

MINUTES OF THE KANSAS 2000 SELECT COMMITTEE.

The meeting was called to order by Chairperson Kenny Wilk at 1:30 p.m. on February 10, 2000 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Jim Wilson, Revisor of Statutes  
Janet Mosser, Committee Secretary

Conferees appearing before the committee:

Dr. Gary George, Assistant Superintendent, USD 233 - Olathe  
Roger Viola, Security Benefit Group  
Norm Wilks, Kansas Association of School Boards  
Alan Conroy, Legislative Research Department

Others attending: See attached list.

Chairperson Wilk opened the hearing on **HB 2874 - Allowing for school and community college employer contributions for tax sheltered annuity plans of employees.**

Gordon Self, Revisor of Statutes, briefed the committee on the contents of the bill.

Chairperson Wilk recognized Dr. Gary George, Assistant Superintendent, USD 233, Olathe, to address the committee (Attachment 1).

Roger Viola, Security Benefit Group, was recognized to address the committee (Attachment 2).

Norm Wilks, Kansas Association of School Boards, was recognized to address the committee (Attachment 3).

Questions and discussion followed testimony.

Chairperson Wilk closed the hearing on **HB 2874.**

Representative Campbell was recognized and introduced Theresa La Follette, one of four pages from each of the high schools in Olathe who were responsible for the organization, implementation, and administration of the first Youth Congress in Olathe last summer. Approximately 100 students participated in the Youth Congress.

Chairperson Wilk then directed the committee's attention to **HB 2605 - Kansas department of history and preservation created, transferring powers, duties and functions from state historical society.**

Chairperson Wilk recognized Nancy Holt, Chairperson of the Executive Board, Kansas State Historical Society, Inc., who explained the involvement of her organization in the preparation of the balloon for **HB 2605**. Her organization appreciated the opportunity to have input and would like to continue the dialog through the process of preparing the substitute bill. There is shared agreement on several points of interest to both the committee and her organization so the foundation is there to revise the bill. She felt comfortable that her organization and the committee could work together to achieve a bill that speaks to the accountability of the Kansas State Historical Society. The retention of governance that the not-for-profit Kansas State Historical Society, Inc. has for 125 years ably been responsible for, is of utmost importance to both societies.

Questions and discussion followed.

Alan Conroy, Legislative Research Department, reviewed a diagram highlighting some of the major changes and relationships between the not-for-profit Kansas State Historical Society, Inc. and the

CONTINUATION SHEET

proposed new state agency, the State Historical Society (Attachment 4).

Questions and discussion followed.

Representative Horst moved to adopt the balloon of amendments, and conceptually to include amendments to the remainder of the bill to make correct references to the names of agencies and offices, in the form of a substitute for HB 2605. The motion was seconded by Representative Campbell. The motion carried.

Representative Barnes moved to change the effective date from July 1, 2000 to July 1, 2001. The motion was seconded by Representative O'Brien. Discussion followed. Representative Barnes withdrew the motion. The second was withdrawn by Representative O'Brien.

Representative Barnes moved to enact the law change July 1, 2000 and build in a one year transition so that parts of the bill do not take effect until July 1, 2001. The motion was seconded by Rep. O'Brien.

Discussion followed.

Representative Wagle made a substitute motion to pass and print July 1, 2000 but that it not go into effect until January 1, 2001 and to change the date on hiring a director from 90 days to 120 days. The motion was seconded by Representative Sloan. Discussion followed. Representative Wagle withdrew the substitute motion. The second was withdrawn by Representative Sloan.

Discussion followed.

Representative Aurand made a substitute motion to leave the dates the same in the bill but extend the search period from 90 to 180 days. The motion was seconded by Representative Campbell. Representative Gatewood called the question and then withdrew the request and yielded to Representative Kirk. Discussion followed. Then Chairperson Wilk ruled that it appeared that the motion carried. Representative Kirk requested a division and a show of hands. Upon that vote, the division was eight in favor and eight against. The Chair voted in favor of the motion to break the tie. The motion carried with a vote of nine to eight.

Representative Osborne moved to change that the governor in all cases may appoint to the governor in all cases shall appoint from the list of nominees submitted. The motion was seconded by Representative Alldritt. The motion carried.

Representative Horst moved to report the substitute bill favorable as amended. The motion was seconded by Representative Campbell. The motion carried.

Chairperson Wilk announced the formation of a subcommittee on defined contribution plan legislation. Members will be Representatives Carmody, Campbell, Sharp, Kirk, and Wilk. The subcommittee will meet on Monday (February 14) at 1:30 p.m. in Room 526-S to work on a balloon for **HB 2718**.

