

**AUTHORIZING MASSACHUSETTS AND VERMONT TO  
DIVIDE THEIR RETIREMENT SYSTEMS FOR SOCIAL  
SECURITY PURPOSES**

August 5, 1958.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

**REPORT**

[To accompany H. R. 11346]

The Committee on Finance, to whom was referred the bill (H. R. 11346) to amend title II of the Social Security Act to include Massachusetts among the States which are permitted to divide their retirement systems into two parts so as to obtain social security coverage, under State agreement, for only those State and local employees who desire such coverage, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

**I. PURPOSE OF BILL**

H. R. 11346, as passed by the House of Representatives, would add the State of Massachusetts to the list of States permitted to extend coverage under the old age, survivors, and disability insurance provisions of the Social Security Act to only those members of a retirement system who desire such coverage, provided all persons who later become members are covered.

Your committee has amended the bill in two respects. First, Vermont would also be added to this list of States. Second, the bill has been amended to accord to those persons not originally choosing coverage under this provision of the law an additional opportunity to elect such coverage.

**II. GENERAL EXPLANATION OF COMMITTEE BILL**

The Social Security Amendments of 1956 included a provision permitting eight States (Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, and Wisconsin) and the Territory of Hawaii to divide their retirement systems into two parts so as to obtain old-age, survivors, and disability insurance coverage, under

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the States' coverage agreements with the Department of Health, Education, and Welfare, for only those State and local government employees who desire such coverage, provided all future entrants into the retirement system are covered under old-age, survivors, and disability insurance. In 1957 this provision was extended to four additional States (California, Connecticut, Minnesota, and Rhode Island) and to all interstate instrumentalities.

Your committee's bill would extend this provision to the States of Massachusetts and Vermont.

Under present law, when a State or local government retirement system is divided to provide social-security coverage for those members who want coverage, the members who fail to choose coverage do not get a second chance to obtain it. Your committee believes that there is a need for legislation which would allow individuals not initially in the group desiring coverage to have a limited additional period of time to consider, or reconsider, whether they wish to come under old-age, survivors, and disability insurance. Problems have arisen in some instances because individuals who would have expressed a desire for coverage if they had an opportunity to do so did not have this opportunity for various reasons, such as absence from work because of illness. In other cases, persons who indicated that they did not desire social-security coverage later changed their minds.

Your committee added an amendment to the bill which would afford an additional opportunity for obtaining social-security coverage to individuals who were included in the group of persons not desiring coverage. Under this amendment, a State would be permitted to modify its coverage agreement with the Department of Health, Education, and Welfare at any time before 1960, or, if later, within 1 year after coverage is approved for the group in question, to transfer these people to the group desiring coverage. Such a transfer would be made only in the case of individuals who filed a written request with the State before the date of approval by the Secretary of the modification proposing the transfer.

The report of the Department of Health, Education, and Welfare on the latter amendment as originally introduced follows:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*Washington, August 5, 1958.*

HON. HARRY S. BYRD,  
*Chairman, Committee on Finance,  
United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN. This letter is in response to your request of May 26, 1958, for a report on amendment (5-22-58—A) to H. R. 11346, a bill to amend title II of the Social Security Act to include Massachusetts among the States which are permitted to divide their retirement systems into two parts so as to obtain social-security coverage under State agreements, for only those State and local employees who desire such coverage.

This amendment would modify the provision of the Social Security Act which permits a State to extend old-age and survivors insurance coverage to only those members of a retirement system who desire such coverage. As you know, the Social Security Act permits 12 specified States, the Territory of Hawaii, and any interstate instrumentality to divide a retirement system into two parts and provide

social-security coverage for the part consisting of the positions of members who desire such coverage. Services performed by the members who desire coverage may then be covered under old-age and survivors insurance, and once these services are covered, the services of all persons who in the future become members of the retirement system must also be covered. The proposed amendment would have the effect of permitting a second opportunity to obtain old-age and survivors insurance coverage for certain individuals who originally were in the group of persons not desiring coverage. The amendment would permit a State to modify its coverage agreement with the Department of Health, Education, and Welfare at any time before December 31, 1959, to transfer additional persons to the group desiring old-age and survivors insurance coverage. An individual could be thus transferred only if he files with the State agency before the date of approval of such modification a written request for such transfer.

