

# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2624

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 2624.

Any municipality, county, authority created by one or more municipalities or counties, or the State may establish a deferred compensation plan for its employees. Employee contributions to a deferred compensation plan are considered assets of the employer. The purpose of this bill is to protect the interests of employees participating in such a plan and to conform State law with federal law regarding the management of assets and income under these plans. The bill provides that all assets and income of a deferred compensation plan shall be held in trust for the exclusive benefit of participating employees and their beneficiaries. It also specifies that contracts for local government deferred compensation plans shall be subject to the approval of the Director of the Division of Local Government Services in the Department of Community Affairs on the basis of restrictions, limitations and other conditions established by the director by rule or regulation, which restrictions, limitations or other conditions shall conform to the provisions of the federal Internal Revenue Code, as amended, that are applicable to the deferred compensation plan.

The State and local public employee deferred compensation plans are known as "§457" plans after the section of the Internal Revenue Code that makes contributions to such plans eligible for tax-deferred treatment. On August 20, 1996, the federal "Small Business Job Protection Act" became law. Section 1448 of the Act added a new subsection g. to §457, as follows:

(g) GOVERNMENTAL PLANS MUST MAINTAIN SET-ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.--

(1) IN GENERAL.--A plan maintained by an eligible employer . . . shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

...

(3) CUSTODIAL ACCOUNTS AND CONTRACTS.--For purposes of this subsection, custodial accounts and

contracts . . . shall be treated as trusts under [applicable] rules [of the Internal Revenue Code].

House Conference Report No. 104-737 includes the following analysis of the provisions of section 1448:

*Present law*

Until deferrals under an unfunded deferred compensation plan of a State or local government or a tax-exempt organization (a "sec. 457 plan") are made available to a plan participant, the amounts deferred, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights must remain solely the property and rights of the employer, subject only to the claims of the employer's general creditors.

*House bill*

Under the House bill, all amounts deferred under a section 457 plan maintained by a State and local governmental employer have to be held in trust (or custodial account or annuity contract) for the exclusive benefit of employees. The trust (or custodial account or annuity contract) is provided tax-exempt status. Amounts are not considered made available merely because they are held in a trust, custodial account, or annuity contract. . . .

COMMITTEE AMENDMENTS

The committee amended the bill to change references to the Internal Revenue Service in P.L.1977, c.381 to the Internal Revenue Code and to specify that contracts for local government deferred compensation plans shall be subject to the approval of the Director of the Division of Local Government Services in the Department of Community Affairs on the basis of restrictions, limitations and other conditions established by the director by rule or regulation, which restrictions, limitations or other conditions shall conform to the provisions of the federal Internal Revenue Code, as amended, that are applicable to the deferred compensation plan.