



SPONSOR: Sen. Paradee & Rep. Griffith

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 143

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE PLANS MANAGEMENT BOARD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2722, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2722. Plans Management Board.

(d) *Standard of care.* —

(1) ~~The~~ With respect to the Deferred Compensation Program, (“Program”) the Board, its subcommittees, and each of their members shall discharge their duties with respect to ~~each Plan~~ the Program solely in the interest of the participants and beneficiaries of ~~such Plan~~ the Program and for the exclusive purpose of providing ~~Plan~~ Program benefits to participants and their beneficiaries, including defraying reasonable expenses of administering ~~each such Plan, the Program,~~ with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of ~~such Plan.~~ the Program.

(2) With respect to the College Investment Plan (“Plan”) and Delaware Achieving a Better Life Experience Program (“Program”), the Board, its subcommittees, and each of their members shall discharge their duties with respect to the Plan and Program in accordance with the implementing Plan and Program trust documents and applicable law. When investing, managing, or using trust assets, the Board, its subcommittees, and each of their members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Plan and Program. The Board may authorize the use of administrative fees from the Plan and Program to defray reasonable expenses of administering each Plan and Program, including marketing expenses, and to fund scholarship, match, or promotional programs as the Board, in its discretion, may establish.

21 (f) *Compensation; indemnification.* —

22 (1) Members ~~shall~~ may not receive compensation for serving on the ~~Board~~. Board or its subcommittees.
23 Except for ex officio members, all members ~~shall be~~ are entitled to reimbursement by the State for travel and other
24 expenses incurred in attending meetings of the ~~Board~~. Board or a subcommittee. A state employee appointed to the
25 Board ~~pursuant to~~ under paragraph (b)(2) of this section ~~shall be~~ is permitted to count the time spent attending or
26 traveling to and from Board meetings (as well as participation on subcommittees, selection committees, and their like)
27 as part of ~~his or her~~ the employee's regular work day and ~~shall~~ may not be required to expend leave time.

28 (2) The Board, its subcommittees, and each of their members ~~shall be~~ is entitled to the immunities ~~set forth in~~
29 under Chapter 40 of Title 10, and in addition, ~~no~~ a member of the Board or a subcommittee ~~shall be~~ is not liable for any
30 act or omission made during the member's tenure on the ~~Board~~, Board or a subcommittee, or for any loss incurred by
31 any person as a result of participation in any of the Plans. Further, the State shall indemnify each Board or
32 subcommittee member who is a party to or is threatened to be made a party to any threatened, pending, or completed
33 action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's
34 participation on the ~~Board~~, Board or a subcommittee, against any expenses (including attorneys' fees if the Attorney
35 General ~~shall determine~~ determines that such Board or subcommittee member is not entitled to representation by the
36 State), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that member in connection
37 with such action, suit, or proceeding, if that member acted in good faith and in a manner that member reasonably
38 believed to be in the best interest of the State, and with respect to any criminal action or proceeding, so long as that
39 member had no reasonable cause to believe that the member's conduct was unlawful. Any expenses incurred by such
40 Board or subcommittee member in defending a civil, administrative, or investigative action, suit, or proceeding ~~shall~~
41 may be paid by the State in advance of the final disposition of such action, suit, or proceeding ~~upon~~ on authorization by
42 a majority of the members of the Board and by the ~~Governor of the State~~. Governor.

SYNOPSIS

The Plans Management Board (the "Board") oversees and administers the State's Deferred Compensation Program authorized under chapter 60A of Title 29 of the Delaware Code. The Deferred Compensation Program encompasses the following 3 distinct supplemental retirement plans authorized under the Internal Revenue Code: the State's deferred compensation plan under 26 U.S.C. § 457(b); the State's tax-sheltered annuity plan for certain education employees under § 403(b); and the State's employer match plan under 26 U.S.C. § 401(a). The Board also oversees and administers the State's College Investment Plan under 26 U.S.C. § 529, authorized by Subchapter XII, Chapter 34 of Title 14 of the Delaware Code, and the State's Achieving a Better Life Experience ("ABLE") Program, authorized by Chapter 96A of Title 16 of the Delaware Code. None of these plans is subject to the Employee Retirement Income Security Act of 1974 ("ERISA").

Section 1 of this Act proposes a separate fiduciary standard for the College Investment and ABLE plans. The existing standard of care under § 2722(d) of Title 29, which presently covers all 5 plans, closely tracks the standard of care for retirement plans subject to ERISA. The existing standard, while appropriate for the State's supplemental retirement plans, may restrict the Board's ability to use administrative fees collected from participants in the College Investment Plan and ABLE Program to fund marketing expenses and implement scholarship, match, or promotional programs, as is

common in the industry. The proposed standard for the College Investment Plan and ABLE Program maintains a high “prudent person” standard but will give the Board needed flexibility to use administrative fees to attract participants in the highly competitive College Investment Plan and ABLE Program markets.

Section 2 of this Act addresses subcommittee members who are not also members of the full Board. This section makes clear such individuals are entitled to reimbursement and indemnification to the same extent as Board members.

Author: Senator Paradee