

P.L. 1997, CHAPTER 116, *approved June 6, 1997*
Assembly, No. 2624 (*Second Reprint*)

1 AN ACT concerning certain deferred compensation plans and
2 amending P.L.1977, c.381 and P.L.1978, c.39.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 ¹1. Section 3 of P.L.1977, c.381 (C.43:15B-3) is amended to read
8 as follows:

9 3. a. The plan shall provide that all money not needed for the
10 immediate payment of benefits shall be invested by the employer in
11 interest bearing securities in which savings banks of this State are
12 authorized to invest their funds, or the employer shall make deposits
13 in interest bearing accounts, or in the State of New Jersey Cash
14 Management Fund established pursuant to section 1 of P.L.1977, c.
15 281 (C. 52:18A-90.4), or in individual or group annuity programs
16 whether fixed or variable, mutual funds, or life insurance contracts
17 whether fixed or variable.

18 b. Notwithstanding section 1 of P.L.1977, c.381 (C.43:15B-1), the
19 employer may contract with one or more private organizations for the
20 administration of all or part of the plan, including the management and
21 investment, or either thereof, of deferred and deducted salary funds.

22 Each contract shall be subject to the prior approval of the Director
23 of the Division of Local Government Services on the basis of
24 restrictions, limitations and other conditions established by the
25 director by rule and regulation promulgated pursuant to the
26 "Administrative Procedure Act" (P.L.1968, c.410, C.52:14B-1 et seq.)
27 ²[, which restrictions, limitations and other conditions shall conform
28 to the provisions of the federal Internal Revenue Code, as amended,
29 that are applicable to those plans]²; provided, however, that the
30 director shall not approve any contract if it is inconsistent with ²[the
31 federal Internal Revenue Code, as amended, and]² any standards

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASG committee amendments adopted January 23, 1997.

² Senate floor amendments adopted March 24, 1997.

1 which the New Jersey State Employees' Deferred Compensation
2 Board, established pursuant to P.L.1978, c.39 (C. 52:18A-163 et
3 seq.), may adopt for the deferred compensation plans of
4 municipalities, counties, or authorities thereof, including, but not
5 limited to, any service cost guidelines. If at the time a municipality,
6 county or authority submits a contract to the Director of the Division
7 of Local Government Services for his approval and the New Jersey
8 State Employees' Deferred Compensation Board has not adopted
9 standards for such deferred compensation plans, the director may
10 approve such contract if it is consistent with the rules and regulations
11 which he has promulgated for such contracts.

12 c. The employer may establish a plan or plan option which permits
13 a participating employee to request the employer to invest all or a
14 specified percentage of said employee's deferred salary in one, or a
15 specified combination of, the following kinds of investments: (1)
16 fixed or variable life insurance contracts, (2) individual or group,
17 fixed or variable annuity contracts, (3) mutual fund shares, (4)
18 interest bearing accounts or securities in which savings banks of this
19 State are authorized to invest their funds, and (5) the State of New
20 Jersey Cash Management Fund; provided that the employer retains the
21 discretion to reject such request. Any such investments shall be limited
22 to investments that are authorized for fiduciaries of trust estates
23 pursuant to the "Prudent Investment Law" (P.L.1975, c.337,
24 C. 3A:15-35 et seq.); provided, however, that with the exception of
25 investments made by domestic insurance companies licensed to sell life
26 insurance and annuities in this State and subject to review by the
27 Commissioner of the Department of Insurance pursuant to chapter 20
28 of Title 17B of the New Jersey Statutes, the Director of the Division
29 of Local Government Services may review and reject any such
30 investments as inconsistent with the standard applicable to the prudent
31 investor as provided in section 3 of P.L.1975, c.337 (C.3A:15-37).

32 d. No organization seeking a contract pursuant to subsection b. of
33 this section, shall through distribution of written material or by any
34 other means, solicit employee participation in any deferred
35 compensation plan or solicit employees to support the efforts of the
36 organization to secure the contract. An organization holding a contract
37 approved pursuant to subsection b. may distribute written material to
38 solicit employee participation in a deferred compensation program,
39 provided that the organization has received approval of the content
40 and form of the material from the Director of the Division of Local
41 Government Services. No representative of an organization under
42 contract pursuant to subsection b. of this section shall initiate verbal
43 communication with any prospective employee participant in a
44 deferred compensation program without the express consent of the
45 employer; provided, however, that any communication so authorized
46 shall be consistent with the written material approved by the Director

1 of the Division of Local Government Services.

2 e. Subject to rules and regulations established by a board or any
3 other body created or designated by the State or public official
4 designated by the State (said board, body or official hereinafter
5 "board"), to administer a deferred payment compensation plan
6 established by the State (hereinafter "State plan") and subject to the
7 approval of the board, the plan may provide for the employer for the
8 benefit of its participants to participate in any State plan established by
9 the board for State employees. In the event that such participation is
10 approved by the board, rules, regulations and conditions established
11 by the board or in the State plan shall apply to such participants, or
12 said rules, regulations and conditions shall so apply as amended or
13 supplemented with regard to said participants.

14 f. The named fiduciary shall provide in the plan for the distribution
15 of any investment earnings, gains or losses, consistent with the
16 requirements of the [U.S.] federal Internal Revenue [Service] Code,
17 as amended. The distribution shall be allocated to each employee
18 when he or she withdraws from the plan or receives benefits from the
19 plan in accordance with the terms of the plan and the provisions of this
20 act. For those employees participating in the State plan pursuant to
21 subsection 3e. herein, the rules and regulations of the State board
22 shall apply.

23 g. The plan shall provide for a uniform system of accounting for
24 each participant and for investment of deferred compensation funds
25 with annual or more frequent reports to the participants in the plan.

26 h. The named fiduciary shall have authority to take any steps
27 reasonably necessary to implement the plan consistent with this act and
28 the requirements of the [U.S.] federal Internal Revenue [Service]
29 Code, as amended.¹

30 (cf: P.L.1983, c.305 , s.3)

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32 ¹[1.] 2.¹ Section 5 of P.L.1977, c.381 (C.43:15B-5) is amended to
33 read as follows:

34 5. ²a.² All moneys which are deferred and deducted in accordance
35 with the provisions of this act and the plan shall ²[remain assets of the
36 employer and shall]² be invested in accord with the provisions of this
37 act and the plan. The obligation of the employer to participating
38 employees shall be contractual only and no preferred or special interest
39 in the deferred moneys shall accrue to such employees ²[, except that
40 all assets and income of the plan shall be held in trust for the exclusive
41 benefit of participating employees and their beneficiaries]².

42 ²b. For plans approved prior to August 20, 1996, moneys deferred
43 shall be subject to the claims of the employer's general creditors until
44 the plan document is amended to have all moneys deferred and any
45 other assets or income of the plan held in trust or one or more annuity
46 contracts or one or more custodial accounts for the exclusive benefit

1 of the participating employees and their beneficiaries. Employers shall
2 have until January 1, 1999 to implement this change. For all plans
3 adopted on or after August 20, 1996, all moneys that are deferred and
4 any other assets or income of the plan shall be held in trust or one or
5 more annuity contracts or one or more custodial accounts for the
6 exclusive benefit of the participating employees and their
7 beneficiaries.²

8 (cf: P.L.1977, c.381, s.5)

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10 ¹3. Section 10 of P.L.1977, c.381 (C.43:15B-10) is amended to
11 read as follows:

12 10. No agreement may be entered into between the employer and
13 any employee for the deferral and deduction of any portion of current
14 salary, pursuant to this act, until the named fiduciary determines that
15 the plan and any related implementing rules and regulations are
16 consistent with the requirements of the [United States] federal Internal
17 Revenue [Service] Code, as amended.¹

18 (cf: P.L.1977 , c.381, s.10)

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20 ¹[2.] 4.¹ Section 8 of P.L.1978, c.39 (C.52:18A-170) is amended
21 to read as follows:

22 8. All moneys which are deferred and deducted in accordance with
23 the provisions of this act and the plan shall remain assets of the State
24 and shall be invested in accord with the provisions of this act and the
25 plan. The obligation of the State to participating employees and
26 contractors shall be contractual only and no preferred or special
27 interest in the deferred moneys shall accrue to such employees or
28 contractors, except that all assets and income of the plan shall be held
29 in trust for the exclusive benefit of participating employees and their
30 beneficiaries.

31 (cf: P.L.1978, c.39, s.8)

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33 ¹[3.] 5.¹ This act shall take effect immediately.

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38 Provides that deferred compensation plan assets and income shall be
39 held in trust for the exclusive benefit of participating employees and
40 their beneficiaries.