
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 386 Session of
2007

INTRODUCED BY PETRI, BELFANTI, BOYD, CAPPELLI, CREIGHTON, DALLY,
FAIRCHILD, GALLOWAY, GODSHALL, HENNESSEY, HERSHEY,
HICKERNELL, HORNAMAN, HUTCHINSON, M. KELLER, McILHATTAN,
MUSTIO, PHILLIPS, RAPP, REED, REICHLEY, SCHRODER, STERN AND
SWANGER, FEBRUARY 13, 2007

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 13, 2007

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions and
3 for mandatory and optional membership; and providing for the
4 State Employees' Optional Retirement Program.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 5102 of Title 71 of the Pennsylvania
8 Consolidated Statutes is amended by adding a definition to read:
9 § 5102. Definitions.

10 The following words and phrases as used in this part, unless
11 a different meaning is plainly required by the context, shall
12 have the following meanings:

13 * * *

14 "State Employees' Optional Retirement Program." The
15 alternative defined contribution retirement program established
16 under Ch. 59 Subch. D (relating to State Employees' Optional
17 Retirement Program).

1 * * *

2 Section 2. Section 5301 of Title 71 is amended to read:

3 § 5301. Mandatory and optional membership.

4 (a) Mandatory membership.--Membership in the system shall be
5 mandatory as of the effective date of employment for all State
6 employees except the following:

7 (1) Governor.

8 (2) Lieutenant Governor.

9 (3) Members of the General Assembly.

10 (4) Heads or deputy heads of administrative departments.

11 (5) Members of any independent administrative board or
12 commission.

13 (6) Members of any departmental board or commission.

14 (7) Members of any advisory board or commission.

15 (8) Secretary to the Governor.

16 (9) Budget Secretary.

17 (10) Legislative employees.

18 (11) School employees who have elected membership in the
19 Public School Employees' Retirement System.

20 (12) School employees who have elected membership in an
21 independent retirement program approved by the employer,
22 provided that in no case, except as hereinafter provided,
23 shall the employer contribute on account of such elected
24 membership at a rate greater than the employer normal
25 contribution rate as determined in section 5508(b) (relating
26 to actuarial cost method). For the fiscal year 1986-1987 an
27 employer may contribute on account of such elected membership
28 at a rate which is the greater of 7% or the employer normal
29 contribution rate as determined in section 5508(b) and for
30 the fiscal year 1992-1993 and all years after that at a rate

1 of 9.29%.

2 (13) Persons who have elected to retain membership in
3 the retirement system of the political subdivision by which
4 they were employed prior to becoming eligible for membership
5 in the State Employees' Retirement System.

6 (14) Persons who are not members of the system and are
7 employed on a per diem or hourly basis for less than 100 days
8 or 750 hours in a 12-month period.

9 (15) Employees of the Philadelphia Regional Port
10 Authority who have elected to retain membership in the
11 pension plan or retirement system in which they were enrolled
12 as employees of the predecessor Philadelphia Port Corporation
13 prior to the creation of the Philadelphia Regional Port
14 Authority.

15 (16) Employees of the Juvenile Court Judges' Commission
16 who, before the effective date of this paragraph, were
17 transferred from the State System of Higher Education to the
18 Juvenile Court Judges' Commission as a result of an
19 interagency transfer of staff approved by the Office of
20 Administration and who, while employees of the State System
21 of Higher Education, had elected membership in an independent
22 retirement program approved by the employer.

23 (17) Any person who becomes a State employee on or after
24 July 1, 2007, and who elects to participate in the State
25 Employees' Optional Retirement Program under Subchapter D of
26 Chapter 59 (relating to State Employees' Optional Retirement
27 Program).

28 (b) Optional membership.--The State employees listed in
29 subsection (a)(1) through (11) shall have the right to elect
30 membership in the system; once such election is exercised,

1 membership shall continue until the termination of State
2 service.