Chairperson Wilk adjourned the meeting at 2:55 p.m.

The next meeting of the full committee is scheduled for February 15, 2000.



**Testimony for Kansas 2000 Select Committee  
February 10, 2000  
Dr. Gary George  
Olathe School District 233**

**Chairman Wilk and members of the Committee, thank you for allowing me to appear today and for taking up the question of matching contributions for employee tax sheltered investment plans. We also want to express our appreciation to Senator Karin Brownlee who requested this topic for interim study and to the Legislative Research staff for their assistance.**

**Last winter when we started investigating this topic, we found that legislation is needed that would specifically allow school districts to match an employee contribution to a 403b tax sheltered annuity plan.**

**Currently, in the Olathe School District, approximately 26% of our employees participate in a tax shelter plan. We believe this number could be much higher. We are asking for legislation that would permit school districts to contribute toward an employee's tax sheltered annuity. This match for our district would be a partial match with a cap on our participation to make it affordable. We see several advantages for the employee and school district.**

- 1. There would be tax advantages for the employee.**

- 2. More employees would participate in tax sheltered annuity plans.**
- 3. It would give school districts another benefit to attract new teachers and retain existing staff.**
- 4. It will help more employees be prepared for retirement.**
- 5. It would provide a supplement to KPERS retirement.**

**We have seen House Bill 2874. It would permit employees to reduce their salary and contribute to a tax sheltered investment. Further, this bill would allow the Board of Education to contribute to such employee's tax sheltered annuity an amount to match the employee's contribution.**

**The concept is good. However, we would like to clarify that we could not afford to match employees on a dollar-for-dollar basis. We would like to see legislation that would permit a board of education to contribute a percentage of what the employee contributes up to a maximum amount or cap established by the board. This, of course, would be subject to all the rules and regulations of the internal revenue code and the state.**

**In summary, we believe that this legislation would allow school districts to take an additional step to help our employees. We see a number of benefits to this legislation. We ask that you consider the concept and are hopeful that legislation can be enacted that accomplishes our aims. Thank you.**

Testimony of  
Roger K. Viola  
Senior Vice President, General Counsel  
and Secretary  
Security Benefit Group of Companies

House Kansas 2000 Select Committee  
House Bill 2874

February 10, 2000

Mr. Chairman, members of the Committee, my name is Roger Viola and I am pleased to appear before you today on behalf of the Security Benefit Group of Companies.

Security Benefit Life Insurance Company ("Security Benefit") is a Kansas life insurance company located in Topeka, Kansas with approximately \$10 billion in assets under management. Security Benefit offers fixed and variable annuities, money management services, retirement plans and, through its subsidiary broker/dealer, Security Distributors, Inc., a family of mutual funds. Security Benefit is a major player nationwide in the 403(b), tax-sheltered annuity business. It is our core business and I appear today to endorse H.B. 2874.

In recent years, many public school districts have instituted 403(b) matching plans. As the following pages detail, 403(b) matching programs have been adopted for the following reasons:

1. Compete with the private sector by offering a plan similar to a 401(k).
2. Provide additional retirement income.
3. Provide additional retirement assets to educators which can be an incentive for early retirement.
4. Provide additional economic benefit to those educational professionals who have reached a salary cap.



5. The matching plan can be provided on a discriminatory basis which will not disrupt current salary schedules.
6. The matching plan can be adopted without an additional bond referendum.
7. Employees see a specific dollar amount contributed into their accounts by the employer.
8. The matching program encourages employees to save for retirement.
9. School districts can adopt matching programs with vesting schedules to reduce employer cost.

## **The value of providing optional matching plan enabling legislation for Kansas Public School Districts.**

The recruitment and retention of quality personnel in Kansas school districts is becoming increasingly difficult. With low unemployment and intense competition for qualified, competent employees, Kansas school districts have difficulty attracting and retaining those individuals who provide a quality educational experience for Kansas students.

The private sector offers many economic incentives that place our school districts at a disadvantage.

In today's private sector, the addition of an employer provided matching (profit sharing) plan through a 401(k) plan is an extremely valued employee benefit.

Although, school districts can provide some variations of this plan, legislation would provide the framework for and definition of an employer sponsored matching retirement program (in addition to the current retirement plan provided through the Kansas State Retirement System) for their employees.

## **Why enabling legislation?**

- ◆ Provide uniform guidelines for plan design.
- ◆ Provide guidelines for coordination with current Kansas Teacher Retirement System.
- ◆ Provide universal plan document.
- ◆ Provide standards for product, investment choice offerings and administration.



