



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
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Memorandum

To: The Honorable Helio Melo
Chairman, House Finance Committee

The Honorable Daniel DaPonte
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: May 15, 2013

Subject: Amendments to FY 2014 Appropriations Act (13-H-5127)

The Governor requests that Article 4 – Relating to FICA Alternative Retirement Plan be replaced with the attached version. As a result of concerns raised in testimony on this article, this revised version clarifies that this new program would be for State of Rhode Island employees only and would not require municipal or school employees to participate.

If you have any questions regarding this revised article, please feel free to call me or my staff at 222-6300.

TAM:13-Amend08
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Eugene Gessow, Senate Fiscal Advisor
Kelly Mahoney, Director of Policy
Richard Licht, Director of Administration
Peter Marino, Director, Office of Management and Budget
Gregory Stack, Supervising Budget Analyst

ARTICLE 4

RELATING TO FICA ALTERNATE RETIREMENT PLAN

SECTION 1. Section 36-7-2 of the General Laws in Chapter 36-7 entitled "Federal Old-Age and Survivors' Insurance" is hereby amended to read as follows:

§ 36-7-2 Definitions. – For the purposes of §§ 36-7-1 – 36-7-31, 36-7-33.1, and 36-7-35, the following terms shall have the meanings indicated unless different meanings are clearly expressed or required by the context:

(1) "Agency of the state" shall mean:

(i) All departments, divisions, agencies, and instrumentalities of the state which are not juristic entities, legally separate and distinct from the state;

(ii) Civilian employees of the Rhode Island national guard; or

(iii) Any instrumentality of the state such as fire districts, water districts, water authorities, sewer commissions and authorities, housing authorities, or other instrumentality of the state which are a juristic entity and legally separate and distinct from the state and if the employees of the instrumentality are not by virtue of their relation to juristic entity employees of the state. Without limiting the generality of the foregoing, examples of those agencies would be the Kent County water authority, the Providence housing authority, the Blackstone Valley sewer district commission, and other like instrumentalities of the state.

(2) "City or town" shall mean:

(i) Any city or town of the state of Rhode Island, inclusive of any department, division, agency, board, commission, or bureau thereof;

(ii) Any instrumentality of a city or town which is a juristic entity and legally separate and distinct from the city or town and if its employees are not by virtue of their relation to the juristic entity employees of the city or town; or

(iii) Any instrumentality of two or more citizens and/or towns which is a juristic entity as provided in subdivision (ii) hereof.

(3) "IRC" shall mean the Internal Revenue Code of 1986, as amended.

~~(3)~~(4) "Coverage group" shall mean:

(i) All employees of the state other than those engaged in performing service in connection with a proprietary function;

(ii) All employees of a city or town other than those engaged in performing service in connection with a single proprietary function;

(iii) All employees of the state engaged in performing service in connection with a single proprietary function;

(iv) All employees of an agency of the state;

(v) All employees of a city or town of the state engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he or she performs service in connection with two (2) or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he or she shall be included in only one coverage group. The determination of the coverage group in which the employee shall be included shall be made in such manner as may be specified in the agreement. Members of retirement systems shall constitute separate coverage groups as provided in § 36-7-10.

~~(4)~~(5) "Employee" shall mean any officer or employee of any city, town, or agency of the state receiving salaries or wages for employment.

~~(5)~~(6) "Employment" shall mean any service performed by an employee for wages as a member of a coverage group as herein defined, including service of an emergency nature, service in any class or classes of elective positions and service in part-time positions, but excluding the following:

(i) Service in a position the compensation for which is on a fee basis;

(ii) Service performed by election officials or election workers for calendar year 2003 in which the remuneration paid for that service is less than one thousand two hundred fifty dollars

(\$1,250), and for each calendar year after 2003 in which the remuneration paid is less than the adjusted amount in accordance with section 218(c)(8)(B) of the Social Security Act;

(iii) Service which under the federal Social Security Act may not be included in an agreement between the state and the secretary entered into under this chapter;

(iv) Service which, in the absence of an agreement entered into under §§ 36-7-1 – 36-7-31, would constitute "employment" as defined in the federal Social Security Act. Service which under the federal Social Security Act may be included in an agreement only upon certification by the governor in accordance with § 218(d)(3) of the federal Social Security Act, 42 U.S.C. § 418(d)(3), shall be included in the term "employment" if and when the governor issues, with respect to that service, a certificate to the secretary, pursuant to § 36-7-19.

