

## **IC 5-10-1.1**

### **Chapter 1.1. Public Employees Deferred Compensation Plans**

#### **IC 5-10-1.1-0.3**

##### **Legalization of actions of school corporations to establish certain employee savings plans**

Sec. 0.3. The actions taken by a school corporation before January 1, 1988, to:

- (1) establish an employee savings plan that is a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code; and
- (2) contribute amounts to the employee savings plan on behalf of the employee, with those amounts to be credited and allocated to the employee;

are legalized.

*As added by P.L.220-2011, SEC.63.*

#### **IC 5-10-1.1-1**

##### **Nonqualified deferred compensation plans; employee savings plans**

Sec. 1. The state and any political subdivision (as defined by IC 36-1-2-13) may:

- (1) 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 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) or 403(b) of the Internal Revenue Code, and 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.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by Acts 1980, P.L.27, SEC.1; P.L.42-1988, SEC.1; P.L.66-1995, SEC.1; P.L.65-1995, SEC.1; P.L.15-1998, SEC.1; P.L.68-2001, SEC.1.*

#### **IC 5-10-1.1-1.5**

##### **Defined contribution plan**

Sec. 1.5. (a) The state, through the budget agency, may adopt a defined contribution plan, under Section 401(a) of the Internal Revenue Code, for the purpose of matching all or a specified portion of state employees' contributions to the state employees' deferred

compensation plan and for any additional purposes established by statute.

(b) The deferred compensation committee shall be the trustee of a plan established under subsection (a) as described in section 4 of this chapter. A plan established under subsection (a) shall be administered by the auditor of state as described in section 5 of this chapter.

(c) The deferred compensation committee may approve funding offerings for a plan established under subsection (a), which may be the same as offerings for the state employees' deferred compensation plan. All funds in each plan shall be separately accounted for but may be commingled for investment purposes.

(d) Contributions to a plan established under subsection (a) are limited to the amount of biennial appropriations the budget agency determines are available for any such purposes. The deferred compensation committee may use funds available under the plan to hire or contract with qualified attorneys, financial advisers, or other professional or administrative persons that the committee believes are necessary or useful in the administration of the plan.

(e) A plan established under subsection (a) must include appropriate provisions concerning the plan's day to day operation and any other provisions that are appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, online activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

(f) The state is obligated at any particular time only for the current market value of the funding previously made to a plan established under subsection (a).

(g) The state board of finance shall extend the plan established under subsection (a) to any political subdivision that also elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) or 7(b)(3) of this chapter. *As added by P.L.195-1999, SEC.7 and P.L.273-1999, SEC.231. Amended by P.L.184-2001, SEC.2; P.L.220-2005, SEC.1.*

#### **IC 5-10-1.1-2**

##### **Employee defined**

Sec. 2. As used in this chapter, "employee" means any person, including a person elected, appointed or under contract, receiving compensation from the state or any political subdivision as described in section 1 of this chapter.

*(Formerly: Acts 1975, P.L.42, SEC.1.)*

#### **IC 5-10-1.1-3**

##### **Effective and operative dates**

Sec. 3. A deferred compensation plan established under this chapter exists and serves in addition to other retirement, pension and benefit systems established by the state, or political subdivision, and

may not effect a reduction of any retirement, pension or other benefit provided by applicable law. Any compensation deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the retirement and pension benefits earned by any employee.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by Acts 1977, P.L.51, SEC.1.*

### **IC 5-10-1.1-3.5**

#### **Deferred compensation plan; automatic enrollment**

Sec. 3.5. (a) This section applies to an individual who becomes an employee of the state after June 30, 2007.

(b) Unless an employee notifies the state that the employee does not want to enroll in the deferred compensation plan, on day thirty-one (31) of the employee's employment:

- (1) the employee is automatically enrolled in the deferred compensation plan; and
- (2) the state is authorized to begin deductions as otherwise allowed under this chapter.

(c) The auditor of state shall provide written notice to an employee of the provisions of this chapter. The notice provided under this subsection must:

- (1) be provided:
  - (A) with the employee's first paycheck; and
  - (B) on paper that is a color that is separate and distinct from the color of the employee's paycheck;
- (2) contain a statement concerning:
  - (A) the purposes of;
  - (B) procedures for notifying the state that the employee does not want to enroll in;
  - (C) the tax consequences of; and
  - (D) the details of the state match for employee contribution to;the deferred compensation plan; and
- (3) list the telephone number, electronic mail address, and other contact information for the auditor of state, who serves as plan administrator.

