

43:15B-3

LEGISLATIVE HISTORY CHECKLIST

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(Deferred compensation)

NJSA: 43:15B-3 et al

LAWS OF: 1997 CHAPTER: 116

BILL NO: A2624

SPONSOR(S): Bagger and others

DATE INTRODUCED: December 19, 1996

COMMITTEE: ASSEMBLY: State Government

SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 29, 1997

SENATE: April 21, 1997

DATE OF APPROVAL: June 6, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: Statement  
adopted 3-24-97

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:  
REPORTS: No

HEARINGS: No

KBP:pp

[Second Reprint]  
ASSEMBLY, No. 2624

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Assemblymen BAGGER, KRAMER and Senator Bassano

1 AN ACT concerning certain deferred compensation plans and  
2 amending P.L.1977, c.381 and P.L.1978, c.39.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 <sup>1</sup>1. Section 3 of P.L.1977, c.381 (C.43:15B-3) is amended to read  
8 as follows:

9 3. a. The plan shall provide that all money not needed for the  
10 immediate payment of benefits shall be invested by the employer in  
11 interest bearing securities in which savings banks of this State are  
12 authorized to invest their funds, or the employer shall make deposits  
13 in interest bearing accounts, or in the State of New Jersey Cash  
14 Management Fund established pursuant to section 1 of P.L.1977, c.  
15 281 (C. 52:18A-90.4), or in individual or group annuity programs  
16 whether fixed or variable, mutual funds, or life insurance contracts  
17 whether fixed or variable.

18 b. Notwithstanding section 1 of P.L.1977, c.381 (C.43:15B-1), the  
19 employer may contract with one or more private organizations for the  
20 administration of all or part of the plan, including the management and  
21 investment, or either thereof, of deferred and deducted salary funds.

22 Each contract shall be subject to the prior approval of the Director  
23 of the Division of Local Government Services on the basis of  
24 restrictions, limitations and other conditions established by the  
25 director by rule and regulation promulgated pursuant to the  
26 "Administrative Procedure Act" (P.L.1968, c.410, C.52:14B-1 et seq.)  
27 <sup>2</sup>[. which restrictions, limitations and other conditions shall conform  
28 to the provisions of the federal Internal Revenue Code, as amended,  
29 that are applicable to those plans]<sup>2</sup>; provided, however, that the  
30 director shall not approve any contract if it is inconsistent with <sup>2</sup>[the  
31 federal Internal Revenue Code, as amended, and]<sup>2</sup> any standards

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ASG committee amendments adopted January 23, 1997.

<sup>2</sup> Senate floor amendments adopted March 24, 1997.

1 which the New Jersey State Employees' Deferred Compensation  
2 Board, established pursuant to P.L.1978, c.39 (C. 52:18A-163 et  
3 seq.), may adopt for the deferred compensation plans of  
4 municipalities, counties, or authorities thereof, including, but not  
5 limited to, any service cost guidelines. If at the time a municipality,  
6 county or authority submits a contract to the Director of the Division  
7 of Local Government Services for his approval and the New Jersey  
8 State Employees' Deferred Compensation Board has not adopted  
9 standards for such deferred compensation plans, the director may  
10 approve such contract if it is consistent with the rules and regulations  
11 which he has promulgated for such contracts.

12 c. The employer may establish a plan or plan option which permits  
13 a participating employee to request the employer to invest all or a  
14 specified percentage of said employee's deferred salary in one, or a  
15 specified combination of, the following kinds of investments: (1)  
16 fixed or variable life insurance contracts, (2) individual or group,  
17 fixed or variable annuity contracts, (3) mutual fund shares, (4)  
18 interest bearing accounts or securities in which savings banks of this  
19 State are authorized to invest their funds, and (5) the State of New  
20 Jersey Cash Management Fund; provided that the employer retains the  
21 discretion to reject such request. Any such investments shall be limited  
22 to investments that are authorized for fiduciaries of trust estates  
23 pursuant to the "Prudent Investment Law" (P.L.1975, c.337,  
24 C. 3A:15-35 et seq.); provided, however, that with the exception of  
25 investments made by domestic insurance companies licensed to sell life  
26 insurance and annuities in this State and subject to review by the  
27 Commissioner of the Department of Insurance pursuant to chapter 20  
28 of Title 17B of the New Jersey Statutes, the Director of the Division  
29 of Local Government Services may review and reject any such  
30 investments as inconsistent with the standard applicable to the prudent  
31 investor as provided in section 3 of P.L.1975, c.337 (C.3A:15-37).

