

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 937

H.P. 685

House of Representatives, February 11, 1997

An Act Relating to the State's Deferred Compensation Plan.

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MAYO of Bath.

Cosponsored by Senator MILLS of Somerset and

Representatives: BOUFFARD of Lewiston, KONTOS of Windham, LEMAIRE of Lewiston, SAXL of Bangor, THOMPSON of Naples, Senators: BENNETT of Oxford, HARRIMAN of Cumberland, PINGREE of Knox.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 5 MRSA c. 67, first 2 lines** are repealed and the following
enacted in their place:

6 **CHAPTER 67**

8 **TAX-DEFERRED ARRANGEMENT**

10 **Sec. 2. 5 MRSA §881, as amended by PL 1983, c. 791, §1,** is
12 repealed and the following enacted in its place:

14 **§881. Tax-deferred arrangements**

16 The State or any county, city, town or other political
18 subdivision may, by contract, agree with any employee to defer or
20 contribute a portion of that employee's compensation as part of a
22 tax-deferred arrangement permitted for employees under the
24 provisions of the Internal Revenue Code of 1986, as amended, and
26 subsequently contract for, purchase or otherwise procure for the
28 employee an investment product or products as permitted by
30 applicable law, including, but not limited to, a fixed or
32 variable life insurance or annuity contract from an insurance
34 company licensed to contract business in this State, shares of an
investment company registered under the federal Investment
Company Act of 1940 or investment products offered by any state
or national bank. Any tax deferral program offered by a firm
must protect the benefits of employees to the full extent allowed
by a plan authorized under the Internal Revenue Code of 1986, as
amended. In addition to the option to select those firms
available pursuant to section 885, the State may offer to state
employees and state employees may elect to participate in any
tax-deferred arrangement established and made available by the
Board of Trustees of the Maine State Retirement System pursuant
to section 17103.

36 **Sec. 3. 5 MRSA §882, as enacted by PL 1973, c. 491,** is
38 amended to read:

40 **§882. Authorization**

42 The director or the principal officer of each state agency,
44 department, board, commission or institution is authorized to
46 enter into such contractual agreements with employees of that
48 particular state agency, department, board, commission or
institution on behalf of the State to defer any portion of that
employee's compensation as part of a tax-deferred arrangement
under this chapter.

2 **Sec. 4. 5 MRSA §883**, as amended by PL 1985, c. 785, Pt. A,
§39, is further amended to read:

4 **§883. Administration**

6 Administration of ~~a---deferred---compensation---program~~
7 tax-deferred arrangements under this chapter, within state
8 agencies, departments, boards, commissions or institutions shall
9 be, is under the direction of the Department of Finance
10 Administrative and Financial Services. Each county, city, town
11 or other political subdivision may designate an officer to
12 administer ~~a---deferred---compensation---program~~ tax-deferred
13 arrangements. Payroll deductions shall must be made in each
14 instance by the appropriate payroll officer.

16 **Sec. 5. 5 MRSA §884**, as amended by PL 1991, c. 780, Pt. Y,
17 §§32 and 33, is further amended to read:

18 **§884. Advisory Council on Tax-deferred Arrangements**

20 The Advisory Council on ~~Deferred---Compensation---Plans~~
21 Tax-deferred Arrangements, established by section 12004-I,
22 subsection 25, shall meet at least once a year, review the
23 operations of the ~~deferred-compensation~~ arrangements program and
24 advise the Department of Administrative and Financial Services on
25 matters of policy relating to the activities under the
26 arrangements program. Members of the advisory council are
27 entitled to compensation as provided in chapter 379. All
28 appointed or elected members serve at the pleasure of their
29 appointing or electing authorities. The advisory council
30 consists of 7 members as follows.

32 **1. Ex officio members; chair.** The ex officio members of
33 the Advisory Council on ~~Deferred-Compensation-Plans~~ Tax-deferred
34 Arrangements are: the Commissioner of Administrative and
35 Financial Services, or the commissioner's designee; the
36 Superintendent of Insurance, or the superintendent's designee;
37 and the Superintendent of Banking, or the superintendent's
38 designee. The Commissioner of Administrative and Financial
39 Services, or a designee, is the chair of the advisory council.

42 **2. Retirement system representative.** The retirement system
43 representative of the advisory council is the Executive Director
44 of the Maine State Retirement System, who also, upon request of
45 the advisory council, may act as the day-to-day administrator of
46 all or part of the tax-deferred arrangements program pursuant to
47 this chapter.

2 **3. Employee representatives.** The employee representatives
of the advisory council are 3 classified state employees
appointed by the Governor as follows:

4
6 A. One employee recommended to the Governor by the Maine
State Employees Association;

8 B. One employee recommended to the Governor by the American
Federation of State and Municipal Employees; and

10
12 C. One employee recommended to the Governor by the Maine
State Troopers Association.

