

**CHAPTER 181****(HB 697)**

AN ACT relating to Kentucky Public Employees Deferred Compensation Authority.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS 18A.230 TO 18A.275 IS CREATED TO READ AS FOLLOWS:

*The contributions to the trust fund of participants' deferred compensation represent private employee contributions. The assets and earnings of the trust fund shall at all times be preserved, invested, and expended solely for the purposes of the trust and shall be held in trust for the exclusive benefit of the participants and beneficiaries, and no right or interest therein shall exist in favor of the Commonwealth. The assets and earnings shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust fund.*

➔Section 2. KRS 18A.240 is amended to read as follows:

A state fund is hereby authorized, called "The Kentucky State Public Employees Deferred Compensation Trust Fund," which shall consist of all of the assets of the system as set forth in KRS 18A.230 to 18A.275. *No part of this fund shall revert to the general fund of the Commonwealth.*

➔Section 3. KRS 18A.245 is amended to read as follows:

- (1) The authority shall be administered by a board of trustees composed of seven (7) members, who shall be as follows:
  - (a) Secretary, Finance and Administration Cabinet, ex officio;
  - (b) Secretary of personnel, ex officio;
  - (c) The state controller, ex officio; and
  - (d) Four (4) at-large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall be a representative of a nonstate government employer.
- (2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office. *Each ex officio member may designate a proxy by written notice to the authority prior to call of order of each meeting and the proxy shall be entitled to participate as a full voting member.*
- (3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.
- (4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or of a misdemeanor involving moral turpitude.
- (5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of one hundred dollars (\$100) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.
- (6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.
- (7) The authority shall be attached to the Personnel Cabinet for administrative purposes only. The board may take but is not limited to the following actions:
  - (a) Appoint such employees as it deems necessary and fix the compensation for all employees of the board, subject to the approval of the secretary. The executive director of the authority and employees appointed by the board shall serve at its will and pleasure. All other staff of the authority shall be employed under KRS 18A.005 to 18A.200;

- (b) Require such employees as it thinks proper to execute bonds for the faithful performance of their duties;
- (c) Establish a system of accounting;
- (d) Contract for such services as may be necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
- (e) Do all things, take all actions, and adopt plans for participation consistent with federal law and with the provisions of KRS 18A.230 to 18A.275, including but not limited to:
  - 1. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan or the Kentucky Employees 457 Deferred Compensation Plan, or both such plans, to adopt, maintain, and terminate a deemed IRA program under Internal Revenue Code Section 408;
  - 2. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan to adopt, maintain, and terminate a qualified Roth contribution program under Internal Revenue Code Section 402A; and
  - 3. Adopting, maintaining, and terminating an Internal Revenue Code Section 403(b) plan for qualified employees.
- (f) ***Contract with persons or companies duly licensed by the state of Kentucky and applicable federal regulatory agencies, at the cost of the trust fund, to provide investment advice to participants in the plans, with respect to their selection of permitted investments in the plans.***

- (8) The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.
- (9) The board shall prepare an annual financial report showing all receipts, disbursements, assets, and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.

➔Section 4. KRS 18A.255 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the State of Kentucky public employees deferred compensation trust fund pursuant to written deferred compensation agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts.
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the written deferred compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments shall be used to defray the expenses of administering the deferred compensation system.
- (3) ***Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice provided to the participant by operation of subsection (7)(f) of Section 3 or otherwise. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice provided to a participant.***

**Signed by Governor April 24, 2008.**