

Amendment No. 523

Senate Amendment to Senate Bill No. 434	(BDR 23-16)
Proposed by: Senate Committee on Government Affairs	
Amendment Box: Replaces Amendment No. 470.	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>
Receded <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EGO/BJF



Date: 4/23/2023

S.B. No. 434—Revises provisions related to public retirement systems.
(BDR 23-16)



SENATE BILL NO. 434—SENATOR NEAL

MARCH 27, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions related to ~~public~~ retirement ~~systems~~ (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 ~~public~~ retirement ~~systems~~; 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:

Eligible retired public employees receive retirement allowances through membership in and contributions to the Public Employees’ Retirement System. (Chapter 286 of NRS) Under existing law, certain persons are not eligible to be members of the System, including substitute teachers. (NRS 286.297) **Section 1** of this bill makes ~~long-term~~ substitute teachers eligible for membership in the System.

Existing law provides several different alternative options to an unmodified retirement allowance under the Public Employees’ Retirement System that members are authorized to elect upon retirement. (NRS 286.590) **Section 2** of this bill provides the additional alternative option of a reduced service retirement allowance with a benefit paid for 6 months to a designated beneficiary or an alternate beneficiary.

Existing law specifies certain powers and duties of courts in granting a divorce. One such power is modifying an adjudication of property rights or an agreement settling property rights upon written stipulation by the parties to the action. (NRS 125.150) Section 2.5 of this bill requires a court, in granting a divorce, to provide an explanation, or ensure that an explanation has been provided, to the parties of any provision relating to the disposition of pension or retirement benefits that will be included in the decree of divorce or any related order. Section 2.5 also authorizes a court to modify the adjudication of or an agreement settling property rights as a result of the filing of a motion to amend the adjudication or agreement relating to the disposition of pension or retirement benefits by the parties to the action.

Existing law provides for the disposition of pension or retirement benefits provided by the Public Employees’ Retirement System or the Judicial Retirement Plan upon dissolution of marriage. Existing law codifies the “time rule,” whereby the community interest in such retirement benefits is calculated by dividing an employee’s length of service during marriage by his or her total length of service. (NRS 125.155) ~~With an exception for homemakers, section~~ **Section 3** of this bill replaces the “time rule” with the “frozen benefit rule,” whereby

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27 the community interest in such retirement benefits is “frozen” at the salary base and years of
 28 service of the party participating in the retirement system on the date on which the decree of
 29 legal separation or divorce is entered. The “frozen benefit rule” currently applies to military
 30 pensions under the Uniformed Services Former Spouses’ Protection Act. (10 U.S.C. §
 31 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 members of the
 3 System:

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

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

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

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

15 5. ~~Substitute Short term substitute teachers and students~~ Students who are
 16 employed by the institution which they attend.

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

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

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

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

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

29 11. Nurses who:

30 (a) Are not full-time employees;

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

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

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

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

37 286.590 The alternatives to an unmodified service retirement allowance are as
 38 follows:

39 1. Option 2 consists of a reduced service retirement allowance payable
 40 monthly during the retired employee’s life, with the provision that it continue after
 41 the retired employee’s death for the life of the beneficiary whom the retired
 42 employee nominates by written designation acknowledged and filed with the Board
 43 at the time of retirement should the beneficiary survive the retired employee.

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

7 3. Option 4 consists of a reduced service retirement allowance payable
8 monthly during the retired employee's life, with the provision that it continue after
9 the retired employee's death for the life of the retired employee's beneficiary,
10 whom the retired employee nominates by written designation acknowledged and
11 filed with the Board at the time of the election, should the retired employee's
12 beneficiary survive the retired employee, beginning on the attainment by the
13 surviving beneficiary of age 60. If a beneficiary designated under this option dies
14 after the date of the retired employee's death but before attaining age 60, the
15 contributions of the retired employee which have not been returned to the retired
16 employee or the retired employee's beneficiary must be paid to the estate of the
17 deceased beneficiary.

18 4. Option 5 consists of a reduced service retirement allowance payable
19 monthly during the retired employee's life, with the provision that it continue after
20 the retired employee's death at one-half the rate paid to the retired employee and be
21 paid for the life of the retired employee's beneficiary whom the retired employee
22 nominates by written designation acknowledged and filed with the Board at the
23 time of the election, should the retired employee's beneficiary survive the retired
24 employee, beginning on the attainment by the surviving beneficiary of age 60. If a
25 beneficiary designated under this option dies after the date of the retired employee's
26 death but before attaining age 60, the contributions of the retired employee which
27 have not been returned to the retired employee or the retired employee's beneficiary
28 must be paid to the estate of the deceased beneficiary.

