TITLE 43:
PENSIONS AND RETIREMENT AND
UNEMPLOYMENT COMPENSATION

CHAPTER 15B: COUNTY AND MUNICIPAL
ANNUITIES

with changes enacted June 6, 1997

with changes made 1997/LOSAP

43:15B-1. Deferred compensation plan; written
agreement; employee's deferred
salary account

Any municipality, county, or an authority
created by one or more counties or municipalities
(hereinafter "employer") may establish a deferred
compensation plan (hereinafter "plan"), and a
sponsoring agency, pursuant to P.L.1997, c.388
(C.40A:14-183), may establish a length of
service award program based on such plan,
whereby the employer may enter into a written
agreement with any of its employees (hereinafter
"participants") constituting a contract for a
voluntary deferral of salary. Such contract shall
remain in effect until the employee's service is
terminated or until a new contract is executed by the
employer and employee. Not more than one contract
shall be executed in any one fiscal year of the
employer with any one employee. Pursuant to such
contract the employer shall credit from time to time,
as deferred salary, to a participant's account. This account shall be
known as the Employee's Deferred Salary Account,
and shall be credited from time to time to reflect
gains realized on the investment of the moneys in
the deferred salary account. An accounting
summary of the individual deferred salary accounts
of all employee participants shall be maintained to
reflect the employer's total deferred liability under
the plan and the individual balances of all
participants. Any employer which establishes such a
plan shall designate one or a group of its public
officials, or the county's or municipality's governing
body, as defined in N.J.S. 40A:4-2 of the Local

Budget Law, or an authority's governing body, as
the case may be, as the named fiduciary responsible
for the administration of said plan and investment of
and accounting for the funds maintained thereunder.


43:15B-2. Amounts; determination by
agreement

The amounts of any such deferred salary shall
be determined by agreement between the employer
and the employee, subject to any limitations which
the employer may establish. The total amount of the
salary deferred pursuant hereto for any year shall be
in addition to any contributions made in such year
on behalf of any employee in accordance with


43:15B-3. Provisions of plans; contracts;
requirements

a. The plan shall provide that all money not
needed for the immediate payment of benefits shall
be invested by the employer in interest bearing
securities in which savings banks of this State are
authorized to invest their funds, or the employer
shall make deposits in interest bearing accounts, or
in the State of New Jersey Cash Management Fund
established pursuant to section 1 of P.L.1977, c. 281
(C. 52:18A-90.4), or in individual or group annuity
programs whether fixed or variable, mutual funds,
or life insurance contracts whether fixed or variable.

381 (C. 43:15B-1), the employer may contract with
one or more private organizations for the
administration of all or part of the plan, including
the management and investment, or either thereof,
of deferred and deducted salary funds.

Each contract shall be subject to the prior
approval of the Director of the Division of Local
Government Services on the basis of restrictions,
limitations and other conditions established by the
director by rule and regulation promulgated pursuant to the "Administrative Procedure Act" (P.L.1968, c. 410, C. 52:14B-1 et seq.); provided, however, that the director shall not approve any contract if it is inconsistent with any standards which the New Jersey State Employees' Deferred Compensation Board, established pursuant to P.L.1978, c. 39 (C. 52:18A-163 et seq.), may adopt for the deferred compensation plans of municipalities, counties, or authorities thereof, including, but not limited to, any service cost guidelines. If at the time a municipality, county or authority submits a contract to the Director of the Division of Local Government Services for his approval and the New Jersey State Employees' Deferred Compensation Board has not adopted standards for such deferred compensation plans, the director may approve such contract if it is consistent with the rules and regulations which he has promulgated for such contracts.

c. The employer may establish a plan or plan option which permits a participating employee to request the employer to invest all or a specified percentage of said employee's deferred salary in one, or a specified combination of, the following kinds of investments: (1) fixed or variable life insurance contracts, (2) individual or group, fixed or variable annuity contracts, (3) mutual fund shares, (4) interest bearing accounts or securities in which savings banks of this State are authorized to invest their funds, and (5) the State of New Jersey Cash Management Fund; provided that the employer retains the discretion to reject such request. Any such investments shall be limited to investments that are authorized for fiduciaries of trust estates pursuant to the "Prudent Investment Law" (P.L.1975, c. 337, C. 3A:15-35 et seq.); provided, however, that with the exception of investments made by domestic insurance companies licensed to sell life insurance and annuities in this State and subject to review by the Commissioner of the Department of Insurance pursuant to chapter 20 of Title 17B of the New Jersey Statutes, the Director of the Division of Local Government Services may review and reject any such investments as inconsistent with the standard applicable to the prudent investor as provided in section 3 of P.L.1975, c. 337 (C. 3A:15-37).

