

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

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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

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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.