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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

LINDA M. HODGDON
Commissioner
(603) 271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

February 11, 2013

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1. Authorize the Department of Administrative Services to accept and expend from Great West Retirement Services ("GWRs"), administrator of the State of New Hampshire's 457(b) Deferred Compensation Plan (RSA 101-B) ("the Plan"), revenue-sharing in the amount of \$33,451 for the purpose of administering the Plan on behalf of its participants. This request is effective upon Governor and Executive Council approval through June 30, 2013. **100% Agency Income (DAS)**
2. Pursuant to RSA 124:15, subject to the approval of Requested Action #1, authorize the Department of Administrative Services to create one temporary full-time Administrator to the Deferred Compensation Plan position # 9T169, effective upon Fiscal Committee and Governor and Executive Council approval through June 30, 2013. This position would report operationally within the Department of Administrative Services and functionally to the Deferred Compensation Commission (RSA 101-B:2). **100% Agency Income (DAS)**

Funds will be budgeted in account 01-14-14-140010-13070000 Deferred Compensation as follows:

<u>Class</u>	<u>Description</u>	<u>Current Budget</u>	<u>Requested Action</u>	<u>New Budget</u>
009-407067	Deferred Comp	(110,000)	(33,451)	(143,451)
020-500200	Current Expense	-0-	3,500	3,500
026-500251	Organizational Dues	-0-	100	100
030-500311	Equipment	-0-	2,500	2,500
037-500173	Technology – Hardware	-0-	2,500	2,500
038-500175	Technology – Software	-0-	1,500	1,500
039-500188	Telecommunications	-0-	750	750
059-500117	Temp Full Time	-0-	14,580	14,580
060-500602	Benefits	-0-	7,521	7,521

070-500704	In-State Travel	-0-	500	500
080-500717	Out of State Travel	5,400		5,400
206-509206	Deferred Comp Advisors	<u>287,500</u>		<u>287,500</u>
		\$292,900	\$33,451	\$326,351

EXPLANATION

RSA 101-B created a public employees 457(b) deferred compensation plan and established the Deferred Compensation Commission (the "Commission") to provide fiduciary oversight for the Plan. The Commission currently has seven of the eight statutory members seated, with the post for a non-classified legislative employee and member of the Plan having been vacant for two years. Other appointees to the Commission include the State Treasurer or designee, the Commissioner of Administrative services or designee, the Insurance Commissioner or designee, the Attorney General or designee, the Secretary of State or designee, an unclassified state employee who is a member of the Plan and appointed by the Governor, and a public employee at-large appointed by the Governor with the advice and consent of the Executive Council.

Pursuant to RSA 101-B:7, the State's financial liability under the Plan is limited to the value of the fixed or variable life insurance policy or annuity contract or contracts entered into by the Plan on behalf of its employee-members. At present it is estimated that this value limitation could be as high as \$100 million dollars, which is the total amount Plan participants currently have invested in the specific fund that could be characterized as an annuity contract. While it is unlikely the State would ever be liable for this entire sum, should the Plan be declared as unqualified by the IRS as a 457(b) deferred compensation plan due to the State's negligence, the State's liability could be substantial given the potential for claims to be made by the Plan's 6,000 participants should their individual tax liabilities increase as a result of the Plan's disqualification.

RSA 101-B:3 provides the Commission the authority to contract with an administrator or custodian of deferred compensation plans for the administration of assets accumulated under each employee participant's account. It is common practice for administrators of such plans to enter into revenue-sharing agreements with the plan sponsor, in this case the State of New Hampshire. However pursuant to federal Treasury Regulation Section 1.457-8(a), such revenue is to be expended solely for the benefit of Plan participants and their beneficiaries:

- (2) Trust requirement. (i) A trust described in this paragraph (a) must be established pursuant to a written agreement that constitutes a valid trust under State law. The terms of the trust must make it impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries.

Explanation for Requested Action #1

During the Plan's administration under ING, which ended in January 2010, revenue-sharing was reflected in the State's accounting system and budgeted accordingly. Ongoing expenses of administering the Plan have been paid from these funds, which stood at approximately \$290,000 as of December 31, 2012. However from the inception of GWRS's administration of the Plan in early 2010 until now, the revenue-sharing of approximately \$300,000 as of December 31, 2012, has not been reflected in the State's accounting system. In order to correct this omission in the State's accounting system and ensure transparency and continued accountability, we request that the Governor and Council

authorize acceptance and expenditure of funds in the amount of \$33,451 which represents appropriations necessary to support the program through June 30, 2013. The balance of the revenue sharing will be used to support the administration of the deferred compensation plan in the state fiscal year budget for 2014-2015.

