

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 268
FINAL READING

Introduced by Urban Affairs Committee: Friend, 10, Chairperson;
Connealy, 16; Janssen, 15; Landis, 46; Schimek, 27

Read first time January 10, 2005

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to the Volunteer Emergency Responders
2 Recruitment and Retention Act; to amend sections 35-1310,
3 35-1312, 35-1320, 35-1324, and 35-1330, Reissue Revised
4 Statutes of Nebraska; to change and eliminate provisions
5 relating to administration of service award programs; and
6 to repeal the original sections.

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

1 Section 1. Section 35-1310, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 35-1310. Each volunteer department serving a city,
4 village, or rural or suburban fire protection district conducting a
5 service award benefit program shall designate one member of the
6 department to serve as the certification administrator. The
7 designation of such individual as the certification administrator
8 shall be confirmed and approved by the governing body of that city,
9 village, or rural or suburban fire protection district. It shall
10 be the duty of the certification administrator to keep and maintain
11 records on the activities of all volunteer members and participants
12 and award points for such activities based upon the standard
13 criteria for qualified active service. Each volunteer member and
14 participant shall be provided by the certification administrator
15 with notice of the total points he or she has accumulated during
16 each six-month period in which the program is in operation. No
17 later than ~~one month~~ thirty days following the ~~first~~ end of each
18 year of service, ~~during which a service award benefit program has~~
19 ~~been in existence,~~ the certification administrator shall forward to
20 the governing body of the city, village, or fire protection
21 district a report specifying the name of each volunteer member of
22 the volunteer department, the number of points accumulated by each
23 volunteer during the year of service, and the names of those
24 volunteers who have qualified as active emergency responders,
25 active rescue squad members, or active volunteer firefighters. At
26 the time of the filing of the report, each volunteer member of the
27 department whose name does not appear on the list of qualified
28 volunteers shall be informed of such fact in writing by the

1 certification administrator by mailing the same by first-class
2 United States mail, postage prepaid. No sooner than forty-five
3 days nor later than sixty days after the end of each year of
4 service, ~~following the first year of service during which a service~~
5 ~~award benefit program has been in existence,~~ the governing body of
6 the city, village, or fire protection district conducting the
7 program shall formally approve and certify the list of those
8 volunteers who have qualified as active emergency responders,
9 active rescue squad members, or active volunteer firefighters. Any
10 volunteer member whose name does not appear on the approved
11 certification list may, within fifteen days after the filing of the
12 report, appeal in writing to the governing body to have his or her
13 name added to the certification list by filing the same with the
14 clerk of the governing body. The appeal shall set out the basis
15 upon which the volunteer believes he or she should be placed upon
16 the certification list and shall specify whether or not a public
17 hearing is requested. If requested by the appealing party, the
18 governing body shall hold a public hearing on the appeal prior to
19 or upon the date upon which the certification list is approved.
20 The governing body shall designate an appropriate person to
21 investigate the appeal and report on its merits to the governing
22 body which shall, by majority vote, add the name of the person to
23 the certification list if there is sufficient evidence to indicate
24 that the individual performed sufficient activities or services to
25 qualify as an active emergency responder, active rescue squad
26 member, or active volunteer firefighter as provided in the standard
27 criteria for qualified active service during the prior year of
28 service. The decision of the governing body may be appealed to the

1 district court of the county in which the volunteer member resides.

2 Sec. 2. Section 35-1312, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 35-1312. (1) Except as provided in section 35-1313,
5 service award benefits provided under a service award benefit
6 program shall be paid to a participant only upon the date he or she
7 reaches the age of sixty-five or upon the first day of the first
8 year of service after the first year of service in which such
9 participant was not on the certification list of his or her
10 volunteer department, whichever is later, if the participant has
11 been an active emergency responder, active rescue squad member, or
12 active volunteer firefighter for the number of years of service
13 specified by the city, village, or fire protection district
14 administering the service award benefit program.

15 (2) Upon the completion of the specified years of service
16 as determined by the city, village, or rural or suburban fire
17 protection district, the participant shall have a nonforfeitable
18 interest in the annual accounts of all years of service in which
19 such participant is listed on the certification list. Such
20 interest is equivalent to a proportionate equal share with all
21 other participants listed on the certification list for a year of
22 service in (a) the principal amount of all contributions deposited
23 into the annual account for such year of service and (b) all income
24 derived therefrom.

25 (3) Nothing in this section shall be construed as
26 preventing a city, village, or rural or suburban fire protection
27 district from establishing a vesting schedule under which a stated
28 proportion of a participant's interest in his or her annual

1 accounts becomes nonforfeitable upon completion of a specified
2 number of years of service, subject to sections 35-1313, 35-1323,
3 and 35-1329.