29 5. Option 6 consists of a reduced service retirement allowance payable
30 monthly during the retired employee's life, with the provision that a specific sum
31 per month, which cannot exceed the monthly allowance paid to the retired
32 employee, be paid after the retired employee's death to the beneficiary for the life
33 of the beneficiary whom the retired employee nominates by written designation
34 acknowledged and filed with the Board at the time of retirement, should the
35 beneficiary survive the retired employee.

36 6. Option 7 consists of a reduced service retirement allowance payable
37 monthly during the retired employee's life, with the provision that a specific sum
38 per month, which cannot exceed the monthly allowance paid to the retired
39 employee, be paid after the retired employee's death to the beneficiary for the life
40 of the beneficiary whom the retired employee nominates by written designation
41 acknowledged and filed with the Board at the time of election, should the
42 beneficiary survive the retired employee, beginning on the attainment by the
43 surviving beneficiary of age 60 years. If a surviving beneficiary dies after the date
44 of the retired employee's death, but before attaining age 60, all contributions of the
45 retired employee which have not been returned to the retired employee or the
46 retired employee's beneficiary must be paid to the estate of the beneficiary.

47 7. *Option 8 consists of a reduced service retirement allowance payable*
48 *monthly during the retired employee's life, with the provision that a specific sum*
49 *per month, which cannot exceed the monthly allowance paid to the retired*
50 *employee, be paid for 6 months after the retired employee's death to the*
51 *beneficiary whom the retired employee nominates by written designation*
52 *acknowledged and filed with the Board at the time of retirement, should the*
53 *beneficiary survive the retired employee. The retired employee may also designate*

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

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

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

21 1. In granting a divorce, the court:

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

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

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

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

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

49 (b) The length of the marriage; and

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

52 ➤ As used in this subsection, "contribution" includes, without limitation, a down
 53 payment, a payment for the acquisition or improvement of property, and a payment

1 reducing the principal of a loan used to finance the purchase or improvement of
2 property. The term does not include a payment of interest on a loan used to finance
3 the purchase or improvement of property, or a payment made for maintenance,
4 insurance or taxes on property.

5 3. A party may file a postjudgment motion in any action for divorce,
6 annulment or separate maintenance to obtain adjudication of any community
7 property or liability omitted from the decree or judgment as the result of fraud or
8 mistake. A motion pursuant to this subsection must be filed within 3 years after the
9 discovery by the aggrieved party of the facts constituting the fraud or mistake. The
10 court has continuing jurisdiction to hear such a motion and shall equally divide the
11 omitted community property or liability between the parties unless the court finds
12 that:

13 (a) The community property or liability was included in a prior equal
14 disposition of the community property of the parties or in an unequal disposition of
15 the community property of the parties which was made pursuant to written findings
16 of a compelling reason for making that unequal disposition; or

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

20 ➤ If a motion pursuant to this subsection results in a judgment dividing a defined
21 benefit pension plan, the judgment may not be enforced against an installment
22 payment made by the plan more than 6 years after the installment payment.

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

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

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

33 7. If the court adjudicates the property rights of the parties, or an agreement
34 by the parties settling their property rights has been approved by the court, whether
35 or not the court has retained jurisdiction to modify them, the adjudication of
36 property rights, and the agreements settling property rights, may nevertheless at any
37 time thereafter be modified by the court as a result of the filing of a motion to
38 amend the adjudication or agreement relating to the disposition of pension or
39 retirement benefits by the parties to the action or upon written stipulation signed
40 and acknowledged by the parties to the action, and in accordance with the terms
41 thereof.

42 8. If a decree of divorce, or an agreement between the parties which was
43 ratified, adopted or approved in a decree of divorce, provides for specified periodic
44 payments of alimony, the decree or agreement is not subject to modification by the
45 court as to accrued payments. Payments pursuant to a decree entered on or after
46 July 1, 1975, which have not accrued at the time a motion for modification is filed
47 may be modified upon a showing of changed circumstances, whether or not the
48 court has expressly retained jurisdiction for the modification. In addition to any
49 other factors the court considers relevant in determining whether to modify the
50 order, the court shall consider whether the income of the spouse who is ordered to
51 pay alimony, as indicated on the spouse's federal income tax return for the
52 preceding calendar year, has been reduced to such a level that the spouse is

1 financially unable to pay the amount of alimony the spouse has been ordered to
2 pay.

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

- 6 (a) The financial condition of each spouse;
- 7 (b) The nature and value of the respective property of each spouse;
- 8 (c) The contribution of each spouse to any property held by the spouses
9 pursuant to NRS 123.030;
- 10 (d) The duration of the marriage;
- 11 (e) The income, earning capacity, age and health of each spouse;
- 12 (f) The standard of living during the marriage;
- 13 (g) The career before the marriage of the spouse who would receive the
14 alimony;
- 15 (h) The existence of specialized education or training or the level of marketable
16 skills attained by each spouse during the marriage;
- 17 (i) The contribution of either spouse as homemaker;
- 18 (j) The award of property granted by the court in the divorce, other than child
19 support and alimony, to the spouse who would receive the alimony; and
- 20 (k) The physical and mental condition of each party as it relates to the financial
21 condition, health and ability to work of that spouse.