d. No organization seeking a contract pursuant to subsection b. of this section, shall through distribution of written material or by any other means, solicit employee participation in any deferred compensation plan or solicit employees to support the efforts of the organization to secure the contract. An organization holding a contract approved pursuant to subsection b. may distribute written material to solicit employee participation in a deferred compensation program, provided that the organization has received approval of the content and form of the material from the Director of the Division of Local Government Services. No representative of an organization under contract pursuant to subsection b. of this section shall initiate verbal communication with any prospective employee participant in a deferred compensation program without the express consent of the employer; provided, however, that any communication so authorized shall be consistent with the written material approved by the Director of the Division of Local Government Services.

e. Subject to rules and regulations established by a board or any other body created or designated by the State or public official designated by the State (said board, body or official hereinafter "board"), to administer a deferred payment compensation plan established by the State (hereinafter "State plan") and subject to the approval of the board, the plan may provide for the employer for the benefit of its participants to participate in any State plan established by the board for State employees. In the event that such participation is approved by the board, rules, regulations and conditions established by the board or in the State plan shall apply to such participants, or said rules, regulations and conditions shall so apply as amended or supplemented with regard to said participants.

f. The named fiduciary shall provide in the plan for the distribution of any investment earnings, gains or losses, consistent with the requirements of
the federal Internal Revenue Code, as amended. The
distribution shall be allocated to each employee
when he or she withdraws from the plan or receives
benefits from the plan in accordance with the terms
of the plan and the provisions of this act. For those
employees participating in the State plan pursuant to
subsection 3e. herein, the rules and regulations of
the State board shall apply.

   g. The plan shall provide for a uniform system
of accounting for each participant and for
investment of deferred compensation funds with
annual or more frequent reports to the participants
in the plan.

   h. The named fiduciary shall have authority to
take any steps reasonably necessary to implement
the plan consistent with this act and the
requirements of the federal Internal Revenue Code,
as amended.

78, § 1, eff. July 24, 1980; L.1983, c. 305, § 3, eff. Aug. 26,

43:15B-4. Plan to be in addition to obligation
under any other retirement system
or benefit plan

Any deferred compensation plan shall be in
addition to the obligation of the employee under any
other retirement system or benefit plan established
pursuant to any other law of this State.


43:15B-5. Assets developed from plan;
investment; obligation of employer

   a. All moneys which are deferred and
deducted in accordance with the provisions of this
act and the plan shall be invested in accord with the
provisions of this act and the plan. The obligation of
the employer to participating employees shall be
contractual only and no preferred or special interest
in the deferred moneys shall accrue to such
employees.

   b. For plans approved prior to August 20,
1996, moneys deferred shall be subject to the claims
of the employer’s general creditors until the plan
document is amended to have all moneys deferred
and any other asset or income of the plan shall be
held in trust or one or more annuity contracts or one
or more custodial accounts for the exclusive benefit
of the participating employees and their
beneficiaries. Employers shall have until January 1,
1999 to implement this change. For all plans
adopted on or after August 20, 1996, all moneys
that are deferred and any other asset or income of
the plan shall be held in trust or one or more annuity
contracts or one or more custodial accounts for the
exclusive benefit of the participating employees and
their beneficiaries.

L.1977, c. 381, § 5, eff. Feb. 8, 1978; L 1997, c. 116, § 5, eff
June 6, 1997.

43:15B-6. Unassignability of payments and
rights

No participating employee or beneficiary
thereof shall have the right to commute, sell, assign
or otherwise transfer or convey the rights to receive
any payments deriving from participation in the
plan and such payments and rights are expressly
declared to be and shall be unassignable.


43:15B-7. Exclusion of deferred and deducted
amount from computation of federal
withholding taxes

Any amount of the employee's salary that is
defered and deducted under this act and the plan
shall continue to be included as regular
compensation for all purposes, including pension
benefits earned by any such employee, but any
salary deferred and deducted shall not be included
in the computation of any Federal taxes withheld
from the employee's salary on behalf of such
employee.

43:15B-8. Transfer of credits from employment by different employer

Any employee who made contributions to a similar plan while employed in a state other than New Jersey or by an employer in New Jersey different from the current employer may transfer his credit from the previous plan pursuant to provisions contained in the plan, provided the previous similar plan allows such transfers. Such purchase of credit in a plan authorized by this act shall enable the employee to gain the same benefits of the plan as if he had always been employed by his current employer.


43:15B-9. Transfer of credit from plan to similar plan of participant's new employer

Any participant who changes jobs may transfer his credit from the plan pursuant to authorizing provisions which may be contained in the plan, provided the similar plan of the participant's new employer permits such a transfer.


43:15B-10. Conformance of plan to requirements of United States Internal Revenue Service

No agreement may be entered into between the employer and any employee for the deferral and deduction of any portion of current salary, pursuant to this act, until the named fiduciary determines that the plan and any related implementing rules and regulations are consistent with the requirements of the United States Internal Revenue Service.