

No. 1998-162

AN ACT

HB 1628

Amending the act of March 30, 1811 (P.L.145, No.99), entitled "An act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public monies, and for other purposes," further providing for deferred compensation plans of the Commonwealth and political subdivisions; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section VIII.2 of the act of March 30, 1811 (P.L.145, No.99), entitled "An act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public monies, and for other purposes," added November 6, 1987 (P.L.394, No.81), is amended to read:

Section VIII.2.—(a) The Commonwealth of Pennsylvania, and any political subdivision *or municipal authority* of this Commonwealth, may establish eligible deferred compensation plans pursuant to section 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) for their elected or appointed officers and employees who perform services for the Commonwealth [or], a political subdivision *or municipal authority*.

(b) As used in this section, "Commonwealth officer" or "employee" means:

(1) any individual who is an elected or appointed official of the Commonwealth;

(2) any individual employed by the Commonwealth; or

(3) any individual employed by the Commonwealth where it is deemed an employer-employee relationship exists. The State Employees' Retirement Board shall make the final determination of who is a Commonwealth officer or employee.

"Compensation" means pay for normal services rendered.

(c) Any eligible deferred compensation plans established for Commonwealth officers or employees shall be established by the State Employees' Retirement Board.

(d) Any eligible deferred compensation plans established for the officers, employees or other individuals performing services for a political subdivision *or municipal authority* shall be established and administered by the governing body of the political subdivision *or municipal authority*.

(e) In order to establish and administer eligible deferred compensation plans, the powers and duties of the State Employees' Retirement Board or the governing body of a political subdivision *or municipal authority* shall include, but not be limited to:

(1) Entering into written agreements with one or more financial or other organizations to administer the deferred compensation plan for Commonwealth employees or employees of political subdivisions *or municipal authorities* and to invest funds held pursuant to such plan. Any such written agreement and deferred compensation plan shall conform with **[the provisions of]** section 457 **and any other provisions** of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) **[and regulations adopted pursuant thereto]** *applicable to the plans.*

(2) Promulgating rules and regulations establishing procedures whereby eligible individuals may elect to participate in a plan, change their election amount or change their investment choices on a **[quarterly basis,]** *periodic basis as determined by the State Employees' Retirement Board or governing body of the political subdivision or municipal authority which shall not be less frequently than quarterly,* whereby eligible individuals may elect to cease **[participation]** *deferrals* entirely at any time with reasonable notice, not to exceed four weeks, and whereby such individuals may designate the amount of compensation to be deferred above a minimum monthly deposit of ten dollars; arranging for a deduction, from the compensation of eligible individuals, of the amounts to be deferred under a plan; establishing standards or criteria for the selection by the State Employees' Retirement Board or the governing body of the political subdivision *or municipal authority* of financial institutions, insurance companies or other organizations which may be qualified as managers on behalf of the Commonwealth, **[or]** a political subdivision *or municipal authority*, of funds deferred under a plan on behalf of any eligible individual; establishing standards and criteria for the providing of options to eligible individuals concerning the method of investing amounts deferred under any plan and of informing eligible individuals of specific options offered by qualified managers; establishing standards and criteria for the disclosure to eligible individuals of the anticipated and actual income attributable to such amounts, property and rights and all fees, costs and charges to be made against such amounts deferred to cover the costs of administering and managing the funds. **[Any officer or employee of the State or a political subdivision who elects to participate in a deferred compensation plan shall have the option to elect that his deferred compensation be invested in a portfolio which does not include any stock or obligation of any corporation doing business, either by itself or through any subsidiary or affiliate, in the Republic of South Africa or Namibia. The State Employees' Retirement Board or governing body of a political subdivision shall, in selecting qualified fund managers, ensure that a fund manager is selected who has such an option available.]**

(3) An annual review of any qualified fund manager for the purpose of making certain it continues to meet all standards and criteria established.

(4) Establishing procedures *in the plan document* where any officer or employee may **[cease making deferrals or where deferred amounts may be withdrawn in cases of financial hardship or the separation of such**

individual from service with the Commonwealth or political subdivision.]:

(i) *cease making deferrals;*

(ii) *withdraw deferred amounts in cases of financial hardship or separation of such individual from service with the Commonwealth, political subdivision or municipal authority, or as otherwise permitted under section 457 of the Internal Revenue Code of 1986; and*

(iii) *dispose of a participant's account pursuant to a domestic relations order unless in conflict with the provisions of section 457 of the Internal Revenue Code of 1986.*

(5) All deferred compensation plans shall be administered in compliance with section 457 *and any other provisions* of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) and **[its accompanying regulations]** *applicable to the plans*. Any income deferred under such authorized agreement shall continue to be included as regular compensation for computing retirement and benefits earned by any Commonwealth [or], political subdivision *or municipal authority* officer or employe, but any sum deferred shall not be included in the computation of any Federal income taxes to be withheld.

