

**40-2305. Plans for coverage of employees of political subdivisions; contributions; late penalty; recovery of delinquent payments; tax levy, use of proceeds.** (a) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending or modifying the benefits of title II of the social security act, in conformity with the applicable provisions of such act, to employees, including any holding the office or position of policeman or fireman, of such political subdivisions. Whenever the governor certifies to the secretary of health and human services that, as a result of a referendum held pursuant to subsection (b) of K.S.A. 40-2305a, and amendments thereto, school employees who are covered by the state system for retirement and payment of annuities to school employees as provided for in article 55 of chapter 72 of the Kansas Statutes Annotated, and amendments thereto, the conditions specified in section 218(d)(3) of the social security act have been met with respect to such employees under such separate retirement system, the state agency shall adopt a plan or amend a plan for extending such benefits to school employees, as defined in subsection (d) of K.S.A. 72-5501, and amendments thereto, of every political subdivision and such political subdivision, and its employees shall be liable under such plan or amended plan to the same extent as if the political subdivision had submitted the plan and the same had been approved by the state agency. 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 federal social security act and with the agreement entered into pursuant to K.S.A. 40-2303, and amendments thereto; (2) it provides that all services which constitute employment as defined in subsection (b) of K.S.A. 40-2302, and amendments thereto, and are performed in the employ of the political subdivision by employees thereof, including any holding the office or position of policeman or fireman, shall be covered by the plan, except that it may exclude services performed by other individuals to whom section 218(c)(3)(C) of the federal social security act is applicable; (3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) of this section and by subsection (d) of this section 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 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 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.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a) of this section, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(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 subsection (a) of K.S.A. 40-2302, and amendments thereto, 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 K.S.A. 40-2303, and amendments thereto. Delinquent contributions shall be subject to a late penalty to defray the costs of the collection efforts in the amount of \$10 for each contribution period. All moneys received for the late penalty imposed by this paragraph (1) of subsection (c) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the municipal accounting services recovery fund.

(2) Each political subdivision required to make payments under paragraph (1) of this subsection (c) is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to such employee's wages, as defined in subsection (a) of K.S.A. 40-2302, and amendments thereto, not exceeding the amount of the employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from such employee's 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 or instrumentality under paragraph (1) of this subsection (c). 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) of this section may, with interest at the rate prescribed by federal statute or regulation for delinquent social security remittances, be recovered by the state agency by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department or agency of the state or may be offset against any funds of the subdivision held by the county treasurer upon certification by the state agency of such liability to the officials of the subdivision and to the county treasurer. Upon receipt of the state agency's certification, the county treasurer shall remit from the funds of such political subdivision the amount certified. The county treasurer shall notify the subdivision of the amount remitted to the state agency.

(e) Each political subdivision, other than an instrumentality of the state, shall pay its contributions required under the provisions of subsection (c) of this section from the same fund that the wages for which such contribution is made are paid or from any other funds available to it for such purpose. Each political subdivision, except an instrumentality of the state or a school district, which is by law authorized to levy taxes for other purposes, annually at the time of its levy of taxes for other purposes, may levy a tax, which may be in addition to all other taxes authorized by law, for the purpose of making its contributions under subsection (c) of this section and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, which tax together with any other funds available to such political subdivision for such purpose shall be sufficient to enable it to make such contributions. Any taxing subdivision authorized to levy a tax under this subsection, in lieu of levying such tax, may pay the required employer contribution from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102, and amendments thereto. All contributions of such political subdivisions shall be transmitted to the state agency in the manner as the state agency shall by rules and regulations provide, and, upon receipt of the same, the state agency shall remit such contributions to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the contribution fund created by K.S.A. 40-2307, and amendments thereto.

**History:** L. 1951, ch. 464, § 5; L. 1953, ch. 237, § 1; L. 1955, ch. 246, § 5; L. 1961, ch. 238, § 1; L. 1978, ch. 296, § 14; L. 1978, ch. 163, § 4; L. 1979, ch. 52, § 153; L. 1981, ch. 196, § 1; L. 1983, ch. 157, § 1; L. 1988, ch. 356, § 109; L. 1990, ch. 66, § 40; L. 2001, ch. 5, § 118; July 1.