**Q1. What types of plans are available?**

Current law allows school districts the option of providing two types of voluntary employee pre-tax savings options, Section 457 deferred compensation programs, 403(b) Tax Deferral Annuity Programs or both.

Currently almost 100% of Public Kansas School Districts provide 403(b) programs.

Because 457 plans have a lower minimum employee contribution limit, (\$8,000 per year maximum versus \$10,000 in 403(b)), less participation and have more restrictive retirement options; the 403(b) program is the logical choice.

**Q2. What is a 403(b) Employer Contributory Plan?**

It is a plan that accepts employer non-elective contributions, employer non-elective matching contributions and employee elective salary reduction contributions on a pre-tax basis. An employee/participant is allowed to make voluntary contributions to the plan through salary reduction. The employer is allowed to make employer non-elective contributions and/or employer non-elective matching contributions to the plan for its employees.[IRC §403(b)(1)(D), IRC §403(b)(12)(A)(i) and (ii)].

**Q3. Is a 403(b) Employer Contributory Plan an "in-addition-to" or "in-place-of" a standard salary reduction TSA arrangement?**

Generally, the 403(b) Employer Contributory Plan is used by employers as an "in addition to" its current unmatched salary reduction TSA arrangement. However, either approach is available. The decision to structure the benefit program using the "in addition to" or "in place of" approach is based on factors including savings or retirement plan philosophy, contracts and negotiations, supplemental or primary plan considerations, etc.

**Q4. Is a public school eligible for a 403(b) Employer Contributory Plan?**

Yes. A qualified employer includes public educational organizations such as primary, elementary, secondary (high schools), colleges and universities.  
[IRC §403(b)(1)(A)(ii), IRC §170(b)(1)(A)(ii) and Trea. Reg. §1.170A-9(b)(1)].

**Q5. Is a written plan document and summary plan description required under ERISA Title I for a 403(b) Employer Contributory Plan maintained by a public school?**

Even though a written plan document and summary plan description for a 403(b) employer contributory plan are generally required under ERISA Title I, governmental organizations are statutorily exempt from the application of ERISA Title I. Therefore, a written plan document and a summary plan description are not required. [ERISA §4(b)(1) and §3(32)].

**Q6. Even though a written plan document and summary plan description are not required, is it a good business practice to use both?**

To avoid confusion and misunderstanding, as well as to promote a professional approach to the 403(b) Employer Contributory Plan, it is strongly suggested that a summary plan description be used to communicate the plan to the employees. Additionally, it is highly recommended that a plan document be used to ensure correct communication, administration and on-going operation of the plan.

Under a master plan document, school districts within document parameters, establish features such as eligibility, minimum service, loans, hardship withdrawals, in-service withdrawals, as they pertain to the needs of the specific school district without regulation of the vesting requirements, filing requirements, and non-discrimination rules required in ERISA plans.

**Q7. Are employer and employee contributions to a 403(b) Employer Contributory Plan maintained by a public school (governmental organizations) subject to participation, coverage and nondiscrimination rules?**

Employer non-elective and matching non-elective contributions are not subject to the nondiscrimination requirements of IRC §401(a)(4) and §401(a)(5), minimum participation requirements of §401(a)(26), average contribution percentage test of §401(m) and coverage requirements of §410(b). However, they are subject to \$160,000 (as indexed) compensation limitation of IRC §401(a)(17).

Employee salary reduction contributions satisfy the nondiscrimination requirements of 403(b) if the salary reduction arrangement is available on a nondiscriminatory basis to all employees of the employer. In addition, these contributions are not subject to the average deferral percentage test. [IRC §403(b)(12)(C), IRC §403(b)(12)(A)(ii) and §401(k)(3)(G)].

**Q8. Which employees must be eligible to participate?**

The employee salary reduction contribution portion must be available on a nondiscriminatory basis to all employees of the employer. However, the following employees may be excluded: (1) employees who participate in a 457 plan, 401(k) plan or another 403(b) plan maintained by the employer; (2) employees whose contributions would be less than \$200; (3) nonresident aliens; (4) employees who normally work less than 20 hours per week; (5) employees covered by a collective bargaining agreement; and (6) employees who are students performing services. [IRC §403(b)(12)(A)(ii) and IRC §3121(b)(10)].