(d) This subsection applies to contributions made before July 1, 2011. Notwithstanding IC 22-2-6, except as provided by subsection (g), the state shall deduct from an employee's compensation as a contribution to the deferred compensation plan established by the state under this chapter an amount equal to the maximum amount of any match provided by the state on behalf of the employee to a defined contribution plan established under section 1.5(a) of this chapter.

(e) This subsection applies to contributions made after June 30, 2011. Notwithstanding IC 22-2-6 and except as provided by subsection (g), during the first year an employee is enrolled under subsection (b) in the deferred compensation plan, the state shall deduct each pay period from the employee's compensation as a

contribution to the deferred compensation plan an amount equal to the greater of the following:

- (1) The maximum amount of any match provided by the state on behalf of the employee to a defined contribution plan established under section 1.5(a) of this chapter.
  - (2) One-half percent (0.5%) of the employee's base salary.
- (f) This subsection applies to a year:
- (1) after the first year in which an employee is enrolled in the deferred compensation plan; and
  - (2) in which the employee does not affirmatively choose a contribution amount under subsection (g).

The percentage of the employee's base salary used for the year in subsection (e)(2) to determine the employee's contribution increases by one-half percent (0.5%) from the percentage determined in the immediately preceding year for five (5) years. The maximum percentage of an employee's base salary that may be deducted under this subsection is three percent (3%). The contribution increase occurs on the anniversary date of the employee's enrollment in the deferred compensation plan.

(g) An employee may contribute to the deferred compensation plan established by the state under this chapter an amount other than the amount described in subsections (d) through (f) by affirmatively choosing to contribute:

- (1) a higher amount;
- (2) a lower amount; or
- (3) zero (0).

*As added by P.L.234-2007, SEC.207. Amended by P.L.3-2008, SEC.22; P.L.21-2011, SEC.1.*

#### **IC 5-10-1.1-4**

##### **Deferred compensation committee; state employees' deferred compensation plan**

Sec. 4. (a) 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;
  - (C) must be from different political parties; and
  - (D) may not serve for more than two (2) consecutive three (3) year terms.

(b) The deferred compensation committee may annually elect a chairperson and a secretary.

(c) The deferred compensation committee may approve proposed investment products for the state employees' deferred compensation plan.

(d) 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.

(e) 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.

(f) The plan shall provide for the preparation and distribution, from time to time to all eligible employees, of pamphlets describing the plan and outlining the opportunities available to employees under the plan.

(g) 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) or 7(b)(3) of this chapter.

(h) 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.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by Acts 1977, P.L.51, SEC.2; Acts 1980, P.L.27, SEC.2; P.L.15-1998, SEC.2; P.L.184-2001, SEC.3; P.L.220-2005, SEC.2.*

#### **IC 5-10-1.1-5**

##### **State employees' deferred compensation plan; contracts; funding, selection by bidding; review**

Sec. 5. (a) The auditor of state shall provide for the administration of the state employees' deferred compensation plan. The auditor of state may, at 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 deferral of compensation, the employee shall receive a memorandum of the amount by which the employee's gross compensation is reduced by reason of the deferment of compensation, which amount shall not be included as a part of 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 deferred compensation committee based on a competitive bidding process as established by such specifications deemed appropriate by the 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.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by Acts 1977, P.L.51, SEC.3; Acts 1980, P.L.27, SEC.3; P.L.15-1998, SEC.3.*

#### **IC 5-10-1.1-6**

##### **Obligations of state or political subdivision**

Sec. 6. The state or political subdivision under a deferred compensation plan shall be obligated at any point in time solely for the then current market value of the funding theretofore made.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by P.L.15-1998, SEC.4.*

#### **IC 5-10-1.1-7**

##### **Participation by political subdivisions**

Sec. 7. (a) Any political subdivision (as defined in IC 36-1-2-13) may establish for its employees a deferred compensation plan. 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, which may include more than one (1) funding product;

(2) extend the state employees' deferred compensation plan to employees of the political subdivision, subject to the terms and conditions of the state employees' deferred compensation plan as it is established from time to time; or

(3) offer both a plan described in subdivision (1) and the plan described in subdivision (2).

(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.