32 d. No organization seeking a contract pursuant to subsection b. of  
33 this section, shall through distribution of written material or by any  
34 other means, solicit employee participation in any deferred  
35 compensation plan or solicit employees to support the efforts of the  
36 organization to secure the contract. An organization holding a contract  
37 approved pursuant to subsection b. may distribute written material to  
38 solicit employee participation in a deferred compensation program,  
39 provided that the organization has received approval of the content  
40 and form of the material from the Director of the Division of Local  
41 Government Services. No representative of an organization under  
42 contract pursuant to subsection b. of this section shall initiate verbal  
43 communication with any prospective employee participant in a  
44 deferred compensation program without the express consent of the  
45 employer; provided, however, that any communication so authorized  
46 shall be consistent with the written material approved by the Director

1 of the Division of Local Government Services.

2 e. Subject to rules and regulations established by a board or any  
3 other body created or designated by the State or public official  
4 designated by the State (said board, body or official hereinafter  
5 "board"), to administer a deferred payment compensation plan  
6 established by the State (hereinafter "State plan") and subject to the  
7 approval of the board, the plan may provide for the employer for the  
8 benefit of its participants to participate in any State plan established by  
9 the board for State employees. In the event that such participation is  
10 approved by the board, rules, regulations and conditions established  
11 by the board or in the State plan shall apply to such participants, or  
12 said rules, regulations and conditions shall so apply as amended or  
13 supplemented with regard to said participants.

14 f. The named fiduciary shall provide in the plan for the distribution  
15 of any investment earnings, gains or losses, consistent with the  
16 requirements of the [U.S.] federal Internal Revenue [Service] Code,  
17 as amended. The distribution shall be allocated to each employee  
18 when he or she withdraws from the plan or receives benefits from the  
19 plan in accordance with the terms of the plan and the provisions of this  
20 act. For those employees participating in the State plan pursuant to  
21 subsection 3e. herein, the rules and regulations of the State board  
22 shall apply.

23 g. The plan shall provide for a uniform system of accounting for  
24 each participant and for investment of deferred compensation funds  
25 with annual or more frequent reports to the participants in the plan.

26 h. The named fiduciary shall have authority to take any steps  
27 reasonably necessary to implement the plan consistent with this act and  
28 the requirements of the [U.S.] federal Internal Revenue [Service]  
29 Code, as amended.<sup>1</sup>

30 (cf: P.L.1983, c.305 , s.3)

31

32 <sup>1</sup>[1.] 2.<sup>1</sup> Section 5 of P.L.1977, c.381 (C.43:15B-5) is amended  
33 to read as follows:

34 5. <sup>2</sup>a.<sup>2</sup> All moneys which are deferred and deducted in accordance  
35 with the provisions of this act and the plan shall <sup>2</sup>[remain assets of the  
36 employer and shall]<sup>2</sup> be invested in accord with the provisions of this  
37 act and the plan. The obligation of the employer to participating  
38 employees shall be contractual only and no preferred or special interest  
39 in the deferred moneys shall accrue to such employees <sup>2</sup>[, except that  
40 all assets and income of the plan shall be held in trust for the exclusive  
41 benefit of participating employees and their beneficiaries]<sup>2</sup>.

42 <sup>2</sup>b. For plans approved prior to August 20, 1996, moneys deferred  
43 shall be subject to the claims of the employer's general creditors until  
44 the plan document is amended to have all moneys deferred and any  
45 other assets or income of the plan held in trust or one or more annuity  
46 contracts or one or more custodial accounts for the exclusive benefit

1 of the participating employees and their beneficiaries. Employers shall  
2 have until January 1, 1999 to implement this change. For all plans  
3 adopted on or after August 20, 1996, all moneys that are deferred and  
4 any other assets or income of the plan shall be held in trust or one or  
5 more annuity contracts or one or more custodial accounts for the  
6 exclusive benefit of the participating employees and their  
7 beneficiaries.<sup>2</sup>

8 (cf: P.L.1977, c.381, s.5)

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10 <sup>1</sup>3. Section 10 of P.L.1977, c.381 (C.43:15B-10) is amended to  
11 read as follows:

12 10. No agreement may be entered into between the employer and  
13 any employee for the deferral and deduction of any portion of current  
14 salary, pursuant to this act, until the named fiduciary determines that  
15 the plan and any related implementing rules and regulations are  
16 consistent with the requirements of the **【United States】 federal**  
17 **Internal Revenue 【Service】 Code, as amended.**<sup>1</sup>

18 (cf: P.L.1977 , c.381, s.10)

19

20 <sup>1</sup>**【2.】 4.**<sup>1</sup> Section 8 of P.L.1978, c.39 (C.52:18A-170) is amended  
21 to read as follows:

22 8. All moneys which are deferred and deducted in accordance with  
23 the provisions of this act and the plan shall remain assets of the State  
24 and shall be invested in accord with the provisions of this act and the  
25 plan. The obligation of the State to participating employees and  
26 contractors shall be contractual only and no preferred or special  
27 interest in the deferred moneys shall accrue to such employees or  
28 contractors, except that all assets and income of the plan shall be held  
29 in trust for the exclusive benefit of participating employees and their  
30 beneficiaries.