The employer contribution (non-elective and matching contributions) portion does not need to be made available on a nondiscriminatory basis to the employees of the employer. Accordingly, the plan can be as restrictive or as liberal as the employer desires. For example, only certain employees or group of employees could be eligible or the following employees could be excluded: (1) nonresident aliens; (2) employees who normally work less than 20 hours per week; (3) employees covered by a collective bargaining agreement; (4) employees who are students performing services; (5) employees under a certain age; and (6) employees with less than a certain number of years of service. [IRC §403(b)(12)(A)(i) and IRC §403(b)(12)(C)].

**Q9. Are all 403(b) plans of one employer combined or are the plans treated separately for the employee maximum annual contribution limit?**

Combined. If the employer maintains more than one 403(b) plan or arrangement, the employee combines the plans and arrangements in determining the exclusion allowance (maximum annual contribution).[IRC §403(b)(5)].

**Q10. What types of contributions are allowed in a 403(b) Employer Contributory Plan?**

Examples:

1. Plan A includes: Employer non-elective contributions  
Employer matching contributions  
Employee salary non-elective reduction contributions
2. Plan B includes: Employer matching contributions  
Employee salary reduction contributions
3. Plan C includes: Employer non-elective contributions  
Employee salary reduction contributions
4. Plan D includes: Employer non-elective contributions

[IRC §403(b)(12)(A)(i) and (ii)].

**Q11. Are employee salary reduction contributions subject to FICA and FUTA taxes?**

Yes. Even though employee salary reduction contributions are not currently includible in an employee's gross income for federal and state income tax purposes, the contributions are treated as wages for FICA and FUTA taxes. [IRC §3121(a)(5)(D) and IRC §3306(b)(5)(D)].

**Q12. Are employer non-elective contributions and employer matching contributions subject to FICA and FUTA taxes?**

No. Employer non-elective contributions and employer matching contributions made to 403(b) Employer Contributory Plan are not subject to FICA and FUTA taxes. [IRC §3121(a)(5)(D) and IRC §3306(b)(5)(D)].

**Q13. What is an employer non-elective contribution?**

A non-elective contribution is an amount contributed by the employer to each eligible employee's account under the plan. The amount is generally based on a percentage, determined by the employer, of the employee's compensation. The amount is in addition to the employee's salary. [IRC §403(b)(12)(A)(i)].

**Q14. What is an employer matching contribution?**

The employer matching contribution for each eligible employee is a percentage of the employee's salary reduction contribution. An example of a matching contribution is "employer will match 100% of the first 3% of compensation an employee contributes through salary reduction". This amount, like the employer non-elective contribution, is in addition to the employee's salary. [IRC §403(b)(12)(A)(i)].

**Q15. What is an employee salary reduction contribution?**

An employee salary reduction contribution made by an eligible employee is a voluntary contribution, made pursuant to a salary reduction agreement and generally stated as a percentage of the employee's compensation per pay period. [IRC §403(b)(12)(A)(ii)].

**Q16. How are the 403(b) Employer Contributory Plan and the employer's current Voluntary Salary Reduction TSA Arrangement coordinated?**

The school's program has two main components: (1) 403(b) Employer Contributory Plan and (2) Voluntary Salary Reduction TSA Arrangement.

The 403(b) Employer Contributory Plan offers the employee the opportunity (1) to make a voluntary salary reduction contribution to the plan; (2) receive an employer matching contribution based on the employee's salary reduction contribution to the plan (match is not based on any contribution to the Voluntary Salary Reduction TSA Arrangement made outside the plan); and (3) receive an employer non-elective contribution if the option is elected by the employer.

The Voluntary Salary Reduction TSA Arrangement is the current TSA and offers the employee the opportunity to continue to make salary reduction contributions in addition to deposits into the matching plan.

**Q17. Can a school district establish a vesting schedule for employer contribution?**

Yes. Although employee deposits in a 403(b) plan are always 100% vested in the employee's name, the school district may establish a vesting schedule for employer deposits. The vesting schedule, because of NON-ERISA status has unlimited permutations.

NOTE: When an employee leaves a plan and is not fully vested; the amount reverting back to the employer is a forfeiture. These forfeitures can be legislated to reduce the cost of future school district deposits into the plan.

The employer matching and employer non-elective contributions can vest 100% immediately or a graded vesting schedule based on years of service can apply. A vesting schedule rewards long-term employees, helps to retain employees and reduces the employer's contribution cost.

