

No. 1987-81

AN ACT

SB 209

Amending the act of March 30, 1811 (P.L.145, No.99), entitled "An act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public monies, and for other purposes," authorizing deferred compensation programs for officers and employees of the Commonwealth and political subdivisions; and authorizing the payment of certain commissions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section VIII of the act of March 30, 1811 (P.L.145, No.99), entitled "An act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public monies, and for other purposes," amended July 18, 1974 (P.L.472, No.168), is amended to read:

Section VIII. And be it further enacted by the authority aforesaid, That the state treasurer shall pay all grants, salaries, annuities, gratuities, and pensions established by law, and make all other payments which are or shall be so fixed by law, that the sum to be paid cannot be affected by the settlement of any account, nor increased nor diminished by the discretionary powers of the auditor-general and state treasurer; Provided however, That in relation to pensions payable under decrees of courts, the state treasurer may, if he deems it proper, refer the said decrees or certificates back to the court for revision, stating his reasons therefor: And also provided, That *the State Employees' Retirement Board, on behalf of the Commonwealth, and the treasurer or other officer in charge of payrolls for any county, city, town or other political subdivision may make systematic investments in mutual funds, savings accounts or government bonds or make premium payments on life insurance or annuity contracts to any institution or company licensed and authorized in accordance with the rules and regulations promulgated by the appropriate State agencies to accept deposits or sell such products in this State for the purpose of funding a deferred compensation program for employes.*

Section 2. The act is amended by adding sections to read:

Section VIII.2.—(a) The Commonwealth of Pennsylvania, and any political subdivision of this Commonwealth, may establish eligible deferred compensation plans pursuant to section 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) for their elected or appointed officers and employes who perform services for the Commonwealth or a political subdivision.

(b) As used in this section, "Commonwealth officer" or "employee" means:

(1) *any individual who is an elected or appointed official of the Commonwealth;*

(2) *any individual employed by the Commonwealth; or*

(3) *any individual employed by the Commonwealth where it is deemed an employer-employee relationship exists. The State Employees' Retirement Board shall make the final determination of who is a Commonwealth officer or employe.*

"Compensation" means pay for normal services rendered.

(c) *Any eligible deferred compensation plans established for Commonwealth officers or employes shall be established by the State Employees' Retirement Board.*

(d) *Any eligible deferred compensation plans established for the officers, employes or other individuals performing services for a political subdivision shall be established and administered by the governing body of the political subdivision.*

(e) *In order to establish and administer eligible deferred compensation plans, the powers and duties of the State Employees' Retirement Board or the governing body of a political subdivision shall include, but not be limited to:*

(1) *Entering into written agreements with one or more financial or other organizations to administer the deferred compensation plan for Commonwealth employes or employes of political subdivisions and to invest funds held pursuant to such plan. Any such written agreement and deferred compensation plan shall conform with the provisions of section 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) and regulations adopted pursuant thereto.*

(2) *Promulgating rules and regulations establishing procedures whereby eligible individuals may elect to participate in a plan, change their election amount or change their investment choices on a quarterly basis, whereby eligible individuals may elect to cease participation entirely at any time with reasonable notice, not to exceed four weeks, and whereby such individuals may designate the amount of compensation to be deferred above a minimum monthly deposit of ten dollars; arranging for a deduction, from the compensation of eligible individuals, of the amounts to be deferred under a plan; establishing standards or criteria for the selection by the State Employees' Retirement Board or the governing body of the political subdivision of financial institutions, insurance companies or other organizations which may be qualified as managers on behalf of the Commonwealth, or a political subdivision, of funds deferred under a plan on behalf of any eligible individual; establishing standards and criteria for the providing of options to eligible individuals concerning the method of investing amounts deferred under any plan and of informing eligible individuals of specific options offered by qualified managers; establishing standards and criteria for the disclosure to eligible individuals of the anticipated and actual income attributable to such amounts, property and rights and all fees, costs and charges to be made against such amounts deferred to cover the costs of administering and managing the funds. Any officer or employe of the State or a political subdivi-*

sion who elects to participate in a deferred compensation plan shall have the option to elect that his deferred compensation be invested in a portfolio which does not include any stock or obligation of any corporation doing business, either by itself or through any subsidiary or affiliate, in the Republic of South Africa or Namibia. The State Employees' Retirement Board or governing body of a political subdivision shall, in selecting qualified fund managers, ensure that a fund manager is selected who has such an option available.

(3) An annual review of any qualified fund manager for the purpose of making certain it continues to meet all standards and criteria established.

(4) Establishing procedures where any officer or employe may cease making deferrals or where deferred amounts may be withdrawn in cases of financial hardship or the separation of such individual from service with the Commonwealth or political subdivision.