3 (c) Prohibited membership.--The State employees listed in
4 subsection (a)(12), (13), (14) [and], (15) and (17) shall not
5 have the right to elect membership in the system.

6 (d) Return to service.--An annuitant who returns to service
7 as a State employee shall resume active membership in the system
8 as of the effective date of employment, except as otherwise
9 provided in section 5706(a) (relating to termination of
10 annuities), regardless of the optional membership category of
11 the position.

12 (e) Election prohibited.--Notwithstanding subsections
13 (a)(13) and (c), county employees who are transferred to State
14 employment and become State employees pursuant to 42 Pa.C.S. §
15 1905 (relating to county-level court administrators) shall not
16 have the election to remain a contributor in the retirement
17 system or pension plan of the county by which they were employed
18 prior to becoming eligible for membership in the State
19 Employees' Retirement System. Such employees shall be mandatory
20 members of the system provided they are otherwise eligible and
21 unless they are eligible for optional membership pursuant to
22 subsections (a)(1) through (11) and (b) or prohibited membership
23 pursuant to subsections (a)(14) and (c).

24 (f) Additional optional membership.--The State employees
25 listed in subsection (a)(16) shall be mandatory members of the
26 system as of the effective date of employment with the Juvenile
27 Court Judges' Commission unless they elect membership in an
28 independent retirement program approved by the Juvenile Court
29 Judges' Commission. Employees who elect membership in an
30 independent retirement program approved by the Juvenile Court

1 Judges' Commission shall be prohibited from being active members
2 in the system while employed by the Juvenile Court Judges'
3 Commission. If an employee described in this subsection becomes
4 a State employee with an employer other than the Juvenile Court
5 Judges' Commission, then membership for that employee shall be
6 determined as otherwise provided for in this part. The election
7 of membership in the independent retirement program approved by
8 the Juvenile Court Judges' Commission must be made by the
9 transferred employee filing written notice with the employer
10 while a State employee no later than 90 days after the effective
11 date of this subsection. Upon receipt of such an election, the
12 Juvenile Court Judges' Commission shall certify the election to
13 the board and the independent retirement program.

14 Section 3. Chapter 59 of Title 71 is amended by adding a
15 subchapter to read:

16 SUBCHAPTER D

17 STATE EMPLOYEES' OPTIONAL RETIREMENT PROGRAM

18 Sec.

19 5941. Definitions.

20 5942. State Employees' Optional Retirement Program.

21 5943. Powers and duties of board.

22 5944. Taxation.

23 5945. Investments and expenses.

24 5946. Trust.

25 5947. Investments.

26 5948. Participant contributions.

27 5949. Employer contributions.

28 5950. Vesting.

29 § 5941. Definitions.

30 The following words and phrases when used in this subchapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Participant." A qualified employee who elects to
4 participate in the State Employees' Optional Retirement Program,
5 in lieu of becoming a member of the system.

6 "Program." The State Employees' Optional Retirement Program.

7 "Qualified employee." Any individual who becomes a State
8 employee on or after July 1, 2007, and who is not a member of
9 the system or a State employee categorized in section
10 5301(a)(12), (13), (14) or (15) (relating to mandatory and
11 optional membership).

12 "Trust fund." The trust created under section 5946 (relating
13 to trust) to hold the assets of the program in trust for the
14 exclusive benefit of the program's participants and
15 beneficiaries and for the payment of reasonable expenses of the
16 program in accordance with section 5945 (relating to investments
17 and expenses) and IRC § 401.

18 § 5942. State Employees' Optional Retirement Program.

19 The board shall establish and administer an optional defined
20 contribution retirement program to be known as the State
21 Employees' Optional Retirement Program under which retirement
22 benefits will be provided for qualified employees who elect to
23 participate in the program in lieu of membership in the system.
24 The benefits to be provided for or on behalf of participants in
25 the program shall be provided through participant-directed
26 investments, in accordance with IRC § 401(a). Participants and
27 employers shall contribute to the program in accordance with
28 sections 5948 (relating to participant contributions) and 5949
29 (relating to employer contributions).