4 Sec. 3. Section 35-1320, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 35-1320. (1) Any city, village, or rural or suburban
7 fire protection district conducting a service award benefit program
8 shall, within thirty days after the adoption of a program, provide
9 all volunteers providing its local political subdivision with
10 emergency response services with a summary of the program's
11 provisions, including the program's provisions relating to
12 participation and the applicable standard criteria for qualified
13 active service, the manner in which nonforfeitable interests in
14 annual accounts are obtained, the amount of all contributions to
15 the annual account, and any other information relating to
16 participation in the program. The city, village, or rural or
17 suburban fire protection district shall provide copies of the
18 summary to all new volunteer members and to any applicant for
19 membership to the volunteer department.

20 (2) Any summary of a program's provisions provided
21 pursuant to this section shall include the following statement and
22 such additional explanation as is deemed appropriate by the
23 sponsoring city, village, or rural or suburban fire protection
24 district: Due to definitive interpretations of the relevant
25 provisions of the Internal Revenue Code, in order to insure that
26 funds deposited on behalf of a participant are not taxable to the
27 participant in that or any subsequent year in which they are
28 nonforfeitable, any funds held by a city, village, or rural or

1 suburban fire protection district on behalf of qualifying program
2 participants will be subject to the claims of creditors of the
3 city, village, or rural or suburban fire protection district
4 conducting the program in the event of the insolvency or bankruptcy
5 of that city, village, or district.

6 (3) Any material modification to the program shall be
7 provided in writing to all participants within thirty days after
8 its adoption by the city, village, or rural or suburban fire
9 protection district.

10 (4) No later than December 1 of each year following the
11 end of the first full year of service after the adoption of a
12 service award benefit program, the city, village, or rural or
13 suburban fire protection district shall provide to each participant
14 listed in the certification list for that year of service a summary
15 and copy of the relevant documents relating to the contributions to
16 the annual account for such year of service. By December 1 of each
17 subsequent year, the city, village, or rural or suburban fire
18 protection district shall provide each participant who appears for
19 the first time in the certification list for the immediately
20 preceding year of service with the same information.

21 (5) All documents relating to any program, the
22 certification lists, the annual accounts, the investment of the
23 funds of the annual accounts, the contributions to the account and
24 the income derived therefrom, and the identity of the administrator
25 of the annual accounts shall be public records within the meaning
26 of section 84-712.01.

27 Sec. 4. Section 35-1324, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 35-1324. (1) All deposits made to annual accounts under
2 any service award benefit program conducted pursuant to the
3 Volunteer Emergency Responders Recruitment and Retention Act, all
4 property and rights purchased with such deposits, and all
5 investment income, property, or rights attributable to such
6 deposits shall be held in a grantor trust for the exclusive benefit
7 of participants and their beneficiaries within the meaning of
8 subtitle A, chapter 1, subchapter J, part I, subpart E of the
9 Internal Revenue Code, as defined in section 49-801.01, established
10 by the city, village, or rural or suburban fire protection district
11 conducting the program, until such time as payments shall be paid
12 under the terms of a program and the act. All such assets held in
13 trust shall be invested by the city, village, or rural or suburban
14 fire protection district conducting the program in certificates of
15 deposit, in time deposits, and in any securities in which the state
16 investment officer is authorized to invest pursuant to the Nebraska
17 Capital Expansion Act and the Nebraska State Funds Investment Act
18 and as provided in the authorized investment guidelines of the
19 Nebraska Investment Council in effect on the date the investment is
20 made.

21 (2) ~~All deposits made to annual accounts under service~~
22 ~~award benefit programs~~ The trust established pursuant to subsection
23 (1) of this section shall provide that all deposits made to the
24 trust, all property and rights purchased with the deposits, and all
25 investment income, property, or rights attributable to such
26 deposits under the Volunteer Emergency Responders Recruitment and
27 Retention Act, until paid to participants or their beneficiaries,
28 are subject to the claims of the creditors of the city, village, or

1 rural or suburban fire protection district conducting the program
2 in the event of the insolvency or bankruptcy of the city, village,
3 or rural or suburban fire protection district. With respect to any
4 participant or beneficiary, the trust established pursuant to
5 subsection (1) of this section shall not be subject to garnishment,
6 attachment, levy, the operation of bankruptcy or insolvency laws,
7 or any other process of law whatsoever and shall not be assignable.

8 (3) The trust established pursuant to subsection (1) of
9 this section may contain such other terms and provisions as are
10 necessary to insure that the participation by a participant in the
11 service award benefit program does not result in taxable income to
12 such participant under any provision of the Internal Revenue Code,
13 as defined in section 49-801.01, until such time as service award
14 benefits are paid pursuant to section 35-1312 or 35-1313.

15 Sec. 5. Section 35-1330, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 35-1330. All unallocated contributions forfeited
18 pursuant to section 35-1314 shall be used by the city, village, or
19 rural or suburban fire protection district to finance the cost of
20 conducting the service award benefit program or, at the discretion
21 of the city, village, or rural or suburban fire protection
22 district, to reduce the current or future deposits to the service
23 award benefit program.

24 Sec. 6. Original sections 35-1310, 35-1312, 35-1320,
25 35-1324, and 35-1330, Reissue Revised Statutes of Nebraska, are
26 repealed.