



28 compensation plan qualified under Section 401(k) of the Internal Revenue Code which is selected  
29 by the employee and sponsored by the board, that level A employer, or a group of similar level A  
30 employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act  
31 of 1986, but only up to an amount permitted by federal law.

32 (b) (i) For members of level B under Section 49-3-301, the employer shall contribute  
33 on behalf of each of its employees the difference between 13.31% and the contribution rate  
34 established under Section 49-5-301 to a deferred compensation plan qualified under Section 401(k)  
35 of the Internal Revenue Code which is selected by the employee and which is sponsored by the  
36 board, by that level B employer, or by a group of similar level B employers and which has been  
37 grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

38 (ii) If the contribution rate established under Section 49-5-301 is greater than 13.31%, an  
39 employer 401(k) contribution is not required under Subsection (1)(a)(i).

40 (iii) The employee may also contribute to the same qualified 401(k) plan which the  
41 employee selected to receive the contribution described in Subsection (1)(b)(i), but only up to an  
42 amount permitted by federal law.

43 (c) The employee may not make elective contributions to any other qualified 401(k) plan  
44 sponsored by a state or local government.

45 (2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to  
46 the employee's benefit immediately and is nonforfeitable.

47 (3) Each qualified deferred compensation 401(k) plan is separate and distinct from any  
48 other qualified deferred compensation 401(k) plan for all purposes including, but not limited to,  
49 purposes of fiduciary liability and plan administration. The board may request from any other  
50 qualified 401(k) plan under Subsection (1) any relevant information pertaining to the maintenance  
51 of its tax qualification under the Internal Revenue Code and may request indemnification from  
52 such other plan to the extent it performs testing functions for that plan.

53 (4) Prior to January 1 of each calendar year, each employee shall notify the employing unit  
54 which qualified deferred compensation 401(k) plan the employee has selected to receive the  
55 employer and employee contributions described in Subsections (1)(a) and (b) for that calendar  
56 year. This election may be changed only in accordance with procedures established by the  
57 employing unit. Notwithstanding this section, the board may take any action which in its judgment  
58 is necessary to maintain the tax-qualified status of its 401(k) deferred compensation plan pursuant

59 to federal law. The board shall submit findings of fact and its conclusions prior to taking any such  
60 action.

61 Section 2. **Effective date.**

62 This act takes effect on July 1, 2000.

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**Legislative Review Note**  
**as of 2-8-00 1:06 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**