

LEGISLATIVE BILL 820

Approved by the Governor February 1, 1990

Introduced by Labeledz, 5, Chairperson, Executive Board

AN ACT relating to paupers and public assistance; to amend sections 68-601 to 68-604, 68-608, 68-610, 68-612, 68-617, 68-618, 68-620, 68-622, and 68-631, Reissue Revised Statutes of Nebraska, 1943; to correct references to a repealed section; to eliminate sections relating to certain vendor payments and duties of the Revisor of Statutes; to harmonize provisions; and to repeal the original sections, and also sections 68-720 and 68-722, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 68-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-601. (1) In order to extend to the employees of the state and its political subdivisions and to the dependents and survivors of such employees; the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitations of sections 68-601 to 68-619 ~~68-618~~ and 68-621 to 68-630, that such steps be taken as to provide such protection to employees of the State of Nebraska and its political subdivisions on as broad a basis as is permitted under the ~~Social Security Act~~ act.

(2) In conformity with the policy of the Congress of the United States of America, it is hereby declared to be the policy of the State of Nebraska that the protection afforded employees in positions covered by retirement systems on the date the state agreement is made applicable to service performed in such positions; or receiving periodic benefits under such retirement systems at such time; will not be impaired as a result of making the agreement so applicable or as a result of legislative or executive action taken in anticipation or in consequence thereof; and ~~further~~; that the benefits provided by the Social Security Act and made available to employees of the State of Nebraska and of political subdivisions thereof or instrumentalities jointly

created by the state and any other state or states, who are or may be members of a retirement system, shall be supplementary to the benefits provided by such retirement system.

Sec. 2. That section 68-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-602. As used in For purposes of sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630, unless the context otherwise requires:

(1) Wages shall mean all remuneration for employment, as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term wages shall not include that part of such remuneration which, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that the act;

(2) Employment shall mean any service performed by an employee in the employ of the State of Nebraska or any political subdivision thereof, for such employer, except (a) service which, in the absence of an agreement entered into under sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630, would constitute employment as defined in the Social Security Act or (b) service which under the ~~Social Security Act~~ act may not be included in an agreement between the state and the Secretary of Health and Human Services entered into under sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630. Service which under the ~~Social Security Act~~ act may be included in an agreement only upon certification by the Governor in accordance with section 218(d)(3) of that the act shall be included in the term employment if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624;

(3) Employee shall include an officer of the state or a political subdivision thereof;

(4) State agency shall mean the Director of Administrative Services;

(5) Secretary of Health and Human Services shall include any individual to whom the Secretary of Health and Human Services has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such

administrator had delegated any such function;

(6) Political subdivision shall include an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is essentially legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) Social Security Act shall mean the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the Social Security Act, including regulations and requirements issued pursuant thereto, as such act has been amended or recodified to December 25, 1969, and may from time to time hereafter be amended or recodified; and

(8) Federal Insurance Contributions Act shall mean subchapter A of Chapter 9 of the ~~Federal~~ Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the ~~Federal~~ Internal Revenue Code of 1954, as such codes have been and may from time to time be amended or recodified, and the term employee tax shall mean the tax imposed by section 1400 of such code of 1939 and section 3101 of such code of 1954, as such codes have been and may be from time to time amended or recodified.

Sec. 3. That section 68-603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-603. The state agency, with the approval of the Governor, is hereby authorized to enter, on behalf of the State of Nebraska, into an agreement with the Secretary of Health and Human Services, consistent with the terms and provisions of sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute employment, as defined in section 68-602. The state agency, with the approval of the Governor, is further authorized to enter, on behalf of the State of Nebraska, into such modifications and amendments to such agreement with the Secretary of Health and Human Services as shall be consistent with the terms and provisions of sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630 if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to the State of Nebraska or any political subdivision thereof;

or to any employee of the State of Nebraska or any political subdivision thereof, provided by the Social Security Act, the Federal Insurance Contributions Act, or the employee tax. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification, and termination of the agreement, administration, and other appropriate provisions as the state agency and Secretary of Health and Human Services shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will 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 Title II of the Social Security Act;

