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CHAPTER 23.

DEFERRED COMPENSATION PROGRAM

**SECTION 8‑23‑10.** Declaration of purpose.

The purpose of this chapter is to enable employees of the State, its agencies and political subdivisions to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted and administered by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to tax sheltered voluntary income deferment plans.

HISTORY: 1977 Act No. 97 Section 1.

**SECTION 8‑23‑20.** Deferred Compensation Commission established; investments.

< Section effective until January 1, 2014. See, also, section effective January 1, 2014. >

A Deferred Compensation Commission is established consisting of eight members including the director of the South Carolina Retirement System, chief investment officer of the State Retirement System Investment Commission, and the executive director of the State Employees' Association, each of whom serve ex officio, and five other public employees to be appointed by the State Budget and Control Board, at least two of whom must be state employees and one must be a retired public employee. The appointed members shall serve for terms of three years and until their successors are appointed and qualify. The State Budget and Control Board shall designate the chairman.

The commission shall establish such rules and regulations as it deems necessary to implement and administer the Deferred Compensation Program. The commission shall make such administrative appointments and contracts as are necessary to carry out the purpose and intent of this chapter and in the administration of account assets. For purposes of administering this program an individual account shall be maintained in the name of each employee.

The commission shall select, through competitive bidding and contracts, plans for purchase of fixed and variable annuities, savings, mutual funds, insurance and such other investments as the commission may approve which are not in conflict with the State Constitution and with the advice and approval of the State Treasurer.

Costs of administration may be paid from the interest earnings of the funds accrued as a result of deposits or as an assessment against each account.

HISTORY: 1977 Act No. 97 Section 2; 1990 Act No. 430, Section 1, eff April 25, 1990; 2008 Act No. 305, Section 1, eff June 11, 2008.

**SECTION 8‑23‑20.** Deferred Compensation Program.

< Section effective January 1, 2014. See, also, section effective until January 1, 2014. >

The Board of Directors of the South Carolina Public Employee Benefit Authority shall establish such rules and regulations as it deems necessary to implement and administer the Deferred Compensation Program. The board shall make such administrative appointments and contracts as are necessary to carry out the purpose and intent of this chapter and in the administration of account assets. For purposes of administering this program, an individual account shall be maintained in the name of each employee.

The board shall select, through competitive bidding and contracts, plans for purchase of fixed and variable annuities, savings, mutual funds, insurance, and such other investments as the board may approve which are not in conflict with the State Constitution and with the advice and approval of the State Treasurer.

Costs of administration may be paid from the interest earnings of the funds accrued as a result of deposits or as an assessment against each account.

HISTORY: 1977 Act No. 97 Section 2; 1990 Act No. 430, Section 1, eff April 25, 1990; 2008 Act No. 305, Section 1, eff June 11, 2008; 2012 Act No. 278, Pt IV, Subpt 2, Section 38.A, eff January 1, 2014.

**SECTION 8‑23‑30.** State and political subdivisions may agree to defer percentage of employees' compensation.

< Section effective until January 1, 2014. See, also, section effective January 1, 2014. >

The State or any political subdivision of the State, by contract, may agree with an employee to defer, a portion of his compensation in an amount as provided for in a plan approved by the commission and subsequently with the consent of the employee may contract for purchase or otherwise procure fixed or variable annuities, savings, mutual funds, insurance, or such other investments as the commission may approve for the purpose of carrying out the objectives of the program with the advice and approval of the State Treasurer. The investments shall be underwritten and offered in compliance with applicable federal and state laws and regulations by persons who are authorized by the commission in accordance with the provisions of this chapter.

HISTORY: 1977 Act No. 97 Section 3; 2008 Act No. 305, Section 2, eff June 11, 2008.