Example. Sherry terminates employment after 3 years of service with Shaw School District; her account has \$2,000 of employee salary deferrals and \$1,000 of employer matching contributions; the plan applies a 5-year graded vesting schedule (20% in year 1; 40% in year 2; 60% in year 3; 80% in year 4; 100% in year 5) to the employer matching contributions in her account. Upon termination, Sherry will receive a total of \$2,600 determined as follows: \$2,000 of salary deferrals (100% immediately vested) + \$600 of employer matching ( $\$1,000 \times 60\% = \$600$ ). The balance of \$400 will be forfeited. [ERISA §204]



### **Q18. Who owns the annuity contracts?**

The Voluntary Salary Reduction TSA uses an individual contract owned by the participant/employee or a group contract owned by the employer with certificates issued to the participants/employees. The 403(b) Employer Contributory Plan uses a group allocated contract owned by the employer with certificates issued to the participants/employees.

### **Q19. What are the benefits of a 403(b) Employer Contributory Plan?**

Benefits:

- Design flexibility allows employer non-elective and/or matching contributions as well as employee salary reduction contributions.
- Contributions by employer or employee are not currently taxed to the employee.
- Earnings accumulate and compound on a tax-deferred basis until distributed.
- Employer pays no FICA or FUTA taxes on employer contributions.
- Employee pays no FICA taxes on employer contributions.
- Allowable discrimination provides plan structure to meet needs of the employer.
- Employers can easily change/modify the plan to meet economic developments.

### **Q20. What are the advantages to the employee of a 403(b) Employer Contributory Plan?**

Advantages:

- Contributions and earnings accumulate and compound tax-deferred resulting in a larger account.
- Larger account generates additional income allowing retirement at an earlier age.
- Increased retirement income offers higher standard of living.
- Matching contribution encourages employee to participate in own retirement funding.
- Bridges income gap until state retirement plan or social security starts.
- Employer contributions are not subject to FICA avoiding lower take-home pay.
- Deposits are made on a "Pre-Tax" basis.
- All contributions and earnings are not taxed until withdrawn allowing for increased accumulation through compounding.
- Flexibility available through account portability.

**Q21. What are the advantages to the EMPLOYER of a 403(b) Employer Contributory Plan?**

Advantages:

- Funding for employer contributions to the plan may be easier to obtain than annual salary increases for the employees.
- Cost of plan contributions is lower than salary increases since employer does not pay FICA and FUTA on contributions.
- Employer-provided contributions program enhances employees' perception of employer attracting and retaining quality employees.
- Encourages early retirement by providing increased income at retirement, which establishes a predictable turnover trend.
- Allowable discrimination (age, years of service, etc.) offers structures to meet needs of the employer such as turnover and low cost plan funding.
- Legal cap on contributions and determinable expense help contain budget costs.
- Vesting schedule available that favors long-term service, helping employer retain experienced employees.
- Employer owns and controls the accounts restricting employees' access to account funds.

**Q22. Can the legislation determine program features:**

Yes, the legislation can create program parameters including but not limited to:

- ◆ Limiting the companies eligible to provide the program.
- ◆ Establishing standards for the product providers.
- ◆ Requiring product provider to provide guarantees such as:
  - Maximum Exclusions Allowance Calculation
  - Minimum interest rates
  - Required equity account offerings
  - Minimum standards regarding transfers within products
  - Loans
  - Hardship withdrawals
  - No annual fees to participants
  - Annuity options (as well as lump sum) to correspond to State Teacher Retirement System and the other retirement systems associated with school employees
- ◆ Offering benefit sensitivity
- ◆ Establishing investments option parameters



**Q23. Is legislation needed?**

Because tax dollars are utilized to fund such programs, regulation and structure through appropriate legislation appears to be an appropriate course of action.

Enclosures:

- State of Minnesota 403(b) matching plan legislation

This document has been amended. Use UPDATE.  
See SCOPE for more information.

MINNESOTA STATUTES ANNOTATED  
RETIREMENT  
CHAPTER 356. RETIREMENT SYSTEMS, GENERALLY

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Current through End of 1998 1st Sp. Sess.

356.24. Supplemental pension or deferred compensation plans, restrictions upon government units

Subdivision 1. Restriction; exceptions. (a) It is unlawful for a school district or other governmental subdivision or state agency to levy taxes for, or contribute public funds to a supplemental pension or deferred compensation plan that is established, maintained, and operated in addition to a primary pension program for the benefit of the governmental subdivision employees other than:

