

CHAPTER 2

An Act to provide for the coverage of officers and employees of the State, and local governments, instrumentalities thereof, and other political subdivisions under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act; to provide for certain repeals; and to repeal certain acts.

[S 4]

Approved January 31, 1952

Be it enacted by the General Assembly of Virginia:

✓ 1. § 1. Declaration of Policy.—It is hereby declared to be the policy of the General Assembly, subject to the limitations of this act, that steps be taken to provide Social Security protection to employees of the State and local governments on the basis now permitted under applicable federal law.

§ 2. Definitions.—For the purposes of this act:

✓ (a) The term “wages” means 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 shall not include 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.

✓ (b) The term “employment” means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, whether it be regular or temporary, part-time or full-time, employment, except service which in the absence of an agreement entered into under this act would constitute “employment” as defined in Title II of the Social Security Act, or service which under the Social Security Act may not be included in an agreement by the State and the federal agency entered into under this act.

✓ (c) The term “employee” includes an officer of the State, or of one of its political subdivisions.

✓ (d) The term “teacher” means any person who is regularly employed on a salary basis as a professional or clerical employee of a county, city or other local public school board.

✓ (e) The term “State employee” means any person who is employed in the service of, and whose compensation is payable, in whole or in part, by the Commonwealth or any department, institution or agency thereof, and shall include trial justices, the Auditor of Public Accounts, the Director of the Division of Statutory Research and Drafting, the Clerk of the House of Delegates, and the Clerk of the Senate, but not (1) any officer elected by popular vote, and (2) a county or city treasurer, commissioner of the revenue, Commonwealth’s attorney, clerk of court, sheriff, sergeant or constable, and a deputy or employee of any such officer.

✓ (f) The term “local employee” means any employee of a political subdivision, and shall include a “special employee” which means a county or city treasurer, commissioner of the revenue, Commonwealth’s attorney, clerk of court, sheriff, sergeant or constable and a deputy or employee of any such officer.

✓ (g) The term “State agency” means the Board of Trustees of the Virginia Retirement System.

(h) The term "federal agency" means in each case such federal officer, department, or agency as is charged on behalf of the federal government, by or under the applicable federal law, with the particular federal functions referred to in this act in connection with such term.

(i) The term "political subdivision" includes 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 legally separate and distinct from the State or a political subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or a political subdivision.

(j) The term "applicable federal law" refers to such provisions of federal law, including federal regulations and requirements issued pursuant thereto as provide for extending the benefits of Title II of the Social Security Act to employees of states and their political subdivisions.

(k) The term "Social Security Act" means the act of Congress approved August fourteenth, one thousand nine hundred thirty-five, chapter five hundred thirty-one, forty-nine Statutes six hundred twenty, officially cited as the "Social Security Act", as such act has been and may from time to time be amended.

(1) The term "Federal Insurance Contributions Act" means Subchapter A of Chapter 9 of the Internal Revenue Code as such code has been and may from time to time be amended.

§ 3. Federal-State Agreement; Interstate Agreements.—(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the federal agency, consistent with the terms and provisions of this act, 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 § 2 of this act. 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 federal agency shall agree upon, but, except as may be otherwise required by or under applicable federal law 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 federal agency, at such time or times as may be prescribed by the applicable federal law or by regulation of the federal agency, contributions with respect to wages, as defined in § 2 of this act, equal to the sum of the 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) Such agreement shall be effective with respect to services performed after a date specified therein but shall in no event cover any such services performed prior to January one, nineteen hundred fifty-one.

(4) All services which constitute employment as defined in § 2 and are performed in the employ of the State by State employees shall be covered by the agreement.

(5) All services which (i) constitute employment as defined in § 2, and (ii) are performed in the employ of a political subdivision, and (iii) are covered by a plan which is in conformity with the terms of the agree-

ment and has been approved by the State agency under § 5, shall be covered by the agreement; provided that 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 one, nineteen hundred fifty-one; provided further that such services in the employ of a political subdivision, except such services in the employ of a county, city or other school board, shall not be covered if the governing body of the political subdivision by recorded vote of a majority of the members adopts by April one, nineteen hundred fifty-two, a resolution notifying the State agency that it does not desire coverage for its employees; provided further that such resolution may be rescinded subsequently by a recorded vote of a majority of such governing body, whereupon the provisions of this act shall apply to services performed in the employ of the political subdivision.

(6) A political subdivision which is operating under a retirement system which it finances may, as provided in (5) above, continue the same or may apply for coverage of its employees under the agreement; such application shall be made to the State agency accompanied by evidence of the repeal of such local retirement system which repeal provides for adequate safeguarding of vested rights acquired under such system.

(b) Interstate Instrumentalities. 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 Federal Security Administrator 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 4(a) if they were covered by an agreement made pursuant to subsection (a) of this section, and (3) to make payments to the Secretary of the Treasury 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 subsection (a) and other provisions of this act.

