

1 HB5
2 172333-2
3 By Representative Hill (M)
4 RFD: State Government
5 First Read: 02-FEB-16
6 PFD: 01/12/2016

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the State Personnel
9 Board has established a tax deferred compensation
10 plan for employees of the state or a municipality,
11 county, or other public entity electing to
12 participate in the plan.

13 This bill would authorize entities
14 participating in the plan to enroll employees in
15 the plan upon employment with an option to opt out
16 of the plan within 90 days after enrollment.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Section 36-26-14, Code of Alabama 1975, as
23 amended by Act 2015-83, providing for the establishment of a
24 tax deferred compensation plan by the State Personnel Board,
25 to authorize entities participating in the plan to enroll
26 employees in the plan with provisions for the employee to opt
27 out under certain conditions.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 36-26-14, Code of Alabama 1975,
3 as amended by Act 2015-83, is amended to read as follows:

4 "§36-26-14.

5 "(a) The personnel board may adopt, establish, and
6 maintain a deferred compensation plan or plans, except under
7 Internal Revenue Code Section 403 (b), for the employees of
8 the State of Alabama or any city, town, county, or public
9 entity or corporation organized pursuant to the laws of this
10 state. Notwithstanding the foregoing, prior to the employees
11 of a county or political subdivision of the county
12 participating in a plan, the employing county or political
13 subdivision of the county shall approve participation in the
14 plan. The personnel board may include in any such plan any
15 provision that does not cause the plan to fail to qualify for
16 its tax-favored treatment under the United States Internal
17 Revenue Code, including, but not limited to, participant
18 loans, unforeseeable emergency or hardship distributions, Roth
19 deferrals, rollovers, transfers to purchase service credit,
20 and distributions to purchase a retired public safety
21 officer's health insurance.

22 "(b) The State of Alabama Personnel Board may adopt
23 and arrange for consolidated billing and efficient investment,
24 trustee, administrative, and professional services in order
25 that any such plans adopted shall operate without cost to or
26 contribution from the State of Alabama except for incidental
27 expenses associated with administering any such plan, the

1 payroll salary-reductions and the remittance thereof to the
2 trustee or custodian of the plan or plans.

3 "(c) Subject to subsection (h), Alabama state
4 employees, or the employees of any city, town, county, or
5 public entity or corporation organized pursuant to the laws of
6 this state may participate in these plans on a voluntary basis
7 by authorizing in writing to their employer a reduction in
8 their cash remuneration to be placed in the plan or plans.

9 "(d) The Finance Director, Comptroller, or other
10 appropriate official is hereby authorized and directed to
11 initiate payroll deductions for the plans as directed by each
12 employee.

13 "(e) Participants who are receiving monthly benefits
14 from the Employees' Retirement System of Alabama, the Judicial
15 Retirement Fund of Alabama, the Teachers' Retirement System of
16 Alabama, or any other public retirement plan may opt to have
17 the cost of their retiree health insurance deducted from their
18 deferred compensation distribution in accordance with the
19 guidelines of the United States Internal Revenue Service.

20 "(f) It is expressly provided that any benefits
21 under the provisions of this section shall be in addition to
22 any other benefits provided by law for any employees of the
23 State of Alabama, and this section is specifically made
24 supplemental to and shall be construed in pari materia with
25 the provisions of the employees' retirement law of Alabama.

26 "(g) Except as otherwise required under the Internal
27 Revenue Code, each such deferred compensation plan and its

1 trust shall be established and maintained for the exclusive
2 benefit, as defined by law of the plan's participants and
3 their beneficiaries, and all assets of any such plan shall be
4 held for the exclusive benefit of the plan's participants and
5 their beneficiaries. For the purposes and within the meaning
6 of Section 19-3B-102, each such plan is declared to be a trust
7 created by statute and is therefore required to be
8 administered in the manner of an express trust.

9 "(h) (1) After the effective date of the act adding
10 this subsection, the board, in the case of state employees, or
11 the employing entity for other employees, may require each
12 person who is employed or returns to employment after a break
13 in service who is eligible to participate in an established
14 plan provided for in subsection (a) to be automatically
15 enrolled in the plan as provided in this subsection.

16 "(2) An employee enrolled in the plan may opt out of
17 the plan and withdraw without any penalty his or her
18 contribution within 90 days after the date of the employee's
19 first contribution to the plan.

20 "(3) An employee enrolled in the plan pursuant to
21 this subsection shall contribute one percent of the employee's
22 pre-tax includible compensation to the employee's account in
23 the same manner as otherwise provided for the operation of the
24 plan. An employee automatically enrolled in the plan pursuant
25 to this subsection may change the employee's contribution as
26 otherwise provided for by the plan.

1 "(4) During the 90-day permissible withdrawal
2 period, the plan shall invest all contributions made by the
3 employee in an appropriate investment option with limited
4 exposure to market volatilities as determined by the plan or
5 as otherwise determined by the employee. Thereafter, an
6 employee enrolled in the plan may change his or her investment
7 options and invest funds in his or her account in the same
8 manner as other participants in the plan.

9 "(5) The board, in the case of a state employee, or
10 the employing entity for other employees, shall provide notice
11 in writing to an employee automatically enrolled in the plan.
12 The notice shall include information on the right of the
13 employee to opt out of the plan during the 90-day opt out
14 period and information on investment options under the plan.
15 Notwithstanding the foregoing, the failure to provide notice
16 pursuant to this subdivision shall create an additional
17 obligation or liability on the part of the state, the board,
18 or the plan administrators."

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.