- (1) to a supplemental pension plan that was established, maintained, and operated before May 6, 1971;
  - (2) to a plan that provides solely for group health, hospital, disability, or death benefits;
  - (3) to the individual retirement account plan established by chapter 354B;
  - (4) to a plan that provides solely for severance pay under section 465.72 to a retiring or terminating employee;
  - (5) for employees other than personnel employed by the state university board or the community college board and covered by the board of trustees of the Minnesota state colleges and universities supplemental retirement plan under chapter 354C, if provided for in a personnel policy of the public employer or in the collective bargaining agreement between the public employer and the exclusive representative of public employees in an appropriate unit, in an amount matching employee contributions on a dollar for dollar basis, but not to exceed an employer contribution of \$2,000 a year per employee;
    - (i) to the state of Minnesota deferred compensation plan under section 352.96; or
    - (ii) in payment of the applicable portion of the premium on a tax-sheltered annuity contract qualified under section 403(b) of the Internal Revenue Code, [FN1] if purchased from a qualified insurance company, and if the employing unit has complied with any applicable pension plan provisions of the Internal Revenue Code with respect to the tax-sheltered annuity program during the preceding calendar year; or
  - (6) for personnel employed by the state university board or the community college board and not covered by clause (5), to the supplemental retirement plan under chapter 354C, if provided for in a personnel policy or in the collective bargaining agreement of the public employer with the exclusive representative of the covered employees in an appropriate unit, in an amount matching employee contributions on a dollar for dollar basis, but not to exceed an employer contribution of \$2,000 a year for each employee.
- (b) A qualified insurance company is a company that:
- (1) meets the definition in section 60A.02, subdivision 4;
  - (2) is licensed to engage in life insurance or annuity business in the state;
  - (3) is determined by the commissioner of commerce to have a rating within the top two rating categories by a recognized national rating agency or organization that regularly rates insurance companies; and

(4) is determined by the state board of investment to be among the ten applicant insurance companies with competitive options and investment returns on annuity products. The state board of investment determination must be made on or before January 1, 1993, and must be reviewed periodically. The state board of investment may retain actuarial services to assist it in this determination and in its periodic review. The state board of investment may annually establish a budget for its costs in any determination and periodic review processes. The state board of investment may charge a proportional share of all costs related to the periodic review to those companies currently under contract and may charge a proportional share of all costs related to soliciting and evaluating bids in a determination process to each company selected by the state board of investment. All contracts must be approved before execution by the state board of investment. The state board of investment shall establish policies and procedures under section 11A.04, clause (2), to carry out this paragraph.

(c) A personnel policy for unrepresented employees or a collective bargaining agreement may establish limits on the number of vendors under paragraph (b), clause (5), that it will utilize and conditions under which the vendors may contact employees both during working hours and after working hours.

Subd. 2. Limit on certain contributions or benefit changes. No change in benefits or employer contributions in a supplemental pension plan to which this section applies after May 6, 1971, is effective without prior legislative authorization.

#### CREDIT(S)

#### 1991 Main Volume

Laws 1971, c. 222, § 1. Amended by Laws 1980, c. 600, § 7, eff. April 24, 1980; Laws 1981, c. 224, § 172, eff. May 19, 1981; Laws 1988, c. 605, § 9, eff. April 25, 1988; Laws 1988, c. 709, art. 11, § 6, eff. July 1, 1988; Laws 1989, c. 319, art. 12, § 3.

#### 1999 Electronic Update

Amended by Laws 1992, c. 464, art. 1, § 42; Laws 1992, c. 464, art. 2, § 1; Laws 1992, c. 487, § 4; Laws 1993, c. 192, § 90, eff. May 15, 1993; Laws 1993, c. 239, art. 3, § 1, eff. July 1, 1993; Laws 1993, c. 300, § 12, eff. May 21, 1993; Laws 1995, c. 141, art. 3, § 16; Laws 1995, c. 141, art. 4, § 7, eff. July 1, 1995; Laws 1995, c. 212, art. 4, § 64.

[FN1] 26 U.S.C.A. § 403(b).

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

#### 1999 Electronic Update

#### 1992 Legislation

Laws 1992, c. 464, art. 1, § 42, and Laws 1992, c. 464, art. 2, § 1, corrected citations.

Laws 1992, c. 487, § 4, designated existing text as subds. 1 and 2; and, in subd. 1, permitted payment of the applicable portion of the premium on a tax sheltered annuity contract qualified under § 403(b) of the federal Internal Revenue Code, when purchased from a qualified insurance company, in par. (a), cl. (4), subcl. (ii), added par. (b), defining "qualified insurance company", and added par. (c), authorizing the establishment of limits on the number of vendors under par. (b), cl. (4).

