

TITLE 43:

PENSIONS AND RETIREMENT AND
UNEMPLOYMENT COMPENSATION

**CHAPTER 15B: COUNTY AND MUNICIPAL
ANNUITIES**

with changes enacted June 6, 1997

with changes made 1997/LOSAP

43:15B-1. Deferred compensation plan; written agreement; employee's deferred salary account

Any municipality, county, or an authority created by one or more counties or municipalities (hereinafter "employer") may establish a deferred compensation plan (hereinafter "plan"), **and a sponsoring agency, pursuant to P.L.1997, c.388 (C.40A:14-183), may establish a length of service award program based on such plan,** whereby the employer may enter into a written agreement with any of its employees (hereinafter "participants") constituting a contract for a voluntary deferral of salary. Such contract shall remain in effect until the employee's service is terminated or until a new contract is executed by the employee and employer. Not more than one contract shall be executed in any one fiscal year of the employer with any one employee. Pursuant to such contract the employer shall credit from time to time a specific amount per pay period, as deferred salary, to a participant's account. This account shall be known as the Employee's Deferred Salary Account, and shall be credited from time to time to reflect gains realized on the investment of the moneys in the deferred salary account. An accounting summary of the individual deferred salary accounts of all employee participants shall be maintained to reflect the employer's total deferred liability under the plan and the individual balances of all participants. Any employer which establishes such a plan shall designate one or a group of its public officials, or the county's or municipality's governing body, as defined in N.J.S. 40A:4-2 of the Local

Budget Law, or an authority's governing body, as the case may be, as the named fiduciary responsible for the administration of said plan and investment of and accounting for the funds maintained thereunder.

L.1977, c. 381, e 1, eff. Feb. 8, 1978. Amended by L.1983, c. 305, e 2, eff. Aug. 26, 1983.

43:15B-2. Amounts; determination by agreement

The amounts of any such deferred salary shall be determined by agreement between the employer and the employee, subject to any limitations which the employer may establish. The total amount of the salary deferred pursuant hereto for any year shall be in addition to any contributions made in such year on behalf of any employee in accordance with section 7 of P.L.1963, c. 123 (C. 52:18A-113).

L.1977, c. 381, e 2, eff. Feb. 8, 1978.

43:15B-3. Provisions of plans; contracts; requirements

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

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

Each contract shall be subject to the prior approval of the Director of the Division of Local Government Services on the basis of restrictions, limitations and other conditions established by the

director by rule and regulation promulgated pursuant to the "Administrative Procedure Act" (P.L.1968, c. 410, C. 52:14B-1 et seq.); provided, however, that the director shall not approve any contract if it is inconsistent with any standards which the New Jersey State Employees' Deferred Compensation Board, established pursuant to P.L.1978, c. 39 (C. 52:18A-163 et seq.), may adopt for the deferred compensation plans of municipalities, counties, or authorities thereof, including, but not limited to, any service cost guidelines. If at the time a municipality, county or authority submits a contract to the Director of the Division of Local Government Services for his approval and the New Jersey State Employees' Deferred Compensation Board has not adopted standards for such deferred compensation plans, the director may approve such contract if it is consistent with the rules and regulations which he has promulgated for such contracts.

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

prudent investor as provided in section 3 of P.L.1975, c. 337 (C. 3A:15-37).

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

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

f. The named fiduciary shall provide in the plan for the distribution of any investment earnings, gains or losses, consistent with the requirements of

the federal Internal Revenue Code, as amended. The distribution shall be allocated to each employee when he or she withdraws from the plan or receives benefits from the plan in accordance with the terms of the plan and the provisions of this act. For those employees participating in the State plan pursuant to subsection 3e. herein, the rules and regulations of the State board shall apply.

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

h. The named fiduciary shall have authority to take any steps reasonably necessary to implement the plan consistent with this act and the requirements of the federal Internal Revenue Code, as amended.

L.1977, c. 381, e 3, eff. Feb. 8, 1978. Amended by L.1980, c. 78, e 1, eff. July 24, 1980; L.1983, c. 305, e 3, eff. Aug. 26, 1983; L 1997, c. 116, e1, eff June 6, 1997 .

43:15B-4. Plan to be in addition to obligation under any other retirement system or benefit plan

Any deferred compensation plan shall be in addition to the obligation of the employee under any other retirement system or benefit plan established pursuant to any other law of this State.

L.1977, c. 381, e 4, eff. Feb. 8, 1978.

43:15B-5. Assets developed from plan; investment; obligation of employer

a. All moneys which are deferred and deducted in accordance with the provisions of this act and the plan shall be invested in accord with the provisions of this act and the plan. The obligation of the employer to participating employees shall be contractual only and no preferred or special interest in the deferred moneys shall accrue to such employees.

b. 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 asset 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. 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 asset 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.

L.1977, c. 381, e 5, eff. Feb. 8, 1978; L 1997, c. 116, e5, eff June 6, 1997 .

43:15B-6. Unassignability of payments and rights

No participating employee or beneficiary thereof shall have the right to commute, sell, assign or otherwise transfer or convey the rights to receive any payments deriving from participation in the plan and such payments and rights are expressly declared to be and shall be unassignable.

L.1977, c. 381, e 6, eff. Feb. 8, 1978.

43:15B-7. Exclusion of deferred and deducted amount from computation of federal withholding taxes

Any amount of the employee's salary that is deferred and deducted under this act and the plan shall continue to be included as regular compensation for all purposes, including pension benefits earned by any such employee, but any salary deferred and deducted shall not be included in the computation of any Federal taxes withheld from the employee's salary on behalf of such employee.

L.1977, c. 381, e 7, eff. Feb. 8, 1978.

43:15B-8. Transfer of credits from employment by different employer

Any employee who made contributions to a similar plan while employed in a state other than New Jersey or by an employer in New Jersey different from the current employer may transfer his credit from the previous plan pursuant to provisions contained in the plan, provided the previous similar plan allows such transfers. Such purchase of credit in a plan authorized by this act shall enable the employee to gain the same benefits of the plan as if he had always been employed by his current employer.

L.1977, c. 381,e 8, eff. Feb. 8, 1978.

43:15B-9. Transfer of credit from plan to similar plan of participant's new employer

Any participant who changes jobs may transfer his credit from the plan pursuant to authorizing provisions which may be contained in the plan, provided the similar plan of the participant's new employer permits such a transfer.

L.1977, c. 381,e9, eff. Feb. 8, 1978.

43:15B-10. Conformance of plan to requirements of United States Internal Revenue Service

No agreement may be entered into between the employer and any employee for the deferral and deduction of any portion of current salary, pursuant to this act, until the named fiduciary determines that the plan and any related implementing rules and regulations are consistent with the requirements of the United States Internal Revenue Service.

L.1977, c. 381, e10, eff. Feb. 8, 1978.