*(Formerly: Acts 1975, P.L.42, SEC.1.) As amended by Acts 1977, P.L.51, SEC.4; Acts 1980, P.L.27, SEC.4; P.L.42-1988, SEC.2;*

*P.L.15-1998, SEC.5; P.L.220-2005, SEC.3; P.L.1-2006, SEC.93.*

### **IC 5-10-1.1-7.3**

#### **Matching funds**

Sec. 7.3. (a) Any political subdivision (as defined in IC 36-1-2-13) that elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) or 7(b)(3) of this chapter also may elect to participate in the state's defined contribution plan established by section 1.5 of this chapter for the purpose of matching all or a specified portion of the political subdivision's employees' contributions to the deferred compensation plan.

(b) Participation in the state's defined contribution plan described in subsection (a) shall be authorized 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.

(c) Contributions by a political subdivision to the state's defined contribution plan described in subsection (a) for the purpose of matching all or a specified portion of employee contributions are limited to the amount of appropriations made each year for that purpose.

(d) The political subdivision is obligated at any particular time only for the current market value of the funding previously made to the state's defined contribution plan described in subsection (a).

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

*As added by P.L.184-2001, SEC.4. Amended by P.L.220-2005, SEC.4.*

### **IC 5-10-1.1-7.5**

#### **Unused excess accrued leave**

Sec. 7.5. (a) As used in this section, "state agency" means the following:

- (1) An authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of state government.
- (2) A separate corporate body politic that adopts the plan described in subsection (b).
- (3) State elected officials and their office staff.
- (4) The legislative services agency.
- (5) Legislative staff eligible to participate in the state employees' deferred compensation plan established by section 1 of this chapter.

However, the term does not include a state educational institution or a political subdivision.

(b) The deferred compensation committee shall adopt provisions in a defined contribution plan, under Sections 401(a) and 414(d) of

the Internal Revenue Code, for the purpose of converting unused excess accrued leave to a monetary contribution for employees of a state agency. These provisions may be part of the plan and trust established under section 1.5(a) of this chapter.

(c) The deferred compensation committee is the trustee of the plan described in subsection (b). The plan must be a qualified plan, as determined by the Internal Revenue Service.

(d) The state personnel department shall adopt rules under IC 4-22-2 that it considers appropriate or necessary to implement this section. The rules adopted by the state personnel department under this section must:

- (1) be consistent with the plan described in subsection (b);
- (2) include provisions concerning:
  - (A) the type and amount of leave that may be converted to a monetary contribution;
  - (B) the conversion formula for valuing any leave that is converted;
  - (C) the manner of employee selection of leave conversion; and
  - (D) the vesting schedule for any leave that is converted;
- (3) apply to all state agencies.

(e) The rules adopted by the state personnel department under subsection (d) specifying the conversion formula must provide for a conversion rate under which the amount contributed on behalf of a participating employee for a day of leave that is converted under this section is equal to at least sixty percent (60%) of the employee's daily pay as of the date the leave is converted.

(f) The deferred compensation committee may adopt the following:

- (1) Plan provisions governing:
  - (A) the investment of accounts in the plan; and
  - (B) the accounting for converted leave.
- (2) Any other plan provisions that are necessary or appropriate for operation of the plan.

(g) The plan described in subsection (b) may be implemented only if the deferred compensation committee has received from the Internal Revenue Service any rulings or determination letters that the committee considers necessary or appropriate.

(h) To the extent allowed by:

- (1) the Internal Revenue Code; and
- (2) rules adopted by:
  - (A) the state personnel department under this section; and
  - (B) the board of trustees of the public employees' retirement fund under IC 5-10.3-8-14;

an employee of a state agency may convert unused excess accrued leave to a monetary contribution under this section and under IC 5-10.3-8-14.

*As added by P.L.184-2001, SEC.5. Amended by P.L.220-2005, SEC.5; P.L.2-2007, SEC.80.*

**IC 5-10-1.1-8**

**Supplemental effect of chapter**

Sec. 8. This chapter shall be supplemental and in addition to all other laws. The powers and duties herein given to the state and its political subdivisions shall be in addition to those given by any other law and shall not be subject to the limitations set out therein.

*(Formerly: Acts 1975, P.L.42, SEC.1.)*

**IC 5-10-1.1-9**

**Amounts to be held for exclusive benefit of participants and beneficiaries**

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.

*As added by P.L.15-1998, SEC.6.*