

CHAPTER 125

**GOVERNMENT - STATE**

SENATE BILL 98-040

BY SENATORS Coffin and Tebedo;  
also REPRESENTATIVE Pfiffner.

**AN ACT**

CONCERNING THE STATE DEFERRED COMPENSATION PLAN.

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

**SECTION 1.** 24-52-102 (1) (a), (1) (d) (I), (1) (f), (2) (a), (3), and (5), Colorado Revised Statutes, are amended to read:

**24-52-102. Deferred compensation plan - state deferred compensation committee.** (1) (a) (I) (A) THIRTY DAYS AFTER THE DATE THAT IS THE EFFECTIVE DATE OF THIS PARAGRAPH (a), AS AMENDED, THE EXISTING STATE DEFERRED COMPENSATION COMMITTEE IS ABOLISHED, AND, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), THE TERMS OF THE MEMBERS OF THE COMMITTEE THEN SERVING ARE TERMINATED.

(B) THIRTY DAYS AFTER THE DATE THAT IS THE EFFECTIVE DATE OF THIS PARAGRAPH (a), AS AMENDED, there is hereby created the state deferred compensation committee consisting of the following nine members: The state treasurer, the state controller, or their designees; four employees who are participants in the plan and who are elected by participants in the plan; ~~an employee~~ A PARTICIPANT IN THE PLAN WHO SHALL BE appointed by the governor; and two members of the general assembly, one a senator, OR FORMER SENATOR WHO IS NO LONGER SERVING IN THE GENERAL ASSEMBLY AT THE TIME OF APPOINTMENT AND WHO IS A PARTICIPANT IN THE PLAN, to be appointed by the president of the senate and one a representative, OR FORMER REPRESENTATIVE WHO IS NO LONGER SERVING IN THE GENERAL ASSEMBLY AND WHO IS A PARTICIPANT IN THE PLAN, to be appointed by the speaker of the house of representatives. Each member who is a state official or the member's designee shall serve on the committee for the duration of the member's elected or appointed term of office. ~~and the~~ Members who are members of the general assembly shall serve on the committee for the duration of their elected terms of office as members of the general

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

assembly; except that A FORMER SENATOR OR REPRESENTATIVE WHO WAS NOT SERVING IN THE GENERAL ASSEMBLY AT THE TIME OF APPOINTMENT SHALL SERVE AT THE PLEASURE OF THE OFFICIAL WHO APPOINTED SUCH INDIVIDUAL TO THE COMMITTEE AND the ~~employee~~ PARTICIPANT IN THE PLAN appointed by the governor shall serve at the pleasure of the governor.

(II) ~~On and after July 1, 1996,~~ THIRTY DAYS AFTER THE DATE THAT IS THE EFFECTIVE DATE OF THIS PARAGRAPH (a), AS AMENDED, the committee members ~~representing the~~ ELECTED BY PARTICIPANTS IN THE plan ~~participants~~ shall be elected for terms of four years; except that ~~of the two members elected for terms commencing July 1, 1996, one member shall serve for a term of four years and one member shall serve for a term of three years~~ ELECTED MEMBERS WHO REPRESENTED PLAN PARTICIPANTS ON THE STATE DEFERRED COMPENSATION COMMITTEE ABOLISHED PURSUANT TO SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AT THE TIME SUCH COMMITTEE WAS ABOLISHED SHALL SERVE ON THE COMMITTEE CREATED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AS THE MEMBERS ELECTED BY PARTICIPANTS IN THE PLAN FOR TERMS ENDING ON THE DATE THAT THEIR TERMS ON THE ABOLISHED COMMITTEE WERE SCHEDULED TO EXPIRE. The procedure for the election of the committee members ~~representing~~ ELECTED BY PARTICIPANTS IN THE plan ~~participants~~ shall be established by the committee. Vacancies of elected committee members ~~representing~~ ELECTED BY PARTICIPANTS IN THE plan ~~participants~~ shall be filled by election for the unexpired term.

