

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

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 20, 1997

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 of this Commonwealth, may establish
16 eligible deferred compensation plans pursuant to section 457 of
17 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
18 § 457) for their elected or appointed officers and employees who

1 perform services for the Commonwealth or a political
2 subdivision.

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

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

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

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

12 "Compensation" means pay for normal services rendered.

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

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

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

24 (1) Entering into written agreements with one or more
25 financial or other organizations to administer the deferred
26 compensation plan for Commonwealth employees or employees of
27 political subdivisions and to invest funds held pursuant to such
28 plan. Any such written agreement and deferred compensation plan
29 shall conform with [the provisions of] section 457 and any other
30 provisions of the Internal Revenue Code of 1986 (Public Law 99-

1 514, 26 U.S.C. § 457) [and regulations adopted pursuant thereto]
2 applicable to the plans.

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

1 officer or employe of the State or a political subdivision who
2 elects to participate in a deferred compensation plan shall have
3 the option to elect that his deferred compensation be invested
4 in a portfolio which does not include any stock or obligation of
5 any corporation doing business, either by itself or through any
6 subsidiary or affiliate, in the Republic of South Africa or
7 Namibia. The State Employees' Retirement Board or governing body
8 of a political subdivision shall, in selecting qualified fund
9 managers, ensure that a fund manager is selected who has such an
10 option available.]

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

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

19 (i) cease making deferrals;

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

24 ~~(iii) make disposition of deferred amounts, as the State~~ <—
25 ~~Employees' Retirement Board or governing body of the political~~
26 ~~subdivision may deem desirable or necessary to comply with a~~
27 ~~court order in cases including, but not limited to, divorce.~~

28 (III) DISPOSE OF A PARTICIPANT'S ACCOUNT PURSUANT TO A <—
29 DOMESTIC RELATIONS ORDER UNLESS IN CONFLICT WITH THE PROVISIONS
30 OF SECTION 457 OF THE INTERNAL REVENUE CODE OF 1986.

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

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

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

1 on behalf of participating individuals either by the fund
2 managers or by the Commonwealth or a political subdivision. The
3 obligation of the Commonwealth or political subdivision officer
4 or employe shall be a contractual obligation only with no
5 preferred or special interest in deferred funds to such officer,
6 employe or contractor except as otherwise provided by this act.

7 (h) (1) All [funds] assets and income which have been or
8 shall be withheld or deferred by the Commonwealth or political
9 subdivision in accordance with [the terms of this act shall
10 remain an asset of the Commonwealth and shall be held in a
11 special fund hereby created within the State Treasury of which
12 the State Treasurer shall be the custodian, or an asset of the
13 political subdivision] this section shall be held in trust IN <—
14 ANY FUNDING VEHICLE PERMITTED BY SECTION 457 OF THE INTERNAL
15 REVENUE CODE OF 1986 for the exclusive benefit of the plan's
16 participants and their beneficiaries to the extent required by <—
17 section 457 of the Internal Revenue Code of 1986 until such time
18 as the funds are distributed to the participant or his
19 beneficiary in accordance with the terms of the agreement
20 between the participant and the State Employees' Retirement
21 Board or between the participant and the governing body of the
22 political subdivision. Such deferred compensation plans shall
23 exist and serve in addition to and shall not be a part of any
24 retirement or pension system for officers and employes.

25 (2) The members of the State Employees' Retirement Board
26 shall be the trustees of the deferred compensation plan
27 established for Commonwealth officers and employes. Any
28 political subdivision administering a plan AS A TRUST under this <—
29 section shall be required to name one or more persons as trustee
30 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.

~~Without limiting the generality of the
foregoing, any benefit or interest available under the plan, or
any right to receive or instruct payments under a plan, or any
distribution of payment made under 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.~~

(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 has approved shall not be unreasonably delayed, and
in no case shall the investment of deferred funds be delayed

1 more than thirty days from the date of payroll deduction to the
2 date that funds are invested. Any interest earned on such funds
3 pending investment shall be allocated to the Commonwealth or
4 political subdivision and credited to the accounts of employees
5 who are then participating in the plan unless such interest is
6 used to defray administrative costs and fees which would
7 otherwise be required to be borne by employees who are then
8 participating in 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, but shall not operate
20 to withdraw any funds theretofore contributed, except in cases
21 of approved financial hardship or as otherwise authorized by the
22 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] shall be eligible
27 for participation in a deferred compensation plan[. Thereafter,
28 every officer or employee of the Commonwealth or political
29 subdivision shall become eligible upon employment] under this
30 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.