

LEGISLATIVE BILL 209

Approved by the Governor May 21, 2021

Introduced by McDonnell, 5.

A BILL FOR AN ACT relating to retirement; to amend section 48-1401, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to treatment of deferred compensation by certain political subdivisions, state agencies, and the Public Employees Retirement Board; and to repeal the original section.

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

Section 1. Section 48-1401, Revised Statutes Cumulative Supplement, 2020, is amended to read:

48-1401 (1)(a) (1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such plan of deferred compensation may provide for the deferral of an individual's compensation on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials except as otherwise provided in this section.

(b) This section shall not authorize an entity excepted from this section pursuant to subdivision (1)(a) of this section to modify a plan of deferred compensation or establish a separate plan of deferred compensation. This section shall not require either the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems to modify a plan of deferred compensation established pursuant to sections 84-1504 to 84-1506 to allow for after-tax Roth contributions pursuant to a qualified Roth contributions program under section 402A of the Internal Revenue Code.

(2) All The compensation to be deferred under this section may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program authorized under this section shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan, including an individual's compensation deferred on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code, shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8)(a) (8) Any sum so deferred on a pretax basis shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual at the time of deferral.

(b) Any sum so deferred on an after-tax Roth contribution basis pursuant to a qualified Roth contribution program under section 402A of the Internal Revenue Code shall be included in the computation of any federal or state taxes withheld on behalf of any such individual at the time of deferral.

(9) The state, county, municipality, or other political subdivision,

instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10) All compensation deferred under the plan, including compensation deferred on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds shall become a part of the trust administered by the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems pursuant to sections 84-1504 to 84-1506. Nothing in this subsection shall require a plan of deferred compensation that is administered by the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems pursuant to sections 84-1504 to 84-1506 to provide for the ability of an individual to defer compensation on an after-tax Roth contribution basis pursuant to a qualified Roth contribution program under section 402A of the Internal Revenue Code.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

Sec. 2. Original section 48-1401, Revised Statutes Cumulative Supplement, 2020, is repealed.