(5) All deferred compensation plans shall be administered in compliance with section 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457) and its accompanying regulations. Any income deferred under such authorized agreement shall continue to be included as regular compensation for computing retirement and benefits earned by any Commonwealth or political subdivision officer or employe, but any sum deferred shall not be included in the computation of any Federal income taxes to be withheld.

(f) All amounts deferred under a deferred compensation plan shall constitute taxable income for purposes of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and shall constitute taxable income for State and local earned income taxes.

(g) Neither the Commonwealth, the State Employees' Retirement Board nor any political subdivision shall be responsible for any investment loss incurred in the program, or for the failure of any investment to earn any specific or expected return or to earn as much as any other investment opportunity, whether or not such other investment opportunity was offered to participants in the program, nor shall the Commonwealth contribute to its deferred compensation program. The expenses arising from allowing individuals to elect to participate in a deferred compensation plan to choose a fund manager, to deduct from compensation amounts deferred under a plan and to transfer to the fund manager amounts so deducted shall be borne by the Commonwealth or the political subdivision. All other expenses arising from the administration of a deferred compensation plan shall be assessed against the accounts created on behalf of participating individuals either by the fund managers or by the Commonwealth or a political subdivision. The obligation of the Commonwealth or political subdivision officer or employe shall be a contractual obligation only with no preferred or special interest in deferred funds to such officer, employe or contractor.

(h) All funds which shall be withheld or deferred by the Commonwealth or political subdivision in accordance with the terms of this act shall remain an asset of the Commonwealth and shall be held in a special fund hereby created within the State Treasury of which the State Treasurer shall be the

custodian, or an asset of the political subdivision until such time as the funds are distributed to the participant or his beneficiary in accordance with the terms of the agreement between the participant and the State Employees' Retirement Board or between the participant and the governing body of the political subdivision. Such deferred compensation plans shall exist and serve in addition to and shall not be a part of any retirement or pension system for officers and employes.

(i) Investment of deferred funds by any corporation, institution, insurance company or custodial bank which the State Employees' Retirement Board or governing body of a political subdivision has approved shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than thirty days from the date of payroll deduction to the date that funds are invested. Any interest earned on such funds pending investment shall be allocated to the Commonwealth or political subdivision and credited to the accounts of employes who are then participating in the plan unless such interest is used to defray administrative costs and fees which would otherwise be required to be borne by employes who are then participating in the plan.

(j) No officer or employe participant or beneficiary shall have the right to commute, sell, assign or otherwise transfer or convey the rights to receive any payments under agreements entered into pursuant to this section, and such payments and rights are expressly declared to be nonassignable and nontransferable.

(k) A participant may withdraw from the agreement in accordance with the approved plan by notice, in writing, signed by the participant and approved by the administrator and such withdrawal shall discontinue future deferrals by the State or the political subdivision, but shall not operate to withdraw any funds theretofore contributed, except in cases of approved financial hardship.

(l) Every officer or employe of the Commonwealth or political subdivision who, upon the effective date of this act, has either been in office or employed by the Commonwealth or political subdivision shall immediately be eligible for participation in a deferred compensation plan. Thereafter, every officer or employe of the Commonwealth or political subdivision shall become eligible upon employment.

(m) The State Employees' Retirement Board shall promulgate rules and regulations extending its administrative, funding and marketing facilities to any political subdivision which elects to utilize them in providing a deferred compensation plan to its employes. Each political subdivision shall designate an officer to coordinate the deferred compensation program.

Section VIII.3. For the purposes of this act only, notwithstanding the provisions of the act of September 26, 1961 (P.L.1661, No.692), known as the "State Employes Group Life Insurance Law," the act of January 27, 1966 (1965 P.L.1624, No.577), entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments,

boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined, 'authorizing the Secretary of Property and Supplies to transact business as an insurance broker for the purpose of contracting insurance and surety bonds for any department, board, agency or commission of this Commonwealth and for any State authority established by law,' or the act of July 31, 1968 (P.L.691, No.229), entitled "An act reenacting and amending the act of September 26, 1961 (P.L.1661, No. 692), entitled 'An act providing for group life insurance for State employes; establishing a schedule; providing for payment; providing for reduction of insurance upon retirement; authorizing the Secretary of Property and Supplies to act as exclusive agent for the purpose of contracting for insurance; and providing for administration and advisory services by the Department of Property and Supplies,' providing for contributions by the State, increasing the amounts of insurance provided under the schedule, reducing the period of continuous service required for eligibility, deleting the provision relating to insurance coverage for retired employes and consulting services and extending coverage to permanent part-time employes," insurance companies selected as qualified fund managers by eligible individuals may pay commissions to agents or brokers licensed to transact business in this Commonwealth in accordance with their standard practice followed in other similar plans as if the premium had been paid by such eligible individual.

Section 3. This act shall take effect in 120 days.

APPROVED—The 6th day of November, A. D. 1987.

ROBERT P. CASEY