(d) (I) The committee shall exercise its functions over which it has substantial discretion solely in the interest of the ~~benefit recipients of the plan~~ PARTICIPANTS AND THEIR BENEFICIARIES and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in administering the plan. The committee shall act in accordance with the provisions of this article and with the care, skill, and diligence in light of the circumstances then prevailing that a person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. THE COMMITTEE SHALL BE THE TRUSTEE OF ANY TRUST ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(f) (I) The committee, IN ITS CAPACITY AS COMMITTEE AND TRUSTEE, shall be considered a public entity for purposes of the "Colorado Governmental Immunity Act", article 10 of this title, and shall be included in the coverage provided by the risk management fund pursuant to the provisions of section 24-30-1510.

(II) The committee, IN ITS CAPACITY AS COMMITTEE AND TRUSTEE, may obtain, and the plan shall pay for, insurance or shall self-insure against liability which may arise out of, or is in connection with, the performance of duties by any member of the committee or employee of the plan.

(2) (a) The administrator may establish and administer a deferred compensation plan for employees in addition to any retirement, pension, benefit, or other deferred compensation plans established by the state or a political subdivision. ALL ASSETS AND INCOME OF THE PLAN SHALL BE HELD IN TRUST FOR THE EXCLUSIVE BENEFIT OF PLAN PARTICIPANTS AND THEIR BENEFICIARIES AND TO PAY PLAN EXPENSES IN ACCORDANCE WITH SECTION 457 (g) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THE PLAN, INCLUDING ANY ASSOCIATED TRUST, SHALL BE AN

ELIGIBLE DEFERRED COMPENSATION PLAN AS DEFINED IN SECTION 457 (b) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(3) An employee may enter into a written agreement with the state or a political subdivision to defer any part of ~~his~~ THE EMPLOYEE'S compensation for investment as provided by this article. The total annual amount deferred shall not exceed the employee's annual salary under applicable salary schedules or compensation plans AND SHALL NOT EXCEED ANY LIMITS IMPOSED UNDER THE PLAN.

(5) (a) The ~~administrator~~ COMMITTEE may assess each ~~participating employee~~ STATE PARTICIPANT a fee for administering the ~~fund~~ STATE DEFERRED COMPENSATION PLAN which shall be automatically deducted and which shall not exceed one percent of the participating employee's assets in the STATE deferred compensation plan. All fees collected pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit the same to the deferred compensation ADMINISTRATION fund, which fund is hereby created. ALL INVESTMENT INCOME DERIVED FROM MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. The general assembly shall make annual appropriations from such fund for the direct and indirect costs of administration of the plan under this article. Any fees OR OTHER MONEYS in excess of expenditures shall be used to reduce PLAN participants' annual fees in ~~the following year~~ SUBSEQUENT YEARS.

(b) COMPENSATION DEFERRED BY PARTICIPANTS IN THE STATE DEFERRED COMPENSATION PLAN SHALL BE CREDITED TO THE DEFERRED COMPENSATION PLAN ASSET FUND, WHICH FUND IS HEREBY CREATED. ALL INVESTMENT INCOME DERIVED FROM COMPENSATION DEFERRED BY PLAN PARTICIPANTS PRIOR TO THE TRANSMITTAL OF SUCH DEFERRALS TO THE PLAN SHALL BE CREDITED TO THE STATE DEFERRED COMPENSATION ADMINISTRATION FUND CREATED IN PARAGRAPH (a) OF THIS SUBSECTION (5) FOR THE PURPOSE OF REDUCING THE ADMINISTRATIVE FEES OF PLAN PARTICIPANTS.

**SECTION 2.** 24-52-103 (2), Colorado Revised Statutes, is amended to read:

**24-52-103. Deferred compensation - investment.** (2) ASSETS AND INCOME OF THE STATE DEFERRED COMPENSATION PLAN SHALL NOT BE GENERAL ASSETS OF THE STATE AND, THEREFORE, investments made pursuant to this section shall not be construed to be a prohibited use of the general assets of the state.

**SECTION 3. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 17, 1998