(f) All amounts deferred under a deferred compensation plan shall constitute taxable income for purposes of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and shall constitute taxable income for State and local earned income taxes.

(g) Neither the Commonwealth, the State Employees' Retirement Board [nor], any political subdivision *nor any municipal authority* shall be responsible for any investment loss incurred in the program, or for the failure of any investment to earn any specific or expected return or to earn as much as any other investment opportunity, whether or not such other investment opportunity was offered to participants in the program, nor shall the Commonwealth contribute to its deferred compensation program. The expenses arising from allowing individuals to elect to participate in a deferred compensation plan, to choose a fund manager, to deduct from compensation amounts deferred under a plan and to transfer to the fund manager amounts so deducted shall be borne by the Commonwealth [or], the political subdivision *or municipal authority*. All other expenses arising from the administration of a deferred compensation plan shall be assessed against the accounts created on behalf of participating individuals either by the fund managers or by the Commonwealth [or], a political subdivision *or municipal authority*. The obligation of the Commonwealth [or], political subdivision *or municipal authority* officer or employe shall be a contractual obligation only with no preferred or special interest in deferred funds to such officer, employe or contractor *except as otherwise provided by this act*.

(h) (1) All [funds] *assets and income* which *have been or* shall be withheld or deferred by the Commonwealth [or], political subdivision *or municipal authority* in accordance with [the terms of this act shall remain

an asset of the Commonwealth and shall be held in a special fund hereby created within the State Treasury of which the State Treasurer shall be the custodian, or an asset of the political subdivision] *this section shall be held in trust in any funding vehicle permitted by section 457 of the Internal Revenue Code of 1986 for the exclusive benefit of the plan's participants and their beneficiaries* until such time as the funds are distributed to the participant or his beneficiary in accordance with the terms of the agreement between the participant and the State Employees' Retirement Board or between the participant and the governing body of the political subdivision *or municipal authority*. *All such assets and income withheld or deferred by the Commonwealth shall be held in trust as set forth in this paragraph in a special fund created within the State Treasury of which the State Treasurer shall be the custodian*. Such deferred compensation plans shall exist and serve in addition to and shall not be a part of any retirement or pension system for officers and employees.

(2) *The members of the State Employees' Retirement Board shall be the trustees of the deferred compensation plan established for Commonwealth officers and employees. Any political subdivision or municipal authority administering a plan as a trust under this section shall be required to name one or more persons as trustee of such plan and to establish provisions relating to the removal or resignation of a trustee, the appointment of a successor and the methods by which the trustee may take necessary action as required under the plan.*

(3) *The trust established for Commonwealth officers and employees is declared to be a spendthrift trust, and any construction of a participant's plan account as self-settled shall not cause the plan account to be treated as other than a spendthrift trust.*

(4) *Any benefit or interest available under a deferred compensation plan established under this section, or any right to receive or direct payments under such a plan, or any distribution of payment made under such a plan shall not, except as expressly specified by the plan, be subject to assignment, alienation, garnishment, attachment, transfer, anticipation, sale, mortgage, pledge, hypothecation, commutation, execution or levy, whether by voluntary or involuntary act of any interested person.*

(i) Investment of deferred funds by any corporation, institution, insurance company or custodial bank which the State Employees' Retirement Board or governing body of a political subdivision *or municipal authority* has approved shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than thirty days from the date of payroll deduction to the date that funds are invested. Any interest earned on such funds pending investment shall be allocated to the Commonwealth [or], political subdivision *or municipal authority* and credited to the accounts of employees who are then participating in the plan unless such interest is used to defray administrative costs and fees which would otherwise be required to be borne by employees who are then participating in the plan.

[(j) No officer or employe participant or beneficiary shall have the right to commute, sell, assign or otherwise transfer or convey the rights to receive any payments under agreements entered into pursuant to this section, and such payments and rights are expressly declared to be nonassignable and nontransferable.]

(k) A participant may withdraw from the agreement in accordance with the approved plan by notice, in writing, signed by the participant and approved by the administrator and such withdrawal shall discontinue future deferrals by the [State or] *Commonwealth*, the political subdivision *or the municipal authority*, but shall not operate to withdraw any funds theretofore contributed, except in cases of approved financial hardship *or as otherwise authorized by the plan*.

(l) Every officer or employe of the Commonwealth [or], political subdivision [who, upon the effective date of this act, has either been in office or employed by the Commonwealth or political subdivision shall immediately be] *or municipal authority shall be* eligible for participation in a deferred compensation plan[. Thereafter, every officer or employe of the Commonwealth or political subdivision shall become eligible upon employment] *under this section*.

[(m) The State Employees' Retirement Board shall promulgate rules and regulations extending its administrative, funding and marketing facilities to any political subdivision which elects to utilize them in providing a deferred compensation plan to its employes. Each political subdivision shall designate an officer to coordinate the deferred compensation program.]

Section 2. This act shall take effect immediately.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE