

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1628 Session of
1997

INTRODUCED BY LUCYK, STRITTMATTER, NICKOL, McCALL, HENNESSEY,
FARGO, ITKIN, OLASZ, COY, CLARK, GEIST, MUNDY, BELARDI,
SATHER, TRELLO, CAPPABIANCA, YOUNGBLOOD, BOSCOLA, HESS AND
MELIO, JUNE 10, 1997

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
NOVEMBER 23, 1998

AN ACT

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

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

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

14 Section VIII.2.--(a) The Commonwealth of Pennsylvania, and
15 any political subdivision or municipal authority of this
16 Commonwealth, may establish eligible deferred compensation plans
17 pursuant to section 457 of the Internal Revenue Code of 1986
18 (Public Law 99-514, 26 U.S.C. § 457) for their elected or

1 appointed officers and employees who perform services for the
2 Commonwealth [or], a political subdivision or municipal
3 authority.

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

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

8 (2) any individual employed by the Commonwealth; or

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

13 "Compensation" means pay for normal services rendered.

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

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

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

27 (1) Entering into written agreements with one or more
28 financial or other organizations to administer the deferred
29 compensation plan for Commonwealth employees or employees of
30 political subdivisions or municipal authorities and to invest

1 funds held pursuant to such plan. Any such written agreement and
2 deferred compensation plan shall conform with [the provisions
3 of] section 457 and any other provisions of the Internal Revenue
4 Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) [and
5 regulations adopted pursuant thereto] applicable to the plans.

6 (2) Promulgating rules and regulations establishing
7 procedures whereby eligible individuals may elect to participate
8 in a plan, change their election amount or change their
9 investment choices on a [quarterly basis,] periodic basis as
10 determined by the State Employees' Retirement Board or governing
11 body of the political subdivision or municipal authority, which
12 shall not be less frequently than quarterly, whereby eligible
13 individuals may elect to cease [participation] deferrals
14 entirely at any time with reasonable notice, not to exceed four
15 weeks, and whereby such individuals may designate the amount of
16 compensation to be deferred above a minimum monthly deposit of
17 ten dollars; arranging for a deduction, from the compensation of
18 eligible individuals, of the amounts to be deferred under a
19 plan; establishing standards or criteria for the selection by
20 the State Employees' Retirement Board or the governing body of
21 the political subdivision or municipal authority of financial
22 institutions, insurance companies or other organizations which
23 may be qualified as managers on behalf of the Commonwealth, [or]
24 a political subdivision or municipal authority, of funds
25 deferred under a plan on behalf of any eligible individual;
26 establishing standards and criteria for the providing of options
27 to eligible individuals concerning the method of investing
28 amounts deferred under any plan and of informing eligible
29 individuals of specific options offered by qualified managers;
30 establishing standards and criteria for the disclosure to

1 eligible individuals of the anticipated and actual income
2 attributable to such amounts, property and rights and all fees,
3 costs and charges to be made against such amounts deferred to
4 cover the costs of administering and managing the funds. [Any
5 officer or employe of the State or a political subdivision who
6 elects to participate in a deferred compensation plan shall have
7 the option to elect that his deferred compensation be invested
8 in a portfolio which does not include any stock or obligation of
9 any corporation doing business, either by itself or through any
10 subsidiary or affiliate, in the Republic of South Africa or
11 Namibia. The State Employees' Retirement Board or governing body
12 of a political subdivision shall, in selecting qualified fund
13 managers, ensure that a fund manager is selected who has such an
14 option available.]

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

18 (4) Establishing procedures in the plan document where any
19 officer or employe may [cease making deferrals or where deferred
20 amounts may be withdrawn in cases of financial hardship or the
21 separation of such individual from service with the Commonwealth
22 or political subdivision.]:

23 (i) cease making deferrals;

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

29 (iii) dispose of a participant's account pursuant to a
30 domestic relations order unless in conflict with the provisions

1 of section 457 of the Internal Revenue Code of 1986.

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

12 (f) All amounts deferred under a deferred compensation plan
13 shall constitute taxable income for purposes of the act of March
14 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971,"
15 and shall constitute taxable income for State and local earned
16 income taxes.

17 (g) Neither the Commonwealth, the State Employees'
18 Retirement Board [nor], any political subdivision nor any
19 municipal authority shall be responsible for any investment loss
20 incurred in the program, or for the failure of any investment to
21 earn any specific or expected return or to earn as much as any
22 other investment opportunity, whether or not such other
23 investment opportunity was offered to participants in the
24 program, nor shall the Commonwealth contribute to its deferred
25 compensation program. The expenses arising from allowing
26 individuals to elect to participate in a deferred compensation
27 plan, to choose a fund manager, to deduct from compensation
28 amounts deferred under a plan and to transfer to the fund
29 manager amounts so deducted shall be borne by the Commonwealth
30 [or], the political subdivision or municipal authority. All

1 other expenses arising from the administration of a deferred
2 compensation plan shall be assessed against the accounts created
3 on behalf of participating individuals either by the fund
4 managers or by the Commonwealth [or], a political subdivision or
5 municipal authority. The obligation of the Commonwealth [or],
6 political subdivision or municipal authority officer or employe
7 shall be a contractual obligation only with no preferred or
8 special interest in deferred funds to such officer, employe or
9 contractor except as otherwise provided by this act.

10 (h) (1) All [funds] assets and income which have been or
11 shall be withheld or deferred by the Commonwealth [or],
12 political subdivision or municipal authority in accordance with
13 [the terms of this act shall remain an asset of the Commonwealth
14 and shall be held in a special fund hereby created within the
15 State Treasury of which the State Treasurer shall be the
16 custodian, or an asset of the political subdivision] this
17 section shall be held in trust in any funding vehicle permitted
18 by section 457 of the Internal Revenue Code of 1986 for the
19 exclusive benefit of the plan's participants and their
20 beneficiaries until such time as the funds are distributed to
21 the participant or his beneficiary in accordance with the terms
22 of the agreement between the participant and the State
23 Employees' Retirement Board or between the participant and the
24 governing body of the political subdivision or municipal
25 authority. ALL SUCH ASSETS AND INCOME WITHHELD OR DEFERRED BY <—
26 THE COMMONWEALTH SHALL BE HELD IN TRUST AS SET FORTH IN THIS
27 PARAGRAPH IN A SPECIAL FUND CREATED WITHIN THE STATE TREASURY OF
28 WHICH THE STATE TREASURER SHALL BE THE CUSTODIAN. Such deferred
29 compensation plans shall exist and serve in addition to and
30 shall not be a part of any retirement or pension system for

1 officers and employees.

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

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

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

25 (i) Investment of deferred funds by any corporation,
26 institution, insurance company or custodial bank which the State
27 Employees' Retirement Board or governing body of a political
28 subdivision or municipal authority has approved shall not be
29 unreasonably delayed, and in no case shall the investment of
30 deferred funds be delayed more than thirty days from the date of

1 payroll deduction to the date that funds are invested. Any
2 interest earned on such funds pending investment shall be
3 allocated to the Commonwealth [or], political subdivision or
4 municipal authority and credited to the accounts of employees who
5 are then participating in the plan unless such interest is used
6 to defray administrative costs and fees which would otherwise be
7 required to be borne by employees who are then participating in
8 the plan.

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

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

23 (l) Every officer or employee of the Commonwealth [or],
24 political subdivision [who, upon the effective date of this act,
25 has either been in office or employed by the Commonwealth or
26 political subdivision shall immediately be] or municipal
27 authority shall be eligible for participation in a deferred
28 compensation plan[. Hereafter, every officer or employee of the
29 Commonwealth or political subdivision shall become eligible upon
30 employment] under this section.

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

7 Section 2. This act shall take effect immediately.