

FIRST REGULAR SESSION

# SENATE BILL NO. 290

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 2, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1534S.011

## AN ACT

To repeal sections 105.915 and 105.927, RSMo, and to enact in lieu thereof two new sections relating to the state employee deferred compensation program.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 105.915 and 105.927, RSMo, are repealed and two  
2 new sections enacted in lieu thereof, to be known as sections 105.915 and  
3 105.927, to read as follows:

105.915. 1. The board of trustees of the Missouri state employees'  
2 retirement system shall administer the deferred compensation fund for the  
3 employees of the state of Missouri that was previously administered by the  
4 deferred compensation commission, as established in section 105.910, prior to  
5 August 28, 2007. The board shall be vested with the same powers that it has  
6 under chapter 104, RSMo, to enable it and its officers, employees, and agents to  
7 administer the fund under sections 105.900 to 105.927. Two of the commissioners  
8 serving on the deferred compensation commission immediately prior to the  
9 transfer made to the board under section 105.910 shall serve as ex officio  
10 members of the board solely to participate in the duties of administering the  
11 deferred compensation fund. One such commissioner serving as an ex officio  
12 board member shall be a member of the house of representatives selected by the  
13 speaker of the house of representatives, and such commissioner's service on the  
14 board shall cease on December 31, 2009. The other commissioner serving as an  
15 ex officio board member shall be the chairman of the deferred compensation  
16 commission immediately prior to the transfer made to the board under section  
17 105.910, and such commissioner's service on the board shall cease December 31,  
18 2008.

19 2. **Except as provided in this subsection,** participation in such plan

20 shall be by a specific written agreement between state employees and the state,  
21 which shall provide for the deferral of such amounts of compensation as requested  
22 by the employee subject to any limitations imposed under federal  
23 law. Participating employees must authorize that such deferrals be made from  
24 their wages for the purpose of participation in such program. **An election to**  
25 **defer compensation shall be made before the beginning of the month in**  
26 **which the compensation is paid and contributions shall be made**  
27 **effective for payroll periods beginning on or after the first day of the**  
28 **month after the election is made. Beginning on September 1, 2009, each**  
29 **employee eligible to participate in the plan hired on or after September**  
30 **1, 2009, shall be enrolled in the plan automatically to have his or her**  
31 **employer withhold and contribute to the plan an amount equal to the**  
32 **maximum appropriated state contribution under section 105.927, but in**  
33 **no event shall such contribution be less than twenty-five dollars per**  
34 **month, and contributions shall be made effective for payroll periods**  
35 **beginning on or after the first day of the month following the date of**  
36 **hire, unless the participating employee elects before such automatic**  
37 **enrollment date to change the contribution or opt out of the plan. The**  
38 **contribution rate for employees who are automatically enrolled and**  
39 **who do not subsequently elect to change that contribution rate shall**  
40 **adjust automatically based on any increase to the maximum**  
41 **appropriated state contribution under section 105.927 that may occur**  
42 **after the initial automatic enrollment unless the employee changes the**  
43 **contribution or opts out of the plan. Such employees who are employed**  
44 **by a state college or university shall not be automatically enrolled but**  
45 **may elect to participate in the plan provided such election to defer**  
46 **compensation shall be made before the beginning of the month in which**  
47 **the compensation is paid and contributions shall be made effective for**  
48 **payroll periods beginning on or after the first day of the month after**  
49 **the election is made. Employees who are enrolled automatically may**  
50 **elect at any time to contribute more or less than the automatic**  
51 **enrollment amount of contribution, as permitted by the**  
52 **plan. Employees who opt out of the automatic enrollment may at a**  
53 **later date elect to participate in the plan and make contributions**  
54 **effective for payroll periods beginning on or after the first day of the**  
55 **month after the election is made. All assets and income of such fund shall**  
56 be held in trust by the board for the exclusive benefit of participants and their

57 beneficiaries. Assets of such trust may be pooled solely for investment  
58 management purposes with assets of the trust established under section 104.320,  
59 RSMo.