#### 1993 Legislation

Laws 1993, c. 192, § 90, and Laws 1993, c. 300, § 12, both rewrote in an identical manner subd. 1, par. (b), cl. (4), which formerly read:

"(4) is determined by the state board of investment to be among the ten applicant insurance companies with competitive options and investment returns on annuity products. The state board of investment determination must be made on or before January 1, 1993, and must be reviewed periodically. The state board of investment shall retain actuarial services to assist it in this determination. The state board of investment shall establish a budget for its costs in the determination process and shall charge a proportional share of that budget to each insurance company selected by the state board of investment. All contracts must be approved before execution by the state board of investment. The state board of investment shall establish policies and procedures under section 11A.04, clause (2), to carry out this paragraph."

Laws 1993, c. 239, art. 3, § 1, in subd. 1, par. (a) corrected citations in cls. (2) and (5).

#### 1995 Legislation

Laws 1995, c. 141, art. 3, § 16, in subd. 1, rewrote par. (a), which formerly read:

"(a) It is unlawful for a school district or other governmental subdivision or state agency to levy taxes for, or contribute public funds to a supplemental pension or deferred compensation plan that is established, maintained, and operated in addition to a primary pension program for the benefit of the governmental subdivision employees other than:

"(1) to a supplemental pension plan that was established, maintained, and operated before May 6, 1971;

"(2) to a plan that provides solely for group health, hospital, disability, or death benefits, to the individual retirement account plan established by sections 354B.01 to 354B.05;

"(3) to a plan that provides solely for severance pay under section 465.72 to a retiring or terminating employee;

"(4) for employees other than personnel employed by the state university board or the community college board and covered by section 354B.07, subdivision 1, to:

"(i) the state of Minnesota deferred compensation plan under section 352.96; or

"(ii) payment of the applicable portion of the premium on a tax sheltered annuity contract qualified under section 403(b) of the federal Internal Revenue Code, purchased from a qualified insurance company; if provided for in a personnel policy or in the collective bargaining agreement of the public employer with the exclusive representative of public employees in an appropriate unit, in an amount matching employee contributions on a dollar for dollar basis, but not to exceed an employer contribution of \$2,000 a year per employee; or

"(5) for personnel employed by the state university board or the community college board and covered by sections 352D.02, subdivision 1a, and 354B.07, subdivision 1, to the supplemental retirement plan under sections 354B.07 to 354B.09, if provided for in a personnel policy or in the collective bargaining agreement of the public employer with the exclusive representative of the covered employees in an appropriate unit, in an amount matching employee contributions on a dollar for dollar basis, but not to exceed an employer contribution of \$2,000 a year for each employee."

Laws 1995, c. 141, art. 3, § 21, provides in part that § 16 (amending this section) is effective on May 11, 1995, and applies to tax-sheltered annuity programs receiving employer matching contributions in operation at any time during the 1995 calendar year.

Laws 1995, c. 141, art. 4, § 7, in subd. 1, par. (a), corrected citations and substituted a reference to the higher education board supplemental plan under chapter 154C for a reference to § 354B.07, subd. 1.

Laws 1995, c. 141, art. 4, § 26, effective July 1, 1995, provides:

"(a) Nothing in sections 7 to 17 [amending § 356.24, subd. 1, and enacting §§ 354B.20, 354B.21, 354B.22, 354B.23, 354B.24, 354B.25, 354B.26, 354B.30, 354C.10, and 354C.11, respectively] is intended to remove any current participant in the individual retirement account plan from future coverage by that plan for continued employment in the

same employment position or to add any person to individual retirement account plan coverage or eligibility who was not eligible for that coverage under the laws in effect before July 1, 1995.

"(b) Nothing in sections 7 to 17 may be construed to disqualify any period of employment covered by the individual retirement account plan or to disqualify any contributions to the credit of participants in the individual retirement account plan as reflected in plan records as of June 30, 1995."

Laws 1995, c. 141, art. 4, § 27, effective July 1, 1995, provides:

"(a) Nothing in this recodification article is intended to affect the eligibility for coverage or the coverage by the supplemental retirement plan of any person covered by that plan on June 30, 1995.

"(b) Nothing in this recodification article may be construed to disqualify any contributions to the credit of any person covered by the supplemental retirement plan as reflected in plan records as of June 30, 1995."

Laws 1995, c. 212, art. 4, § 64, par. (c), instructed the revisor of statutes to change the term "higher education board," and similar terms to "board of trustees of the Minnesota state colleges and universities," or similar terms.

#### 1991 Main Volume

Laws 1971, c. 222 was approved by the governor upon May 6, 1971.

The 1980 amendment added "nor to a plan which provides for the payment of severance pay as authorized by section 465.72 to a retiring or terminating employee" at the end of the section.