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

- 26 (a) Whether the spouse who would pay such alimony has obtained greater job
27 skills or education during the marriage; and
- 28 (b) Whether the spouse who would receive such alimony provided financial
29 support while the other spouse obtained job skills or education.

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

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

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

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

- 39 (1) Testing of the recipient's skills relating to a job, career or profession;
- 40 (2) Evaluation of the recipient's abilities and goals relating to a job, career
41 or profession;
- 42 (3) Guidance for the recipient in establishing a specific plan for training or
43 education relating to a job, career or profession;
- 44 (4) Subsidization of an employer's costs incurred in training the recipient;
- 45 (5) Assisting the recipient to search for a job; or
- 46 (6) Payment of the costs of tuition, books and fees for:
 - 47 (I) The equivalent of a high school diploma;
 - 48 (II) College courses which are directly applicable to the recipient's
49 goals for his or her career; or
 - 50 (III) Courses of training in skills desirable for employment.

51 12. For the purposes of this section, a change of 20 percent or more in the
52 gross monthly income of a spouse who is ordered to pay alimony shall be deemed
53 to constitute changed circumstances requiring a review for modification of the

1 payments of alimony. As used in this subsection, “gross monthly income” means
2 the total amount of income received each month from any source of a person who is
3 not self-employed or the gross income from any source of a self-employed person,
4 after deduction of all legitimate business expenses, but without deduction for
5 personal income taxes, contributions for retirement benefits, contributions to a
6 pension or for any other personal expenses.

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

8 125.155 Unless the action is contrary to a premarital agreement between the
9 parties which is enforceable pursuant to chapter 123A of NRS or is prohibited by
10 specific statute:

11 1. In determining the value of an interest in or entitlement to a pension or
12 retirement benefit provided by the Public Employees’ Retirement System pursuant
13 to chapter 286 of NRS or the Judicial Retirement Plan established pursuant to NRS
14 1A.300, the court ~~is~~

15 ~~— (a) Except as otherwise provided in paragraph (b),~~ shall base its
16 *determination upon the amount of the pension or retirement benefits to which the*
17 *participating party would have been entitled using the salary base and years of*
18 *service of the participating party on the date on which a decree of legal*
19 *separation or divorce is entered.*

20 ~~— (b) If the nonparticipating party is a homemaker:~~

21 ~~— (1) Shall base its determination upon the number of years or portion~~
22 ~~thereof that the contributing participating party was employed and received the~~
23 ~~interest or entitlement, beginning on the date of the marriage and ending on the date~~
24 ~~on which a decree of legal separation or divorce is entered; and~~

25 ~~— (2) Shall not base its determination upon any estimated increase in the~~
26 ~~value of the interest or entitlement resulting from a promotion, raise or any other~~
27 ~~efforts made by the party who contributed to the interest or entitlement as a result~~
28 ~~of his or her continued employment after the date of a decree of legal separation or~~
29 ~~divorce.]~~

30 2. The court may, in making a disposition of a pension or retirement benefit
31 provided by the Public Employees’ Retirement System or the Judicial Retirement
32 Plan, order that the benefit not be paid before the date on which the participating
33 party retires. To ensure that the party who is not a participant will receive payment
34 for the benefits, the court may:

35 (a) On its own motion or pursuant to an agreement of the parties, require the
36 participating party to furnish a performance or surety bond, executed by the
37 participating party as principal and by a corporation qualified under the laws of this
38 state as surety, made payable to the party who is not a participant under the plan,
39 and conditioned upon the payment of the pension or retirement benefits. The bond
40 must be in a principal sum equal to the amount of the determined interest of the
41 nonparticipating party in the pension or retirement benefits and must be in a form
42 prescribed by the court.

43 (b) On its own motion or pursuant to an agreement of the parties, require the
44 participating party to purchase a policy of life insurance. The amount payable under
45 the policy must be equal to the determined interest of the nonparticipating party in
46 the pension or retirement benefits. The nonparticipating party must be named as a
47 beneficiary under the policy and must remain a named beneficiary until the
48 participating party retires.

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

52 (d) On its own motion or pursuant to an agreement of the parties, allow the
53 participating party to provide any other form of security which ensures the payment

1 of the determined interest of the nonparticipating party in the pension or retirement
2 benefit.

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

8 (a) An agreement of the parties; or

9 (b) An order of the court,

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

13 **Sec. 4.** This act becomes effective ~~[on July 1, 2023.]~~ upon passage and
14 approval.