60 3. Notwithstanding any other provision of sections 105.900 to 105.927,  
61 funds held for the state by the board in accordance with written deferred  
62 compensation agreements between the state and participating employees may be  
63 invested in such investments as are deemed appropriate by the board. All  
64 administrative costs of the program described in this section, including staffing  
65 and overhead expenses, may be paid out of assets of the fund, which may reduce  
66 the amount due participants in the fund. Such investments shall not be  
67 construed to be a prohibited use of the general assets of the state.

68 4. Investments offered under the deferred compensation fund for the  
69 employees of the state of Missouri shall be made available at the discretion of the  
70 board.

71 5. The board and employees of the Missouri state employees' retirement  
72 system shall be immune from suit and shall not be subject to any claim or  
73 liability associated with any administrative actions or decisions made by the  
74 commission with regard to the deferred compensation program prior to the  
75 transfer made to the board under section 105.910.

76 6. The board and employees of the system shall not be liable for the  
77 investment decisions made or not made by participating employees as long as the  
78 board acts with the same skill, prudence, and diligence in the selection and  
79 monitoring of providers of investment products, education, advice, or any default  
80 investment option, under the circumstances then prevailing that a prudent person  
81 acting in a similar capacity and familiar with those matters would use in the  
82 conduct of a similar enterprise with similar aims.

83 7. The system shall be immune from suit and shall not be subject to any  
84 claim or liability associated with the administration of the deferred compensation  
85 fund by the board and employees of the system.

86 **8. Effective on and after September 1, 2009, if a participant**  
87 **under the deferred compensation plan or the plan established under**  
88 **section 105.927 is married, the participant's surviving spouse shall be**  
89 **automatically designated as the primary beneficiary under both plans,**  
90 **unless the surviving spouse consented in writing to allow the**  
91 **participant to designate a nonspouse beneficiary. The term "surviving**  
92 **spouse" as used in this subsection means the individual of the opposite**

93 sex to whom the participant is lawfully married on the date of death of  
94 the participant, provided that a former spouse shall be treated as the  
95 surviving spouse of the participant to the extent provided under a  
96 judgement, decree, or order that relates to child support, alimony  
97 payments, or marital property rights made under a state domestic  
98 relations law that creates or recognizes the existence of such former  
99 spouse's right to receive all, or a portion expressed as a stated dollar  
100 amount or specific percentage, stated in integers, of the benefits  
101 payable from such plan upon the death of the participant. This  
102 subsection shall not apply to beneficiary designations made prior to  
103 September 1, 2009.

104 9. The board may adopt and amend plan documents to change  
105 the terms and conditions of the deferred compensation plan and the  
106 plan established under section 105.927 that are consistent with federal  
107 law.

105.927. 1. The treasurer of the state of Missouri shall credit an amount  
2 not to exceed seventy-five dollars per month, to a plan established pursuant to  
3 the provisions of the Internal Revenue Code Section 401(a) for each qualified  
4 participant in the state's deferred compensation program; provided that funds to  
5 be credited to each qualified participant's account shall not exceed the amount  
6 appropriated by the general assembly for each qualified participant. **Such funds**  
7 **may be credited through a local payroll for qualified participants who**  
8 **are compensated under a local payroll system.** Funds so credited shall be  
9 held, administered and invested as provided in sections 105.900 to 105.925 and  
10 the plan document adopted for the administration of such contributions.

11 2. For purposes of this section, "qualified participant" means an employee  
12 of the state of Missouri who is making continuous deferrals of at least twenty-five  
13 dollars per month to the deferred compensation program and has been an  
14 employee of the state of Missouri for at least twelve consecutive months  
15 immediately preceding the commencement of any amount credited pursuant to  
16 this section. The amount credited on behalf of a qualified participant pursuant  
17 to this section shall not exceed the amount that the qualified participant  
18 contributes to his or her deferred compensation plan.

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