

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 902

An Act to amend and reenact §§ 51.1-130 and 51.1-700 through 51.1-705 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-707, relating to federal social security.

[H 1929]

Approved March 29, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-130 and 51.1-700 through 51.1-705 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 51.1-707 as follows:

§ 51.1-130. Resolution of governing body; approval by Board.

A. The governing body of a political subdivision may adopt a resolution requesting that its eligible employees become members of the retirement system. The governing body's resolution shall be submitted to the Board for approval, and acceptance of the employees in the retirement system shall be at the option of the Board. If the Board approves the resolution, eligible employees may become members of the retirement system. *The Board shall not approve the resolution unless the political subdivision has first entered into a plan of agreement, as defined in § 51.1-700, to extend benefits under the Social Security Act to its employees approved under the provisions of § 51.1-705.*

B. The governing body of any political subdivision approved for participation in the retirement system pursuant to subsection A may adopt a resolution that provides, on or after October 1, 1994, an additional retirement allowance not to exceed three percent of the applicable service or disability retirement allowances payable under §§ 51.1-155, 51.1-157, 51.1-206, 51.1-306, or § 51.1-308.

§ 51.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means the federal-state agreement between the federal agency and the Commonwealth entered into on February 16, 1952, as authorized by this chapter, for the purpose of extending coverage under the Social Security Act and any subsequent modifications thereto.

"Applicable federal law" refers to provisions of federal law, including federal regulations and requirements issued pursuant thereto, that provide for extending the benefits of the Social Security Act and the Federal Insurance Contributions Act to employees of states and their political subdivisions.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Employee tax" means the tax imposed by § 1400 of the 1939 Internal Revenue Code and § 3101 of the Internal Revenue Codes Code of 1954 and 1986, as amended.

"Employer" means the Commonwealth or a political subdivision thereof, as defined in this chapter.

"Employment" means employment as defined in the Social Security Act as modified under the terms of the agreement and pursuant to the authority granted the state social security administrator under § 51.1-707.

"Federal agency" means the federal officer, department, or agency charged on behalf of the federal government with the particular federal functions referred to in this chapter in connection with such term.

"Federal Insurance Contributions Act" means subchapter A of Chapter 9 of the Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the Internal Revenue Codes Code of 1954 and 1986, as amended.

"Local employee" means any officer or employee of a political subdivision and includes "special employees," which means a county or city treasurer, commissioner of revenue, attorney for the Commonwealth, clerk of court, sheriff, and a deputy or employee of any such officer.

"Modification" means an amendment to the original agreement to modify coverage for coverage groups or to extend coverage to additional coverage groups consistent with the provisions of Section 218 of the Social Security Act and this chapter.

"Plan of agreement" means an agreement between the state social security administrator and an employer for the purpose of extending the benefits of the Social Security Act to coverage groups within its employ.

"Political subdivision" includes an instrumentality of the Commonwealth or one or more of its political subdivisions, or of the Commonwealth and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the Commonwealth or a political subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the Commonwealth or a political subdivision. "Political subdivision" includes Indian tribes.

"Social Security Act" means the act of Congress approved August 14, 1935, Chapter 531, 49 Statutes 620, officially cited as the "Social Security Act," as such act has been and may be amended.

"State employee" means any person who is employed in the service of the Commonwealth but shall not include any member of the General Assembly or local employee.

"State social security administrator" means the Director of the Virginia Retirement System.

"Teacher" means any person who is regularly employed on a salaried basis as a professional or clerical employee of a county, city, or other local public school board.

"Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that part of such remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

§ 51.1-701. Rules and policies.

The ~~Board~~ state social security administrator shall ~~promulgate~~ adopt rules and ~~regulations~~ policies necessary or appropriate for the administration of this chapter.

§ 51.1-702. Federal-state agreement.

A. The ~~Board~~ state social security administrator, with the approval of the Governor, is hereby authorized to enter on behalf of the Commonwealth into an agreement with the federal agency to extend the benefits of the Social Security Act to employees of the Commonwealth and any political subdivision thereof, with respect to services specified in the agreement, which constitute employment. The agreement may contain such provisions relating to coverage, benefits, ~~contributions~~, effective date, modification of the agreement, administration, and other appropriate provisions as the ~~Board~~ state social security administrator and federal agency shall agree upon, but, except as may be otherwise required by applicable federal law as to the services to be covered, the agreement shall provide in effect that:

1. Benefits shall be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of the Social Security Act.

2. The ~~Commonwealth~~ employer shall pay to the federal agency Internal Revenue Service, at the time prescribed by applicable federal law, contributions with respect to wages equal to the *applicable* taxes which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

3. All services which constitute employment and are performed in the employ of the Commonwealth by state employees shall be covered by the agreement.