There appears to be a need for legislation which would allow individuals not initially in the group desiring coverage to have a limited additional period of time to consider, or reconsider, whether they wish to come under old-age and survivors insurance. Problems have arisen in some instances because individuals who would have expressed a desire for coverage if they had an opportunity to do so did not have this opportunity for various reasons, such as illness, or absence from their home. In other cases persons who initially indicated that they would not desire old-age and survivors insurance coverage later came to feel that they had made an error of judgment (based in some cases on erroneous information or on a lack of information) and would like to have another opportunity to secure old-age and survivors insurance coverage.

While we favor the objective of this amendment we wish to suggest two changes for consideration by your committee. Under present law, only persons who are actually members of a State or local retirement system may secure old-age and survivors insurance coverage under the provisions which permit certain States to provide old-age and survivors insurance coverage for only those retirement system members who desire such coverage. Thus, under present law, individuals who are eligible for membership in the State or local system but who have not actually become members of the system cannot secure old-age and survivors insurance coverage under this provision. Moreover, such persons cannot secure old-age and survivors insurance coverage as a member of a nonretirement system coverage group. It appears that the amendment might permit these persons to secure old-age and survivors insurance coverage at the time that a second opportunity to come under old-age and survivors insurance is afforded the members of the system who did not avail themselves of the first opportunity. We believe that it would be desirable to permit persons who are eligible for membership in a State or local retirement system but are not members of such system to secure old-age and survivors insurance coverage under the provisions in question. It seems anomalous, however, to permit these individuals to secure old-age and survivors insurance under an arrangement which is intended to afford a second opportunity to choose coverage if they are not permitted to secure old-age and survivors insurance coverage when the retirement system is originally divided to provide coverage for the individuals

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desiring it. Accordingly, we suggest that the amendment be changed to provide that where a retirement system is divided in order to provide coverage for persons under the system who desire such coverage, the option of coming under social security be given not only to members of the retirement system but also to persons who are eligible for membership in the system but who have not elected to become members.

The second change we suggest concerns the time limitation (December 31, 1959) provided for completion of action taken pursuant to the amendment. It is to be expected that situations like those that the amendment is intended to remedy will occur after 1959. Accordingly, we suggest that the amendment be modified to provide that a modification of a State-Federal coverage agreement to include additional persons in the group desiring coverage could be made at any time before January 1, 1960, or before the end of 1 year after the date on which the coverage for the group in question was approved, whichever date is later.

We would favor the enactment of the provisions of the amendment to H. R. 11346, if it is modified as we suggest.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,  
*Assistant Secretary.*

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

#### SECTION 218 OF THE SOCIAL SECURITY ACT

##### Voluntary Agreements for Coverage of State and Local Employees

##### Purpose of Agreement

SEC. 218. (a) \* \* \*

##### Positions Covered by Retirement Systems

(d) (1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5) (A)). The preceding sentence shall not be applicable to any

service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5) (A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not, including positions excluded by or pursuant to paragraph (5)), if the governor of the State certifies to the Secretary of Health, Education, and Welfare that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c) (3) (C)).

(5) (A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3) (C) of such subsection, such exclusion may not include any services to which such paragraph (3) (C) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this paragraph, the term "institutions of higher learning" includes junior colleges and teachers' colleges. For the purposes of this subsection, any retirement system established by the State of California, Connecticut, Florida, Georgia, *Massachusetts*, Minnesota, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, *Vermont*, Washington, Wisconsin, or the Territory of Hawaii, or any political subdivision of any such State or Territory, which, on, before, or after the date of enactment of this sentence is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions

of members of such system who do not desire such coverage, shall, if the State or Territory so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. The position of any individual which is covered by any retirement system to which the preceding sentence is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of such sentence or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title. *In the case of any retirement system divided pursuant to the fourth sentence of this paragraph, the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1960 or, if later, the expiration of one year after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer.* For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or the Territory of Hawaii which covers positions of employees of such State or Territory who are compensated in whole or in part from grants made to such State or Territory under title III, there shall be deemed to be, if such State or Territory so desires, a separate retirement system with respect to any of the following: (A) the positions of such employees; (B) the positions of all employees of such State or Territory covered by such retirement system who are employed in the department of such State or Territory in which the employees referred to in clause (A) are employed; or (C) employees of such State or Territory covered by such retirement system who are employed in such department of such State or Territory in positions other than those referred to in clause (A).

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