14 Employee representatives are appointed for terms of 3 years,
except that of the first appointments, one must be for one year,
16 one for 2 years and one for 3 years.

18 **4. Voting.** All votes of the council must be one vote cast
by labor and one vote cast by management. The labor vote must be
20 cast by the labor cochair, who must be chosen by the labor
members, and must represent the majority opinion of the labor
22 members of the council. The management vote must be cast by the
24 management cochair, who is the Commissioner of Administrative and
Financial Services or the commissioner's designee.

26 **Sec. 6. 5 MRSA §§885 and 887,** as enacted by PL 1973, c. 491,
are amended to read:

28
30 **§885. Selection of firms**

32 The advisory council shall select up to 3 7 firms for
participation by state employees as the result of investigation
and competitive bidding, as outlined in chapter 155. The
34 advisory council may, at any time after the evaluation and study
of new programs, replace any previously selected firm with
36 another firm through the process of competitive bidding ~~for the~~
~~purpose of new enrollees.~~ Any firm selected by the advisory
38 council in accordance with this section must be a registered
40 investment advisor under the federal Investment Company Act of
1940 or a bank or insurance company authorized to receive or
42 manage contributions as part of a tax-deferred arrangement under
this chapter.

44 Any county, city, town or other political subdivision
wishing to make use of any material relating to evaluation, or
46 competitive bidding compiled by the advisory council, may receive
copies on request.

48
50 **§887. Payment of premiums; purchase of shares; investment products**

2 Notwithstanding any other provision of law to the contrary,
3 those persons designated to administer the ~~deferred-compensation~~
4 ~~program tax-deferred arrangements~~ are authorized to make payment
5 ~~of premiums for the purchase of fixed or variable life insurance~~
6 ~~or annuity contracts and to purchase investment company shares~~
7 ~~under the deferred-compensation program for investment products~~
8 ~~acquired as part of a tax-deferred arrangement.~~ Such The
9 payments shall are not be construed to be a prohibited use of the
10 general assets of the State, county, city or other political
11 subdivision.

12 **Sec. 7. 5 MRSA §888**, as repealed and replaced by PL 1973, c.
13 788, §16-A, is amended to read:

14 **§888. Application**

15
16 ~~Any compensation or portion of compensation reduced by an~~
17 ~~employee in conjunction with a deferred-compensation program~~
18 ~~shall remain as a general, unpledged asset of the State, county,~~
19 ~~city, town or other political subdivision until such time as the~~
20 ~~deferred-compensation program covering such employee calls for~~
21 ~~distribution.~~ Any compensation or portion of compensation
22 reduced shall by an employee in conjunction with a tax-deferred
23 arrangement must be considered in calculating any employee
24 benefits and it shall must be subject to any withholding imposed
25 on such the employee. Any compensation or portion of
26 compensation reduced shall is not be subject to any income
27 taxation until distribution is actually made to the employee.

30 **Sec. 8. 5 MRSA §889**, as enacted by PL 1973, c. 491, is
31 repealed and the following enacted in its place:

32 **§889. Liability limited**

33
34 The financial liability of the State, county, city, town or
35 other political subdivision under a tax-deferred arrangement
36 under this chapter is limited in each instance to the transmittal
37 to the provider of the investment product or products selected by
38 an employee of that portion of the employee's compensation
39 deferred under the tax-deferred arrangement while the enrollee
40 remains an employee of the State, county, city, town or other
41 political subdivision enrolled in the tax-deferred arrangement,
42 and only to the amount of the portion of the employee's
43 compensation.

46 **Sec. 9. 5 MRSA §12004-I, sub-§25**, as enacted by PL 1987, c.
47 786, §5, is amended to read:

48
49 **25.** Advisory Expenses 5 MRSA
50 Finance Council on Only §884

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Deferred
Compensation
Plans
Tax-deferred
Arrangements

SUMMARY

This bill does the following:

1. Allows an increase in the number of firms providing investment products to state employees participating in tax-deferred arrangements;
2. Changes the name of the Advisory Council on Deferred Compensation Plans to the Advisory Council on Tax-deferred Arrangements;
3. Clarifies the eligibility and requirements of firms selected by the advisory council to manage or receive contributions as part of a tax-deferred arrangement;
4. Increases competition among firms providing tax-deferred arrangement investment options to state employees;
5. Increases the number of investment products available to state employees participating in tax-deferred arrangements;
6. Allows state employees to use tax-deferred arrangements authorized for state and local employees by the Internal Revenue Code but previously unavailable under prior state law; and
7. Enhances opportunities for state employees to plan and pay for eventual retirement.