant to chapter 123A
17 of NRS or is prohibited by specific statute:

18 1. In determining the value of an interest in or entitlement to a
19 pension or retirement benefit provided by the Public Employees'
20 Retirement System pursuant to chapter 286 of NRS or the Judicial
21 Retirement Plan established pursuant to NRS 1A.300, the court ~~]:~~

22 ~~—(a)— shall base its determination upon the amount of the~~
23 ~~pension or retirement benefits to which the participating party~~
24 ~~would have been entitled using the salary base and years of service~~
25 ~~of the participating party on the date on which a decree of legal~~
26 ~~separation or divorce is entered.~~

27 ~~[Shall base its determination upon the number of years or portion~~
28 ~~thereof that the contributing party was employed and received the~~
29 ~~interest or entitlement, beginning on the date of the marriage and~~
30 ~~ending on the date on which a decree of legal separation or divorce~~
31 ~~is entered; and~~

32 ~~—(b)— Shall not base its determination upon any estimated increase~~
33 ~~in the value of the interest or entitlement resulting from a~~
34 ~~promotion, raise or any other efforts made by the party who~~
35 ~~contributed to the interest or entitlement as a result of his or her~~
36 ~~continued employment after the date of a decree of legal separation~~
37 ~~or divorce.]~~

38 2. The court may, in making a disposition of a pension or
39 retirement benefit provided by the Public Employees' Retirement
40 System or the Judicial Retirement Plan, order that the benefit not be
41 paid before the date on which the participating party retires. To
42 ensure that the party who is not a participant will receive payment
43 for the benefits, the court may:

44 (a) On its own motion or pursuant to an agreement of the
45 parties, require the participating party to furnish a performance or



1 surety bond, executed by the participating party as principal and by
2 a corporation qualified under the laws of this state as surety, made
3 payable to the party who is not a participant under the plan, and
4 conditioned upon the payment of the pension or retirement benefits.
5 The bond must be in a principal sum equal to the amount of the
6 determined interest of the nonparticipating party in the pension or
7 retirement benefits and must be in a form prescribed by the court.

8 (b) On its own motion or pursuant to an agreement of the
9 parties, require the participating party to purchase a policy of life
10 insurance. The amount payable under the policy must be equal to
11 the determined interest of the nonparticipating party in the pension
12 or retirement benefits. The nonparticipating party must be named as
13 a beneficiary under the policy and must remain a named beneficiary
14 until the participating party retires.

15 (c) Pursuant to an agreement of the parties, increase the value of
16 the determined interest of the nonparticipating party in the pension
17 or retirement benefit as compensation for the delay in payment of
18 the benefit to that party.

19 (d) On its own motion or pursuant to an agreement of the
20 parties, allow the participating party to provide any other form of
21 security which ensures the payment of the determined interest of the
22 nonparticipating party in the pension or retirement benefit.

23 3. If a party receives an interest in or an entitlement to a
24 pension or retirement benefit which the party would not otherwise
25 have an interest in or be entitled to if not for a disposition made
26 pursuant to this section, the interest or entitlement and any related
27 obligation to pay that interest or entitlement terminates upon the
28 death of either party unless pursuant to:

29 (a) An agreement of the parties; or

30 (b) An order of the court,

31 ↪ a party who is a participant in the Public Employees' Retirement
32 System or the Judicial Retirement Plan provides an alternative to an
33 unmodified service retirement allowance pursuant to NRS 1A.450
34 or 286.590.

35 **Sec. 4.** This act becomes effective upon passage and approval.

