

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## HOUSE ENROLLED ACT No. 1245

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AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-10-1.1-1, AS AMENDED BY P.L.65-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The state ~~including its departments and agencies, or and~~ any political subdivision (as defined by IC 36-1-2-13) ~~and agencies or departments of the political subdivision~~ may:

- (1) ~~by contract~~ agree with any employee to reduce and defer any portion of such employee's compensation which under federal law may be deferred under a nonqualified deferred compensation plan and subsequently contract for, purchase, or otherwise procure ~~a fixed or variable life insurance or annuity contract, or investments insurance and investment products appropriate for a nonqualified deferred compensation plan~~ (all referred to in this chapter as "funding"), for the purpose of funding a deferred compensation plan for such employee;
- (2) if the political subdivision is a school corporation, establish an employee savings plan that is a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code, and

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contribute amounts to the plan on behalf of eligible employees to be credited and allocated to an account for each employee; and (3) contribute amounts before January 1, 1995, and continue or begin to contribute amounts after January 1, 1995, to a nonqualified deferred compensation plan on behalf of eligible employees, subject to any limits and provisions under Section 457 of the Internal Revenue Code.

SECTION 2. IC 5-10-1.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) ~~The state employees' deferred compensation plan shall provide for the state board of finance to review proposed funding offerings and shall require that only funding determined to be acceptable by the treasurer of state may be offered to employees under the plan. The deferred compensation committee is established. The committee consists of five (5) persons appointed by the state board of finance as follows:~~

(1) ~~Each member of the state board of finance shall appoint one (1) member to the committee.~~

(2) ~~The remaining two (2) members:~~

(A) ~~must be participants in the state employees' deferred compensation plan;~~

(B) ~~may not be employees of the members of the state board of finance; and~~

(C) ~~must be from different political parties.~~

(b) ~~The deferred compensation committee may approve proposed funding offerings for the state employees' deferred compensation plan.~~

(c) ~~All amounts deferred under the state employees' deferred compensation plan must be put into a trust for the exclusive benefit of plan participants, as required by Section 457(g) of the Internal Revenue Code. The deferred compensation committee is the trustee of the trust.~~

~~(b)~~ (d) The plan shall include appropriate provisions pertaining to its day to day operation providing for methods of electing to defer income, methods of changing the amount of income to be deferred, and such other provisions as may be appropriate. **Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, on-line activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.**

~~(c)~~ (e) The plan shall provide for the preparation and distribution, from time to time to all eligible employees, of pamphlets describing the

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plan and outlining the opportunities available to employees under the plan.

~~(d)~~ (f) The state board of finance shall extend the plan to any political subdivision which elects to utilize the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) of this chapter.

**(g) At least annually, the deferred compensation committee shall report to the state board of finance on the status of the state employees' deferred compensation plan, including any changes to the plan.**

SECTION 3. IC 5-10-1.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The auditor of ~~the~~ state shall provide for the administration of the state employees' deferred compensation plan. ~~He~~ **The auditor of state** may, at ~~his~~ **the auditor of state's** option, enter into a contract or contracts with an individual or individuals, incorporated or unincorporated organizations or associations, the state of Indiana, units of local government, agencies of the state or units of local government, or a group of such persons acting in concert, for the provision of all or part of the services involved in the administration of the plan. Participation in the plan shall be by a specific written agreement between each employee and the state which agreement shall provide for the deferral of such amount of compensation as requested by the employee. With each ~~distribution~~ **deferral** of compensation, ~~to a participating employee,~~ the employee shall receive a memorandum of the amount by which ~~his~~ **the employee's** gross compensation ~~for the period involved~~ is reduced by reason of the deferment of compensation, which amount shall not be included as a part of ~~his~~ **gross the employee's taxable** compensation as to that period.

(b) The funding utilized under the state employees' deferred compensation plan shall have been reviewed and selected by the ~~treasurer of state~~ **deferred compensation committee** based on a competitive bidding process as established by such specifications deemed appropriate by the ~~state board of finance.~~ **deferred compensation committee.** Nothing in this section shall be construed as requiring a limitation on the number and variety of funding contracts which may be selected as a result of this bidding process.

(c) In no case shall funding of the state employees' deferred compensation plan be made except through persons or companies authorized and duly licensed by this state and applicable federal regulatory agencies to offer such funding programs.

SECTION 4. IC 5-10-1.1-6 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The state or political subdivision under a deferred compensation ~~program plan~~ shall be obligated at any point in time solely for the then current **market** value of the funding theretofore made.

SECTION 5. IC 5-10-1.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Any political subdivision (as defined by IC 36-1-2-13) may establish for its employees a deferred compensation plan. ~~or plans. Each~~ **The** plan shall be selected by the governing body of the political subdivision, which in the case of a unit subject to IC 36-1-3 shall be done by ordinance. Participation shall be by written agreement between each employee and the governing body of the political subdivision, which agreement provides for the deferral of compensation and subsequent administration of such funds.

(b) For funding such agreements, the governing body of the political subdivision may:

- (1) designate one (1) of its agencies or departments to establish and administer such plans and choose such funding as deemed appropriate by the agency or department, ~~including life insurance or annuity contracts;~~ **which may include more than one (1) funding product;** or
- (2) ~~enter into an agreement with the state board of finance to extend the state employees' deferred compensation plan to employees of the political subdivision, and designate one (1) of the political subdivision's agencies or departments to locally administer the plan. subject to the terms and conditions of the state employees' deferred compensation plan as it is established from time to time.~~

(c) This section does not limit the power or authority of any political subdivision to establish and administer other plans deemed appropriate by the governing bodies of such subdivisions, including plans established under section 1(2) of this chapter.

SECTION 6. IC 5-10-1.1-9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE AUGUST 5, 1996 (RETROACTIVE)]: **Sec. 9. All amounts held under any deferred compensation plan established under this chapter must be held for the exclusive benefit of participants of the plan and their beneficiaries, as required by Section 457(g) of the Internal Revenue Code.**

SECTION 7. [EFFECTIVE UPON PASSAGE] (a) **All amounts deferred under the state employees' deferred compensation plan before July 1, 1998, that remain in the plan on July 1, 1998, must**

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be put into the trust required by IC 5-10-1.1-4(c), as amended by this act, for the exclusive benefit of plan participants, as required by Section 457(g) of the Internal Revenue Code.

(b) All amounts deferred under any other deferred compensation plan established under IC 5-10-1.1 that remain in the plan on December 31, 1998, must be held for the exclusive benefit of plan participants in a manner permitted by Section 457(g) of the Internal Revenue Code.

(c) This SECTION expires July 1, 2002.

SECTION 8. An emergency is declared for this act.

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