(2) The state will pay to the Secretary of the Treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages as defined in section 68-602 equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act the Federal Insurance Contributions Act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein in the agreement, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that if a political subdivision made reports and payments for social security coverage of its employees to the Internal Revenue Service under the Federal Insurance Contributions Act in the mistaken belief that such action provided coverage for the employees, such agreement shall be effective as of the first day of the first calendar quarter for which such reports were erroneously filed;

(4) All services which constitute employment as defined in section 68-602 and are performed in the employ of the state by employees of the state shall be covered by the agreement;

(5) All services which constitute employment, as defined in section 68-602, are performed in the employ of a political subdivision of the state, and are

covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under sections 68-608 to 68-611 shall be covered by the agreement; ~~7 or services described in subdivisions (4) and (5) of this section;~~

(6) As modified, the agreement shall include all services described in either subdivision (4) or (5) ~~of this section~~ ~~7~~ or both of ~~these such~~ subdivisions, ~~of this section~~ and performed by individuals to whom section 218(c)(3)(c) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either subdivision (4) or (5) ~~of this section~~ ~~7~~ or both of ~~these such~~ subdivisions, ~~of this section~~ and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624.

Sec. 4. That section 68-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-604. Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the Secretary of Health and Human Services whereby the benefits of the federal old age and survivors' insurance system shall be extended to employees of such instrumentality, (2) 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 section 68-605 if they were covered by an agreement made pursuant to section 68-603, and (3) to make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such an agreement shall, to the extent practicable, be consistent with the terms and provisions of section 68-603 and other provisions of sections 68-601 to ~~68-619~~ ~~68-618~~ and 68-621 to 68-630.

Sec. 5. That section 68-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-608. Unless otherwise provided for by ~~the~~

provisions of sections 68-601 to 68-619 ~~68-618~~ and 68-621 to 68-630, each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision and is hereby further authorized to submit for approval by the state agency any modification or amendment to any then existing plan if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to such political subdivisions thereof, or to any employee of the political subdivision, in conformity with Title II of the ~~Social Security Act act~~. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless: (1) It is in conformity with the requirements of the ~~Social Security Act act~~ and with the agreement entered into under sections 68-603 and 68-604; (2) it provides that all services which constitute employment as defined in section 68-602 and are performed in the employ of the political subdivision by employees thereof will be covered by the plan; (3) it specifies the source or sources from which the funds necessary to make the payments required by subsection (1) of section 68-610 and by section 68-611 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose; (4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan; (5) it provides that the political subdivision will make such reports in such form and containing such information as the state agency may from time to time require and will comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of such reports; and (6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the ~~Social Security Act act~~.

Sec. 6. That section 68-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-610. (1) Each political subdivision as to which a plan has been approved under sections 68-608 to 68-611 or prepared under section 68-625, shall pay into the Contribution Fund, with respect to wages, as defined in section 68-602, at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under sections 68-603 and 68-604.

(2) Each political subdivision required to make payments under section 68-609 is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of sections 68-601 to 68-619 68-618 and 68-621 to 68-630, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages, as defined in section 68-602, not exceeding the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that the act, and to deduct the amount of such contribution from his or her wages as and when paid. Contributions so collected shall be paid into the Contribution Fund in partial discharge of the liability of such political subdivisions or instrumentality under subsection (1) of this section. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Sec. 7. That section 68-612, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-612. There is hereby established a revolving fund to be known as the Contribution Fund. Such fund shall consist of and there shall be deposited in such fund: (1) All contributions, interest, and penalties collected under sections 68-605 to 68-611; (2) all money appropriated ~~thereto to the fund~~ under sections 68-601 to 68-619 68-618; (3) any property or securities and earnings thereof acquired through the use of money belonging to the fund; (4) interest earned upon any money in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other money received for the fund from any other source. All money in the fund shall be mingled and undivided. Subject to the provisions of sections 68-601 to 68-619 68-618, the

state agency ~~is shall be~~ vested with full power, authority, and jurisdiction over the fund, including all money and property or securities belonging ~~thereto to~~ the fund, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of sections 68-601 to 68-619 such sections. Any money in the Contribution Fund fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259 72-1276.