4. All services which (i) constitute employment, (ii) are performed in the employ of a political subdivision, and (iii) are covered by a plan of agreement which is in conformity with the terms of the agreement and has been approved by the ~~Board~~ state social security administrator, shall be covered by the agreement. Services rendered in the employ of a county, city, or other school board shall be covered by the agreement on the effective date specified therein not prior to January 1, 1951.

5. A political subdivision which is operating under a retirement system which it finances may continue the same or may apply for coverage of its employees under the agreement, or both.

B. The state social security administrator, with the approval of the Board, is authorized to submit and agree to modifications to the agreement relating to coverage, benefits effective dates, administration, and other appropriate provisions as the state social security administrator and the federal agency may agree upon.

§ 51.1-703. Interstate agreements.

Any instrumentality jointly created by ~~this~~ the Commonwealth and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (i) to enter into an agreement with the federal agency whereby the benefits of the Social Security Act shall be extended to employees of such instrumentality, (ii) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under subsection A of § 51.1-704 if they were covered by an agreement made pursuant to § 51.1-702, and (iii) to make payments to the ~~secretary of the treasury~~ Internal Revenue Service in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of § 51.1-702 and other provisions of this chapter.

§ 51.1-704. Contributions by state employees.

A. Every employee of the Commonwealth whose services are covered by an agreement entered into under § 51.1-702 shall pay contributions, with respect to wages, equal to the *applicable* taxes which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act.

B. The contribution required by this section shall be collected by the Commonwealth by deducting the amount of the contribution from wages, but failure to make such deduction shall not relieve the employee from liability for such contribution.

§ 51.1-705. Plans of agreement for coverage of employees of political subdivisions.

A. Any political subdivision of the Commonwealth which desires coverage for its employees, shall submit a plan of agreement for extending the benefits of the Social Security Act to its employees to the ~~Board~~ state social security administrator for approval. The ~~Board~~ state social security administrator

shall approve plans *of agreement* or amendments to plans *of agreement* that conform to ~~Board regulations~~ *the state social security administrator's rules and policies*, except that no plan *of agreement* or amendment shall be approved or adopted unless it:

1. Conforms with the requirements of the applicable federal law and with the agreement entered into under § 51.1-702.

2. Provides that all services which constitute employment and are performed in the employ of the political subdivision by any employees thereof shall be covered by the plan *of agreement*.

3. Specifies the source from which the funds necessary to make the payments required by subsection C of this section are expected to be derived and contains reasonable assurance that the source will be adequate for such purpose.

4. Provides for the proper and efficient administration of the plan *of agreement*.

5. Provides that the political subdivision shall make such reports, in such form and containing such information, as the ~~Board~~ *state social security administrator* may require and comply with such provisions as the ~~Board~~ *state social security administrator* or the federal agency may find necessary to ensure the correctness and verification of such reports.

B. The ~~Board~~ *state social security administrator* shall not finally refuse to approve a plan *of agreement* submitted under subsection A without reasonable notice and opportunity for hearing to each political subdivision affected ~~thereby~~.

C. Each political subdivision which has a plan *of agreement* approved under this section shall pay to the ~~federal agency~~ *Internal Revenue Service*, at such time or times as may be required by applicable federal law, contributions with respect to wages, equal to the *applicable* taxes which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that Act.

D. Every political subdivision required to make payments under subsection C is authorized to impose upon its employees, as to services which are covered by an approved plan *of agreement*, a contribution with respect to wages, not exceeding the amount of tax which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act and to deduct the amount of such contribution from wages. *Failure to make such deduction shall not relieve the employee from liability for such contribution.*

§ 51.1-707. Authority of state social security administrator.

In addition to the authority granted elsewhere under this chapter, the state social security administrator is hereby authorized to carry out all the functions required of it by the Social Security Act in connection with the agreement, including but not limited to:

1. Administer and maintain the agreement;

2. Negotiate modification to include additional coverage groups, correct errors in modifications, make elections relating to optional coverage for election workers, conduct referenda and identify additional political subdivisions which join a covered retirement system;

3. Maintain the agreement, modifications, dissolutions, and intrastate agreements in a secured location;

4. Provide the federal agency with notice and evidence of the legal dissolution of a covered employer or coverage group within an employer;

5. Resolve coverage and taxation questions related to the agreement with the federal agency and the Internal Revenue Service;

6. Negotiate with the federal agency to resolve social security contribution payment and wage reporting questions concerning wages paid before 1987;

7. Provide information to state and local public employers covered under agreements in accordance with the Social Security Act;

8. Provide information to state and local public employers in accordance with this chapter and the rules and regulations, policies, procedures, and standards regarding nonsection 218 entities; and

9. Carry out any and all other administrative duties necessary to administer the agreement.