(B) Notwithstanding any of the foregoing, if pursuant to § 141 of P.L. 92-603, 42 U.S.C. § 418, the state agreement with the federal government referred to in § 36-7-3 is modified appropriately at any time prior to January 1, 1974, the term "employment" with respect to any coverage group specified in the modification shall, effective after the effective date specified in the modification, include services in designated part-time positions but not services performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at that school, college, or university.

(7) "FARP" shall mean the FICA Alternative Retirement Income Security Program as described in § 36-7-33.1.

(8) "FARP-eligible employee" shall mean any part-time, seasonal, or temporary employee of the State of Rhode Island who is ineligible for participation in the Employees' Retirement System of Rhode Island.

(9) "FARP part-time employee" shall mean an employee of the State of Rhode Island who works twenty (20) hours or less per week, in accordance with IRC standards.

~~(6)~~(10) "Federal Insurance Contributions Act" or "FICA" shall mean subchapter A of chapter 9 of the federal Internal Revenue Code of 1939, subchapters A and B of chapter 21 of the

federal Internal Revenue Code of 1954, and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1986 as those codes have been and may from time to time be amended; and the term "employee tax" shall mean the tax imposed by § 1400 of the code of 1939, § 3101 of the code of 1954, and § 3101 of the code of 1986.

~~(7)~~(11) "Federal Social Security Act", 42 U.S.C. § 301 et seq., shall mean the act of congress approved August 14, 1935, officially cited as the "Social Security Act", including any amendments thereto, and any regulations, directives, or requirements interpretative or implementive thereof.

~~(8)~~(12) "Part-time employment" shall mean any employment by those who work on a regularly scheduled basis regardless of hours.

~~(9)~~(13) "Retirement board" shall mean the retirement board as provided in chapter 8 of this title.

~~(10)~~(14) "Secretary", except when used in the title "secretary of the treasury", shall mean the secretary of health and human services and any individual to whom the secretary of health and human services has delegated any of his or her functions under the federal Social Security Act, 42 U.S.C. § 301 et seq., with respect to coverage under that act of employees of states and their political subdivisions.

~~(11)~~(15) "Sick pay" shall mean the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any sick pay) made to, or on behalf of, an employee or any of his or her dependents under a plan or system established by an employer which makes provision for his employees generally (or for his or her employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability.

~~(12)~~(16) "State" shall mean the state of Rhode Island.

~~(13)~~(17) "Wages" or "salaries" shall mean all compensation received by an employee for employment as defined herein, including the cash value of all remuneration received by an

employee in any medium other than cash, except that this term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq., would not constitute "wages" within the meaning of that act.

SECTION 2. Chapter 36-7 of the General Laws entitled "Federal Old-Age and Survivors' Insurance" is hereby amended by adding thereto the following section:

§ 36-7-33.1 FICA Alternative Retirement Income Security Program. – (a) For FARP eligible employees, the state shall establish the FICA Alternative Retirement Income Security Program. The FARP shall be administered in accordance with the following provisions:

(1) IRC compliance. The FARP shall be administered as a defined contribution plan under § 401(a) of the IRC, and shall provide retirement benefits as required under § 3121(b)(7)(F) of the IRC.

(2) Employee participation in the FARP - One-Time Opt-Out Exception. With the one exception described in (b) below, FARP-eligible employee participation in the FARP shall be mandatory. Each participant shall make mandatory payroll deduction contributions to the FARP equal to a minimum of seven and five tenths per cent (7.5%) of the employee's gross wages for each pay period. Any payroll deduction contributions made pursuant to the FARP shall not be included in the computation of federal income taxes withheld on behalf of any participant. Once implemented, the participants, and the state on behalf of the participants, shall not continue to make FICA contributions. The FARP shall be administered by the financial institution currently administering the 401(a) plan for the state employee retirement plan, as described in Title 36 Chapter 10.3.

(b) An otherwise FARP-eligible employee, who is employed by the state at the time this section takes effect, may opt to not participate in the FARP. An employee who opts to not participate in the FARP will continue to make FICA contributions and the state shall continue to make FICA contributions on behalf of the employee. An employee who opts to not participate in

the FARP may subsequently, without penalty, choose to participate in the FARP; provided, however, such employee must continue to participate in the FARP for as long as he or she is a FARP-eligible employee.

(c) Review by State investment commission. The state investment commission shall, from time to time, review and evaluate the reasonableness of the selected financial institution's fees and the performance of the selected financial institution's funds.

SECTION 3. This article shall take effect as of July 1, 2013.