Sec. 8. That section 68-617, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-617. The state agency shall make and publish such adopt and promulgate rules and regulations, not inconsistent with the provisions of sections 68-601 to 68-619 68-618 and 68-621 to 68-630, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under such sections. 68-601 to 68-619 and 68-621 to 68-630.

Sec. 9. That section 68-618, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-618. The state agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under sections 68-601 to 68-619 68-618 and 68-621 to 68-630.

Sec. 10. That section 68-620, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-620. Notwithstanding any of the provisions of tax levy limitations contained in any other law or city home rule charter, when any city or village of this state shall elect elects to accept the provisions of sections 68-601 to 68-619 68-618 and 68-621 to 68-630, relating to old age and survivors insurance, and enters into a written agreement with the state agency as provided in sections 68-601 to 68-619 and 68-621 to 68-630 such sections, the city or village shall levy a tax, in addition to all other taxes, in order to defray the cost of such city or village in meeting the obligations arising by reason of such written agreement, and ; PROVIDED, the revenue raised by such special levy shall be used for no other purpose.

Sec. 11. That section 68-622, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

68-622. (1) All employees of the State of Nebraska or any political subdivision thereof or any instrumentality jointly created by this state and any other state or states who have heretofore been excluded from receiving or qualifying for benefits under Title II of the Social Security Act because of membership in a retirement system may, when the provisions of sections 68-621 to 68-630 have been complied with, vote at a referendum upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement, ~~except~~ ~~7~~ ~~PROVIDED~~, that if such a referendum shall have been conducted and certified in accordance with the provisions of section 218(d)(3) of the Social Security Act, as amended in 1954, prior to May 18, 1955, then no further referendum shall be required, but this ~~provis~~ shall not prohibit the conducting of such further referendum.

(2) The Governor ~~is empowered to may~~ authorize a referendum, and ~~to~~ designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under the provisions of sections 68-601 to ~~68-619~~ 68-618 and 68-621 to 68-630.

Sec. 12. That section 68-631, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-631. Sections 68-601 to ~~68-619~~ 68-618 and any amendments thereto shall, except as ~~herein~~ otherwise provided in this section, be applicable to metropolitan utilities districts and employees and appointees of metropolitan utilities districts. The state agency contemplated in such sections is authorized to enter, on behalf of the State of Nebraska, into an agreement with any authorized agent of the United States Government for the purpose of extending the benefits of the Federal Old Age and Survivors' Insurance system, as amended by Public Law 761, approved September 1, 1954, to the appointees and employees of each metropolitan utilities district, and all of the appointees and employees covered by a contributory retirement plan are hereby declared to be a separate group for the purposes of referendum and subsequent coverage. Metropolitan

utilities districts are hereby declared to be political subdivisions of the state, as defined in section 68-602, and the Governor is authorized to appoint the board of directors of any metropolitan utilities district as the agency designated by him or her to supervise any referendum required to be conducted under the provisions of the Social Security Act and is authorized to make any certifications required by the Social Security Act the act to be made to the Secretary of Health and Human Services.

Sec. 13. That original sections 68-601 to 68-604, 68-608, 68-610, 68-612, 68-617, 68-618, 68-620, 68-622, and 68-631, Reissue Revised Statutes of Nebraska, 1943, and also sections 68-720 and 68-722, Reissue Revised Statutes of Nebraska, 1943, are repealed.