Explanation for Requested Action #2

As the Plan has grown in time to nearly one-quarter of a billion dollars in assets under management, and also to include several town and county political subdivisions, the complexity of administering the Plan has increased beyond the capacity of Commission members to provide thorough and timely fiduciary oversight. Evidence of this constraint is reflected in the following:

- 1) Under the Plan's prior administrator, ING, participants were permitted to exceed income deferral limits from 2007-2009. This triggered an Internal Revenue Service audit and findings that threatened the tax-qualified status of the Plan and its participants, but was ultimately remedied by the Department of Administrative Services pursuant to certain conditions being met. One of those conditions was the crafting of a new Plan Document, which has yet to be completed due to ongoing time constraints on the part of members of the Commission.
- 2) The Plan sponsor's fiduciary responsibilities include contracting for annual financial audits and periodic compliance audits (approximately every 10-15 years) in order to ensure the Plan's tax-qualified treatment under the tax code. From the inception of Great West Retirement Service's tenure as Plan administrator on February 1, 2010, neither of these types of audits has been conducted, as Commission members have not been able to devote the time to crafting and distributing a Request for Proposals, evaluating the resulting bids, and presenting the contract requests to Governor and Executive Council. This constraint jeopardizes the tax-qualified status of the Plan.
- 3) None of the Commission members has been able to provide the type of consistent monitoring required to ensure that Plan vendors, including the Plan administrator and Plan financial advisor, adhere to the provisions of their respective contracts, both in terms of services to be provided and revenue-sharing. Monitoring of this nature also provides critical protection under increasing Internal Revenue Service scrutiny of 457(b) plans and sponsors.
- 4) Commission members are unable to properly promote the Plan to political subdivisions in the State in order to increase the size of the Plan, which would result in investment management fee reductions to Plan participants. Outreach and assistance to political subdivision Plan partners has also been insufficient.
- 5) With at least two Commission meetings required per quarter, it has become increasingly difficult to ensure the timely drafting and posting of meeting minutes pursuant to RSA 91-A:2, II.
- 6) The Commission has found it increasingly difficult to coordinate the legal oversight necessary from the Attorney General in order to contractually enhance the Plan via new investment offerings. This constraint has also impaired the ability of the Commission to initiate and coordinate online enhancements for the benefit of Plan participants.

- 7) The Commission has been unable to pursue legislation that would result in the creation of a new Commission appointee to represent the political subdivisions.
- 8) Other ongoing responsibilities, such as Right-to-Know requests and unique inquiries, requests, and complaints on the part of current and former members of the Plan that require some degree of Plan sponsor intervention, are becoming increasingly difficult to address by members of the Commission.
- 9) The Commission's public employee at-large has shouldered the bulk of the administrative work required of the Commission and in doing so has had to utilize nearly three weeks of annual leave time in calendar year 2012 in order to attend to these responsibilities.

To the extent this request is not approved, the Commission has a fiduciary obligation under federal Treasury Regulations to distribute to Plan participants on a pro-rata basis up to \$400,000 in revenue-sharing that has accumulated under both ING's and GWRS's administration of the Plan. However it is the belief of the Commission that Plan participants, including those in the State's political subdivisions, are best served by first having a dedicated, full-time Executive Director in place to provide the crucial administration described above and currently lacking. Any funds remaining after funding both the cost of this position and the anticipated ongoing expenses of administering the Plan could then be distributed to Plan participants, at the fiduciary discretion of the Commission.

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Class 020	To pay for photocopying, office supplies, promotional materials, etc
Class 026	To pay for potential membership dues
Class 030	To pay for any required office furniture or equipment that may not already exist
Class 037	To pay for computer equipment for new employee
Class 038	To pay for software or software licensing
Class 059	To pay for full time temporary salary
Class 060	To pay for position's benefits
Class 070	To pay for in-state travel to other state agencies and/or political subdivisions

The Division of Personnel has approved the request for one (1) new temporary full time Administrator II position as per the attached documentation. This position will administer the deferred compensation plan with oversight by the deferred compensation commission.

