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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 sections 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.](#)

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

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

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

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

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

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

14 ~~(4)~~(5) "Employee" shall mean any officer or employee of any city, town, or agency of the
15 state receiving salaries or wages for employment.

16 ~~(5)~~(6) "Employment" shall mean any service performed by an employee for wages as a
17 member of a coverage group as herein defined, including service of an emergency nature, service
18 in any class or classes of elective positions and service in part-time positions, but excluding the
19 following:

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

21 (ii) Service performed by election officials or election workers for calendar year 2003 in
22 which the remuneration paid for that service is less than one thousand two hundred fifty dollars
23 (\$1,250), and for each calendar year after 2003 in which the remuneration paid is less than the
24 adjusted amount in accordance with section 218(c)(8)(B) of the Social Security Act;

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

27 (iv) Service which, in the absence of an agreement entered into under sections 36-7-1 –
28 36-7-31, would constitute "employment" as defined in the federal Social Security Act. Service
29 which under the federal Social Security Act may be included in an agreement only upon
30 certification by the governor in accordance with section 218(d)(3) of the federal Social Security
31 Act, 42 U.S.C. section 418(d)(3), shall be included in the term "employment" if and when the
32 governor issues, with respect to that service, a certificate to the secretary, pursuant to section 36-
33 7-19.

34 (B) Notwithstanding any of the foregoing, if pursuant to section 141 of P.L. 92-603, 42

1 U.S.C. section 418, the state agreement with the federal government referred to in section 36-7-3
2 is modified appropriately at any time prior to January 1, 1974, the term "employment" with
3 respect to any coverage group specified in the modification shall, effective after the effective date
4 specified in the modification, include services in designated part-time positions but not services
5 performed in the employ of a school, college, or university by a student who is enrolled and
6 regularly attending classes at that school, college, or university.

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

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

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

14 ~~(6)~~(10) "Federal Insurance Contributions Act" or "FICA" shall mean subchapter A of
15 chapter 9 of the federal Internal Revenue Code of 1939, subchapters A and B of chapter 21 of the
16 federal Internal Revenue Code of 1954, and subchapters A and B of chapter 21 of the federal
17 Internal Revenue Code of 1986 as those codes have been and may from time to time be amended;
18 and the term "employee tax" shall mean the tax imposed by section 1400 of the code of 1939,
19 section 3101 of the code of 1954, and section 3101 of the code of 1986.

20 ~~(7)~~(11) "Federal Social Security Act", 42 U.S.C. section 301 et seq., shall mean the act of
21 congress approved August 14, 1935, officially cited as the "Social Security Act", including any
22 amendments thereto, and any regulations, directives, or requirements interpretative or
23 implementive thereof.

24 ~~(8)~~(12) "Part-time employment" shall mean any employment by those who work on a
25 regularly scheduled basis regardless of hours.

26 ~~(9)~~(13) "Retirement board" shall mean the retirement board as provided in chapter 8 of
27 this title.

28 ~~(10)~~(14) "Secretary", except when used in the title "secretary of the treasury", shall mean
29 the secretary of health and human services and any individual to whom the secretary of health and
30 human services has delegated any of his or her functions under the federal Social Security Act, 42
31 U.S.C. section 301 et seq., with respect to coverage under that act of employees of states and their
32 political subdivisions.

33 ~~(11)~~(15) "Sick pay" shall mean the amount of any payment (including any amount paid
34 by an employer for insurance or annuities, or into a fund to provide for any sick pay) made to, or

1 on behalf of, an employee or any of his or her dependents under a plan or system established by
2 an employer which makes provision for his employees generally (or for his or her employees
3 generally and their dependents) or for a class or classes of his employees (or for a class or classes
4 of his employees and their dependents), on account of sickness or accident disability.

5 ~~(12)~~(16) "State" shall mean the state of Rhode Island.

6 ~~(13)~~(17) "Wages" or "salaries" shall mean all compensation received by an employee for
7 employment as defined herein, including the cash value of all remuneration received by an
8 employee in any medium other than cash, except that this term shall not include that part of the
9 remuneration which, even if it were for "employment" within the meaning of the Federal
10 Insurance Contributions Act, 26 U.S.C. section 3101 et seq., would not constitute "wages" within
11 the meaning of that act.

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

14 **36-7-33.1. FICA Alternative Retirement Income Security Program. -- (a) For FARP**
15 **eligible employees, the state shall establish the FICA Alternative Retirement Income Security**
16 **Program. The FARP shall be administered in accordance with the following provisions:**

17 (1) IRC compliance. The FARP shall be administered as a defined contribution plan
18 under section 401(a) of the IRC, and shall provide retirement benefits as required under section
19 3121(b)(7)(F) of the IRC.

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

30 (b) An otherwise FARP-eligible employee, who is employed by the state at the time this
31 section takes effect, may opt to not participate in the FARP. An employee who opts to not
32 participate in the FARP will continue to make FICA contributions and the state shall continue to
33 make FICA contributions on behalf of the employee. An employee who opts to not participate in
34 the FARP may subsequently, without penalty, choose to participate in the FARP; provided,

1 however, such employee must continue to participate in the FARP for as long as he or she is a
2 FARP-eligible employee.

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

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