**SECTION 8‑23‑30.** State and political subdivisions may agree to defer percentage of employees' compensation.

< Section effective January 1, 2014. See, also, section effective until January 1, 2014. >

The State or any political subdivision of the State, by contract, may agree with an employee to defer a portion of his compensation in an amount as provided for in a plan approved by the Board of Directors of the South Carolina Public Employee Benefit Authority and subsequently with the consent of the employee may contract for purchase or otherwise procure fixed or variable annuities, savings, mutual funds, insurance, or such other investments as the board may approve for the purpose of carrying out the objectives of the program with the advice and approval of the State Treasurer. The investments shall be underwritten and offered in compliance with applicable federal and state laws and regulations by persons who are authorized by the board in accordance with the provisions of this chapter.

HISTORY: 1977 Act No. 97 Section 3; 2008 Act No. 305, Section 2, eff June 11, 2008; 2012 Act No. 278, Pt IV, Subpt 2, Section 38.A, eff January 1, 2014.

**SECTION 8‑23‑40.** Director or principal fiscal officer of state agencies, departments and the like may agree to defer any portion of employee's compensation.

The director or the principal fiscal officer of each state agency, department, board, commission, institution or political subdivision may enter into contractual agreements with employees to defer any portion of the employee's compensation.

HISTORY: 1977 Act No. 97 Section 4.

**SECTION 8‑23‑50.** Payment of premiums.

Notwithstanding any other provision of law, those persons designated to administer the Deferred Compensation Program are authorized to make payment of premiums for the purchase of fixed or variable annuities, savings, mutual funds and insurance contracts under the Deferred Compensation Program. Such payments shall not be construed to be a prohibited use of the general assets of the State or political subdivision.

HISTORY: 1977 Act No. 97 Section 5.

**SECTION 8‑23‑60.** "Employees" defined.

For the purposes of this chapter, "employees" means any person whether appointed or elected providing services for the State or any political subdivision thereof for which compensation is paid on a regular basis.

HISTORY: 1977 Act No. 97 Section 6; 1980 Act No. 448.

**SECTION 8‑23‑70.** Program additional to other retirement; pension or benefit systems; taxation of deferred sums.

< Section effective until January 1, 2014. See, also, section effective January 1, 2014. >

The Deferred Compensation Program established pursuant to this chapter shall be in addition to retirement, pension or benefit systems established by the State, federal government or political subdivision and no deferral of income under the Deferred Compensation Program shall affect a reduction of any retirement, pension, social security or other benefit provided by law. Any sum deferred under the Deferred Compensation Program shall not be subject to taxation until distribution is actually made to the employee.

Nothing contained in this chapter shall be construed to prohibit counties, municipalities, school districts, and other political subdivisions of the State and their employees from participation in deferred compensation plans or programs offered independently of the State Deferred Compensation Commission by building and loan or savings and loan associations, banks, trust companies and credit unions chartered by the state or federal governments, and all such political subdivisions shall be empowered with such contractual authority as may be necessary or incident to such participation; provided, however, that (a) such deferred compensation plans or programs shall comply with applicable federal income tax law in providing income deferral, (b) all deferred amounts shall be held in accounts, certificates of deposit or other forms of savings vehicles which are insured by the Federal Savings and Loan Insurance Corporation in the case of savings and loan associations, the Federal Deposit Insurance Corporation in the case of commercial banks, and the National Credit Union Administration in the case of credit unions.

HISTORY: 1977 Act No. 97 Section 7; 1981 Act No. 67, Section 1.

**SECTION 8‑23‑70.** Program additional to other retirement; pension or benefit systems; taxation of deferred sums.

< Section effective January 1, 2014. See, also, section effective until January 1, 2014 . >

The Deferred Compensation Program established pursuant to this chapter shall be in addition to retirement, pension, or benefit systems established by the State, federal government, or political subdivision and no deferral of income under the Deferred Compensation Program shall affect a reduction of any retirement, pension, social security, or other benefit provided by law. Any sum deferred under the Deferred Compensation Program shall not be subject to taxation until distribution is actually made to the employee.