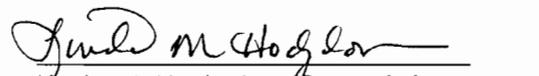
The following information is provided in accordance with the comptroller's instructional memo dated September 12, 1981.

- 1) *List of personnel involved:* One (1) full time temporary position of Administrator II (LG 29, A000)

- 2) *Nature, Need, and Duration:* This new full time temporary position will advise the New Hampshire Deferred Compensation Commission on policy issues and supervises all functions of the State of NH Public Employees Deferred Compensation Plan. This request is for the remainder of fiscal year 2013 with the intention of budgeting a full time position in the FY 2014/15 budget.
- 3) *Relationship to existing agency programs:* The Administrator II is responsible for overseeing contractors that provide auditing services, investment consulting services, recordkeeping and custody, investment management services, and marketing of the State of New Hampshire Deferred Compensation Program.
- 4) *Has a similar program been requested of the legislature and denied?* No
- 5) *Why wasn't the funding included in the agency's budget request?* At the time the budget was created it was unknown that this position would be needed.
- 6) *Can portions of the grant funds be utilized?* Yes, 100% Agency Income
- 7) *Estimate the funds required to continue this position:* Based upon the 2011-2013 Collective Bargaining Agreement, within the pay scale of A000 – 37.5 hours per week, the amount needed to fund this position (LG29, step 5) for the remainder of the fiscal year would be \$14,580 for salary and approximately \$7,521 for benefits, for a total of \$22,101.

Respectfully submitted,


Catherine A. Provencher
State Treasurer


Linda M. Hodgdon, Commissioner
Department of Administrative Services



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
State House Annex - Room 419
25 Capitol Street
Concord, New Hampshire 03301

Handwritten initials and date: *1/15/13*

LINDA M. HODGDON
Commissioner
(603) 271-3201

CAROL B. JERRY
Human Resources Administrator
(603) 271-2260

January 15, 2013

Karen D. Hutchins, Director
Division of Personnel
25 Capitol Street
Concord, NH 03301

APPROVED *Karen D. Hutchins*
JAN 25 2013
DIRECTOR OF PERSONNEL
BY *Carrie A. Elberfeld*

Re: Request to Establish a Full-Time Temporary Position
Administrator II, LG 29

Dear Ms. Hutchins:

The Department of Administrative Services requests permission to establish a full-time temporary Administrator II / Executive Director position, LG (29). The position will be located in the Department of Administrative Services/ NH Deferred Compensation Commission.

As the Plan has grown in time to nearly one-quarter of a billion dollars in assets under management, and also to include several town and county political subdivisions, the complexity of administering the Plan has increased beyond the capacity of Commission members to provide thorough and timely fiduciary oversight. (Specific examples of Commission requirements that are currently pending are attached).

Funding for this position is available in Account 01-14-14-140010-13070000-500109.

Attached is a proposed supplemental job description for this position for the NH Deferred Compensation Commission and the current and revised organizational chart for the Commissioner's Office.

If you need any further information regarding this request, please feel free to contact me at 271-2260. Thank you for your consideration.

Sincerely,
Carol B. Jerry
Carol B. Jerry
Human Resources Administrator

Attachments
cc: File



FIS 13-080

JEFFRY A. PATTISON
Legislative Budget Assistant
(603) 271-3161

MICHAEL W. KANE, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire
OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

RICHARD J. MAHONEY, CPA
Director, Audit Division
(603) 271-2785

March 8, 2013

Linda M. Hodgdon, Commissioner
Department of Administrative Services
25 Capitol Street, Room 120
Concord, New Hampshire 03301

Dear Commissioner Hodgdon,

The Fiscal Committee, pursuant to the provisions of RSA 124:15, on March 8, 2013, **amended** and approved the request of the Department of Administrative Services, to create one temporary full-time Administrator to the Deferred Compensation Plan, position #9T169, **with a start date no earlier than July 1, 2013**, as specified in your letter dated February 11, 2013.

Sincerely,


Jeffrey A. Pattison
Legislative Budget Assistant

JAP/pe
Attachment

Cc: Catherine A. Provencher, State Treasurer