31 (cf: P.L.1978, c.39, s.8)

32

33 <sup>1</sup>**【3.】 5.**<sup>1</sup> This act shall take effect immediately.

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37

38 Provides that deferred compensation plan assets and income shall be  
39 held in trust for the exclusive benefit of participating employees and  
40 their beneficiaries.



# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2624

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 2624.

Any municipality, county, authority created by one or more municipalities or counties, or the State may establish a deferred compensation plan for its employees. Employee contributions to a deferred compensation plan are considered assets of the employer. The purpose of this bill is to protect the interests of employees participating in such a plan and to conform State law with federal law regarding the management of assets and income under these plans. The bill provides that all assets and income of a deferred compensation plan shall be held in trust for the exclusive benefit of participating employees and their beneficiaries. It also specifies that contracts for local government deferred compensation plans shall be subject to the approval of the Director of the Division of Local Government Services in the Department of Community Affairs on the basis of restrictions, limitations and other conditions established by the director by rule or regulation, which restrictions, limitations or other conditions shall conform to the provisions of the federal Internal Revenue Code, as amended, that are applicable to the deferred compensation plan.

The State and local public employee deferred compensation plans are known as "§457" plans after the section of the Internal Revenue Code that makes contributions to such plans eligible for tax-deferred treatment. On August 20, 1996, the federal "Small Business Job Protection Act" became law. Section 1448 of the Act added a new subsection g. to §457, as follows:

**(g) GOVERNMENTAL PLANS MUST MAINTAIN SET-ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.--**

(1) IN GENERAL.--A plan maintained by an eligible employer . . . shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

...

(3) CUSTODIAL ACCOUNTS AND CONTRACTS.--For purposes of this subsection, custodial accounts and

contracts . . . shall be treated as trusts under **【applicable】**  
rules **【of the Internal Revenue Code】**.

House Conference Report No. 104-737 includes the following  
analysis of the provisions of section 1448:

*Present law*

Until deferrals under an unfunded deferred compensation plan of a State or local government or a tax-exempt organization (a "sec. 457 plan") are made available to a plan participant, the amounts deferred, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights must remain solely the property and rights of the employer, subject only to the claims of the employer's general creditors.

*House bill*

Under the House bill, all amounts deferred under a section 457 plan maintained by a State and local governmental employer have to be held in trust (or custodial account or annuity contract) for the exclusive benefit of employees. The trust (or custodial account or annuity contract) is provided tax-exempt status. Amounts are not considered made available merely because they are held in a trust, custodial account, or annuity contract. . . .

**COMMITTEE AMENDMENTS**

The committee amended the bill to change references to the Internal Revenue Service in P.L.1977, c.381 to the Internal Revenue Code and to specify that contracts for local government deferred compensation plans shall be subject to the approval of the Director of the Division of Local Government Services in the Department of Community Affairs on the basis of restrictions, limitations and other conditions established by the director by rule or regulation, which restrictions, limitations or other conditions shall conform to the provisions of the federal Internal Revenue Code, as amended, that are applicable to the deferred compensation plan.



# STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 2624**

with Senate Floor Amendments  
(Proposed By Senator BASSANO)

ADOPTED: MARCH 24, 1997

On August 20, 1996, the federal Small Business Job Protection Act, which contained provisions concerning public employee deferred compensation plans, was signed into law. These amendments provide that for plans approved prior to August 20, 1996, moneys deferred shall be subject to the claims of the employer's general creditors until the plan document is amended to have all moneys deferred and any other assets or income of the plan held in trust or one or more annuity contracts or one or more custodial accounts for the exclusive benefit of the participating employees and their beneficiaries. Employers shall have until January 1, 1999 to implement this change. For all plans adopted on or after August 20, 1996, all moneys that are deferred and any other assets or income of the plan shall be held in trust or one or more annuity contracts or one or more custodial accounts for the exclusive benefit of the participating employees and their beneficiaries.