Nothing contained in this chapter shall be construed to prohibit counties, municipalities, school districts, and other political subdivisions of the State and their employees from participation in deferred compensation plans or programs offered independently of the Board of Directors of the South Carolina Public Employee Benefit Authority by building and loan or savings and loan associations, banks, trust companies, and credit unions chartered by the state or federal governments, and all such political subdivisions shall be empowered with such contractual authority as may be necessary or incident to such participation; provided, however, that (a) such deferred compensation plans or programs shall comply with applicable federal income tax law in providing income deferral, (b) all deferred amounts shall be held in accounts, certificates of deposit, or other forms of savings vehicles which are insured by the Federal Savings and Loan Insurance Corporation in the case of savings and loan associations, the Federal Deposit Insurance Corporation in the case of commercial banks, and the National Credit Union Administration in the case of credit unions.

HISTORY: 1977 Act No. 97 Section 7; 1981 Act No. 67, Section 1; 2012 Act No. 278, Pt IV, Subpt 2, Section 38.B, eff January 1, 2014.

**SECTION 8‑23‑80.** Limitation on financial liability of State or political subdivisions.

The financial liability of the State or political subdivision under a deferred compensation program shall be limited in each instance to the value of the particular fixed or variable annuity, insurance, savings or mutual fund contract purchased under this program and the State or political subdivision shall not be liable for any change in value of a policy at the time of settlement.

HISTORY: 1977 Act No. 97 Section 8.

**SECTION 8‑23‑90.** No cost or liability to State or political subdivisions other than incidental expenses.

The Deferred Compensation Plan shall operate without cost or liability to the State, any of its departments, agencies, boards, commissions, institutions or political subdivisions except for the incidental expense of administering the deduction of the deferred funds and the remittance thereof.

HISTORY: 1977 Act No. 97 Section 9.

**SECTION 8‑23‑100.** Withdrawal from program.

Notwithstanding any other provision of law, upon thirty days notice to his employer and to the underwriter, an employee may cease making contributions to any deferred compensation program established for his benefit under the provisions of this chapter. All contracts entered into under the provisions of this chapter shall include a statement to this effect in the contract.

HISTORY: 1977 Act No. 97 Section 10.

**SECTION 8‑23‑110.** Employer contributions; matching and other contributions by political subdivisions of State; determination of amount and terms of State contributions.

< Section effective until January 1, 2014. See, also, section effective January 1, 2014. >

(A) The commission shall ensure that plan documents governing deferred compensation plans administered by the commission permit employer contributions to the extent allowed under the Internal Revenue Code.

(B) Political subdivisions of the State, including school districts, participating in deferred compensation plans administered by the commission or such plans offered by other providers may make matching or other contributions on behalf of their participating employees.

(C) As an additional benefit for state employees, and to the extent funds are appropriated for this purpose, the State shall make matching or other contributions on behalf of state employees participating in the deferred compensation plans offered by the commission or such plans offered by other providers in an amount and under the terms and conditions prescribed for such contributions by the State Budget and Control Board.

HISTORY: 2000 Act No. 387, Part II, Section 6A, eff July 1, 2000.

**SECTION 8‑23‑110.** Employer contributions; matching and other contributions by political subdivisions of State; determination of amount and terms of State contributions.

< Section effective January 1, 2014. See, also, section effective until January 1, 2014. >

(A) The Board of Directors of the South Carolina Public Employee Benefit Authority shall ensure that plan documents governing deferred compensation plans administered by the board permit employer contributions to the extent allowed under the Internal Revenue Code.

(B) Political subdivisions of the State, including school districts, participating in deferred compensation plans administered by the board or such plans offered by other providers may make matching or other contributions on behalf of their participating employees.

(C) As an additional benefit for state employees, and to the extent funds are appropriated for this purpose, the State shall make matching or other contributions on behalf of state employees participating in the deferred compensation plans offered by the board or such plans offered by other providers in an amount and under the terms and conditions prescribed for such contributions by the board.

HISTORY: 2000 Act No. 387, Part II, Section 6A, eff July 1, 2000; 2012 Act No. 278, Pt IV, Subpt 2, Section 38.C, eff January 1, 2014.

**SECTION 8‑23‑115.** Repealed by 2002 Act No. 287, Section 2, eff July 1, 2002.