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.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 223, 248.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 40, Agreements Affecting Compensation.

Attorney General’s Opinions

International City Management Association (ICMA) may legally provide investments under its deferred compensation plans to employees of state, its agencies and political subdivisions, provided Deferred Compensation Commission has approved plans and authorized person underwriting and offering plans pursuant to Sections 8‑23‑20 and 8‑23‑30. Even if Commission has not approved plans, ICMA may legally provide them to political subdivisions, provided ICMA and particular investment meet requirements of Section 8‑23‑70. 1993 Op Atty Gen No. 93‑80.

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

 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.

Editor’s Note

1990 Act No. 430, Section 2, effective April 25, provides as follows:

“The requirement that one member be a retired public employee does not apply until the first vacancy in the commission occurs after the effective date of this act which is not now designated for a state employee.”

2012 Act No. 278, Pt IV, Subpt 3, Section 65, provides as follows:

“(A) Where the provisions of this act transfer portions of the Budget and Control Board to the South Carolina Public Employee Benefit Authority, the employees, authorized appropriations, and assets and liabilities of the transferred portions of the Budget and Control Board are also transferred to and become part of the South Carolina Public Employee Benefit Authority. All classified or unclassified personnel employed by the transferred portions of the Budget and Control Board either by contract or by employment at will, shall become on July 1, 2012, employees of the South Carolina Public Employee Benefit Authority, with the same compensation, classification, and grade level, as applicable. Before its abolition, the Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations. Notwithstanding the provisions of Section 9‑4‑10(A) of the 1976 Code, as added by this act, on the effective date of this section, the Governor and the Chairmen of the House Ways and Means Committee and the Senate Finance Committee jointly shall appoint the initial and any necessary succeeding Executive Director of the South Carolina Public Employee Benefit Authority to serve through December 31, 2013, after which the position must be filled by the appointment of the authority board. Notwithstanding the provisions of Section 9‑4‑10(F) of the 1976 Code, as added by this act, the Governor shall name a member of the Board of Directors of the South Carolina Public Employee Benefit Authority to serve as chairman of that board through December 31, 2013.

“(B) Regulations promulgated by the transferred portions of the Budget and Control Board are continued and are considered to be promulgated by the South Carolina Public Employee Benefit Authority. Contracts entered into by the Budget and Control Board and the Deferred Compensation Commission are continued and are considered to be devolved upon the South Carolina Public Employee Benefit Authority at the time of the transfer.

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

Effect of Amendment

The 1990 amendment, in the first paragraph, added the requirement that one member must be a retired state employee, and deleted provisions relating to initial appointments to the commission.

The 2008 amendment, in the first paragraph, in the first sentence, substituted “eight members including” for “seven members which includes” and added “chief investment officer of the State Retirement System Investment Commission, and” and “each of whom serve ex officio,”; and in the third sentence, added “State” before “Budget”.

The 2012 amendment rewrote the section.

Attorney General’s Opinions

International City Management Association (ICMA) may legally provide investments under its deferred compensation plans to employees of state, its agencies and political subdivisions, provided Deferred Compensation Commission has approved plans and authorized person underwriting and offering plans pursuant to Sections 8‑23‑20 and 8‑23‑30. Even if Commission has not approved plans, ICMA may legally provide them to political subdivisions, provided ICMA and particular investment meet requirements of Section 8‑23‑70. 1993 Op Atty Gen No. 93‑80.

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

 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.

Effect of Amendment

The 2008 amendment, in the first sentence, substituted “a portion” for “not more than twenty‑five percent” and added “an amount as provided for in a plan approved by the commission”, and made nonsubstantive changes.

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “commission” and substituted “board” for “commission” in two places.

Attorney General’s Opinions

International City Management Association (ICMA) may legally provide investments under its deferred compensation plans to employees of state, its agencies and political subdivisions, provided Deferred Compensation Commission has approved plans and authorized person underwriting and offering plans pursuant to Sections 8‑23‑20 and 8‑23‑30. Even if Commission has not approved plans, ICMA may legally provide them to political subdivisions, provided ICMA and particular investment meet requirements of Section 8‑23‑70. S.C. Op.Atty.Gen. Opinion No. 93‑80 (Dec. 8, 1993), 1993 WL 560535.

**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.

 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.

Editor’s Note

2012 Act No. 278, Pt IV, Subpt 3, Section 65, provides as follows:

“(A) Where the provisions of this act transfer portions of the Budget and Control Board to the South Carolina Public Employee Benefit Authority, the employees, authorized appropriations, and assets and liabilities of the transferred portions of the Budget and Control Board are also transferred to and become part of the South Carolina Public Employee Benefit Authority. All classified or unclassified personnel employed by the transferred portions of the Budget and Control Board either by contract or by employment at will, shall become on July 1, 2012, employees of the South Carolina Public Employee Benefit Authority, with the same compensation, classification, and grade level, as applicable. Before its abolition, the Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations. Notwithstanding the provisions of Section 9‑4‑10(A) of the 1976 Code, as added by this act, on the effective date of this section, the Governor and the Chairmen of the House Ways and Means Committee and the Senate Finance Committee jointly shall appoint the initial and any necessary succeeding Executive Director of the South Carolina Public Employee Benefit Authority to serve through December 31, 2013, after which the position must be filled by the appointment of the authority board. Notwithstanding the provisions of Section 9‑4‑10(F) of the 1976 Code, as added by this act, the Governor shall name a member of the Board of Directors of the South Carolina Public Employee Benefit Authority to serve as chairman of that board through December 31, 2013.

“(B) Regulations promulgated by the transferred portions of the Budget and Control Board are continued and are considered to be promulgated by the South Carolina Public Employee Benefit Authority. Contracts entered into by the Budget and Control Board and the Deferred Compensation Commission are continued and are considered to be devolved upon the South Carolina Public Employee Benefit Authority at the time of the transfer.

“(C) The Code Commissioner is directed to change or correct all references to the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission to reflect its transfer to the South Carolina Public Employee Benefit Authority. References to the name of the Employee Insurance Program, the Retirement Division, and the Deferred Compensation Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.”

Effect of Amendment

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “State Deferred Compensation Commission”.

Attorney General’s Opinions

International City Management Association (ICMA) may legally provide investments under its deferred compensation plans to employees of state, its agencies and political subdivisions, provided Deferred Compensation Commission has approved plans and authorized person underwriting and offering plans pursuant to Sections 8‑23‑20 and 8‑23‑30. Even if Commission has not approved plans, ICMA may legally provide them to political subdivisions, provided ICMA and particular investment meet requirements of Section 8‑23‑70. 1993 Op Atty Gen No. 93‑80.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 40, Agreements Affecting Compensation.

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

 (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.

Effect of Amendment

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “commission”; substituted “board” for “commission” throughout; and, substituted “board” for “State Budget and Control Board” in subsection (C).

CROSS REFERENCES

Distribution of funds for deferred compensation, see Section 59‑1‑470.

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

Editor’s Note

Former Section 8‑23‑115 was entitled “Third party vendors to provide consultative services for plan participants” and was derived from 2000 Act No. 387, Part II, Section 36, eff June 30, 2000.