(c) Upon two years' advance notice in writing to the Administrator the State may terminate, effective at the end of a calendar quarter specified in the notice, its agreement hereunder with the Administrator either (1) in its entirety, but only if the agreement has been in effect from its effective date for not less than five years prior to the receipt of such notice; or (2) with respect to any coverage group as defined in the Social Security Act, but only if the agreement has been in effect with respect to such coverage group for not less than five years prior to the receipt of such notice.

§ 4. Contributions by State Employees.—(a) Every employee of the State whose services are covered by an agreement entered into under § 3 shall be required to pay for the period of such coverage, into the contribution fund established by § 7, contributions, with respect to wages, as defined in § 2 of this act, equal to the amount of tax which would be imposed by the "Rate of Tax" section of Part I of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service, or his entry upon such service, after the enactment of this act.

(b) The contribution imposed by this section shall be collected by the State by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution im-

posed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agency shall prescribe.

§ 5. Plans for Coverage of Employees of Political Subdivisions.—

(a) Each political subdivision of the State, except for those already having a locally financed retirement system and those which do not desire coverage and notify the State agency in accordance with § 3 (a) (5), shall 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 federal law, to employees of any such political subdivision. In the event any county, city or other school board or any other political subdivision fails to submit such plan to the State agency on or before April one, nineteen hundred fifty-two the State agency shall make and adopt a plan not inconsistent with the provisions of this act applicable to such county, city or other school board or other political subdivision. Each plan or any amendment thereof submitted to the State agency 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 plan or amendment shall be approved or adopted unless:

(1) It is in conformity with the requirements of the applicable federal law and with the agreement entered into under § 3.

(2) It provides that all services which constitute employment as defined in § 2 and are performed in the employ of the political subdivision by any employees thereof, shall be covered by the plan.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) 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 comply with such provisions as the State agency or the federal agency may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the State agency to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provisions 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 be consistent with applicable federal law.

(7) Any plan submitted by a political subdivision theretofore operating under a retirement system which it finances shall not be approved unless the plan contains evidence of repeal of such retirement system with adequate provision for safeguard of all vested rights which have arisen under the system.

(b) The State agency shall not finally refuse to approve a plan submitted under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to each political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages, as defined in § 2 of this act, 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

Apr. 1

Money

2800 -
1200
1600

280
120
160

280
120
160

280
120
160

agency under § 3.

(2) Every political subdivision required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, to impose upon its employees, as to services which are covered by an approved plan, a contribution with respect to wages, as defined in § 2 of this act, not exceeding the amount of tax which would be imposed by the "Rate of Tax" section of Part I of the Federal Insurance Contribution Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the State agency and after notice to the delinquent, be deducted from any non-carried moneys distributable to such subdivision by any department or agency of the State.

§ 6. Source of Contributions.—(a) In the case of State employees the employer contributions by the State shall be wholly paid by the State and shall begin as of January one, nineteen hundred fifty-one, or the beginning date of current employment whichever is the latest. State employees who are covered as of such latest date shall pay the employee contribution for coverage back to that date.

(b) In the case of local employees and teachers, contributions by the employing political subdivision shall be paid as of the time the agreement herein provided for specifies. Such agreement shall provide that the employee and teachers shall pay for back contributions; provided that the employer may by recorded resolution pay the back contributions for its employees and teachers or advance such sums as may be required to provide back contributions subject to repayment by the employees and teachers concerned. In the case of teachers, the State shall reimburse the employing political subdivision for the cost of the employer contribution.

(c) In the case of special employees the State shall reimburse the employing political subdivision for the cost of the employer contribution to the extent the State participates in paying the salary of the employee who is covered or to the extent it shares or would share in the excess receipts from such office. The special employee shall pay the employee contribution for back coverage; provided that the employer may by recorded resolution pay the back contributions for its employees and teachers or advance such sums as may be required to provide back contributions subject to repayment by the employees and teachers concerned.

§ 7. Contribution Fund.—(a) There is hereby established a special 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 hereunder. (2) All moneys appropriated thereto. (3) All moneys paid to the State pursuant to any agreement entered into under this act. (4) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund. (5) Interest earned upon any moneys in the fund. (6) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this act, the State agency is vested with full power, authority

and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof consistent with the provisions of this act.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall only be made for (i) payment of amounts required to be paid to the federal agency pursuant to an agreement entered into hereunder; and (ii) payment of refunds provided for herein.

(c) From the contribution fund the custodian of the fund shall pay to the federal agency such amounts and at such time or times as may be directed by the State agency in accordance with any agreement entered into under § 3 and applicable federal law.

(d) The State Treasurer shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the State agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State agency may prescribe pursuant thereto.

§ 8. Rules and Regulations.—The State agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

§ 9. Separability.—If any provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

2. Repeal.—All acts or parts of acts which are in conflict with the provisions of this act are hereby repealed to the extent of such conflict.

3. An emergency exists and this act is in force on and after February one, nineteen hundred fifty-two;