Laws 1980, c. 600, § 21, provides:

"Any payments or agreements for payments of severance pay made or authorized by a county, city, township, school district or other governmental subdivision prior to the effective date of this section which are within the limitations contained in sections 7 and 8 are hereby validated."

The 1981 amendment revised the section which previously provided:

"Upon passage of this section, it shall be unlawful for a school district or other governmental subdivision or state agency to levy taxes for, or contribute public funds to a supplemental pension or deferred compensation plan which is maintained and operated in addition to a primary pension program for the benefit of the governmental subdivision employees. This section shall not apply to supplemental pension plans which are maintained and operated prior to passage of this section, except that, any changes in benefits or employer contributions after the passage of this section shall be made pursuant to legislative authorization. This section does not apply to plans that provide only for group health, hospital, disability, or death benefits, nor to a plan which provides for the payment of severance pay as authorized by section 465.72 to a retiring or terminating employee."

Laws 1988, c. 605, made nonsubstantive changes as well as adding the provisions reading: "to the state of Minnesota deferred compensation plan under section 352.96, if provided for in a personnel policy or in a collective bargaining agreement of the public employer with the exclusive representative of public employees in an appropriate unit, in an amount matching employee contributions on a dollar for dollar basis, but not to exceed an employer contribution of \$2,000 a year per employee".

Laws 1988, c. 709, art. 11, § 6 inserted "to the individual retirement account plan established by sections 354B.01 to 354B.05".

The 1989 amendment in par. (a) in cl. (4) added "for employees other than personnel employed by the state university board or the community college board and covered by section 136.80, subdivision 1," and added cl. (5).

#### LIBRARY REFERENCES

## 1991 Main Volume

Municipal Corporations ↪ 220(9).  
 Schools ↪ 63(5).  
 WESTLAW Topic Nos. 268, 345.  
 C.J.S. Municipal Corporations § 727.  
 C.J.S. Schools and School Districts §§ 118, 149, 150.

## NOTES OF DECISIONS

## Primary pension plan 2

## Purpose 1

## Salary 3

## Severance pay 4

## Sick leave 5

Purpose of this section is to prohibit establishment of new supplemental pension plans, or amendment of existing plans in such manner as to alter contributions or benefits of such plans; legislative intent was not to affect continued operation of existing plans according to terms embodied therein. Op. Atty. Gen., 175, July 20, 1971.

## 1. Purpose

## 2. Primary pension plan

Term "primary pension plan" refers to statutory pension plan to which employees of school districts, governmental subdivisions or state agencies may belong. Op. Atty. Gen., 175, July 20, 1971.

## 3. Salary

Payments on behalf of city manager for purchase of annuity or deferred compensation benefits must be made from and not in addition to the manager's "salary". Op. Atty. Gen., 59-a-41, Feb. 22, 1984.

## 4. Severance pay

A contract entered into prior to May 7, 1971, the effective date of this section, providing benefits not subsequently authorized by this section, would not be subject to the limitations of § 465.72 inasmuch as that statute had reference to benefits payable prior to, rather than at, the normal retirement date. Op. Atty. Gen., 107-A-3, March 20, 1979.

## 5. Sick leave

County board could not obligate itself to pay to county highway and welfare department employees a benefit in the form of a payment for unused accumulated sick leave at the time of retirement unless such contract were entered into prior to May 7, 1971, the effective date of this section. Op. Atty. Gen., 107-A-3, March 20, 1979.

M. S. A. § 356.24

MN ST § 356.24

END OF DOCUMENT



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ASSOCIATION



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TESTIMONY ON HOUSE BILL 2874 BEFORE THE HOUSE KANSAS 2000  
SELECT COMMITTEE

By  
Norman D. Wilks  
Kansas Association of School Boards  
February 10, 2000

Mr. Chairman and Members of the Committee, on behalf of the members of the Kansas Association of School Boards, we wish to express our general support for the changes proposed in House Bill 2874. The changes to allow employer contributions will allow boards of education to shape compensation packages to benefit both employees and the school district.

We believe that the match should be according to provisions or criteria as established by the board and allow the board to make a proportional match. As a result, we would suggest changes to paragraph (b) as follows: The board of education of any school district and the board of trustees of any community college may contribute to such employees tax shelter annuity an amount determined annually by the board, not to exceed the employees contribution as provided in subsection (a).

Thank you for your consideration of this matter and our suggested changes.

Kansas 2000 Select Committee  
Meeting Date 2-10-00  
Attachment 3



# HOUSE BILL NO. 2605