30 § 5943. Powers and duties of board.

1 In order to establish and administer the program, the powers
2 and duties of the board shall include all of the following:

3 (1) Entering into written agreements with financial or
4 other organizations to administer the program for
5 participants and to invest funds held pursuant to the
6 program. The program and any written agreement shall comply
7 with the IRC, including the plan qualification requirements
8 imposed on governmental plans under IRC § 401(a).

9 (2) Establishing procedures whereby qualified employees
10 may elect to participate in the program and participants may
11 change their investment choices on a periodic basis, as
12 determined by the board, which shall not be less frequently
13 than quarterly.

14 (3) Arranging for a deduction, from the compensation of
15 participants, of employee contributions to the program.

16 (4) Establishing standards or criteria for selection by
17 the board of the financial institutions, insurance companies
18 or other organizations that may be qualified as managers, on
19 behalf of the board, of funds accumulated under the program
20 on behalf of any participant.

21 (5) Establishing standards and criteria for the
22 providing of options to qualified employees and participants
23 concerning the method of investing amounts accumulated under
24 the program if the options include a diversified mix of low-
25 cost investment products that span the risk-return spectrum.

26 (6) Establishing standards and criteria for informing
27 qualified employees and participants of specific options
28 offered by qualified managers.

29 (7) Designing a comprehensive, balanced and impartial
30 educational program to assist qualified employees and

1 participants in their choice of investment options under the
2 program, which shall include retirement planning education
3 and financial planning guidance on matters such as investment
4 diversification, investment risks, investment costs and asset
5 allocation.

6 (8) Establishing standards and criteria for the
7 disclosure to qualified employees and participants of the
8 anticipated and actual income attributable to the amounts,
9 property and rights and all fees, costs and charges to be
10 made against the amounts accumulated to cover the costs of
11 administering and managing the funds.

12 (9) Establishing processes for election to participate
13 in the program. The election period shall begin on the date
14 that an individual becomes a qualified employee and shall end
15 90 days from that date.

16 (10) Performing an annual review of any qualified fund
17 manager for the purpose of assuring it continues to meet all
18 standards and criteria established.

19 (11) Establishing procedures whereby any participant may
20 do one of the following:

21 (i) Withdraw accumulated amounts in cases of
22 financial hardship or separation of a participant from
23 State service or as otherwise permitted under the IRC.

24 (ii) Dispose of a participant's account pursuant to
25 a domestic relations order unless in conflict with the
26 IRC.

27 (12) Administering the program in compliance with the
28 IRC.

29 (13) Promulgating regulations necessary to administer
30 this subchapter.

1 § 5944. Taxation.

2 All amounts deferred under the program shall constitute
3 taxable income for purposes of the act of March 4, 1971 (P.L.6,
4 No.2), known as the Tax Reform Code of 1971, and shall
5 constitute taxable income for State and local earned income
6 taxes.

7 § 5945. Investments and expenses.

8 The board shall not be responsible for any investment loss
9 incurred in the program or for failure of any investment to earn
10 any specific or expected return or to earn as much as any other
11 investment opportunity, whether or not the other investment
12 opportunity was offered to participants in the program. The
13 expenses arising from allowing qualified employees to elect to
14 participate in the program and participants to choose a fund
15 manager, deduct from compensation amounts contributed under the
16 program and transfer to the fund manager amounts so deducted
17 shall be borne by the board. All other expenses arising from the
18 administration of the program shall be assessed against the
19 accounts created on behalf of participants either by the fund
20 managers or by the board.

21 § 5946. Trust.

22 (a) Establishment.--All assets and income that have been or
23 shall be withheld by the employer in accordance with this
24 subchapter shall be held in trust in any funding vehicle
25 permitted by applicable provisions of the IRC for the exclusive
26 benefit of the program's participants and their beneficiaries
27 until the time when the funds are distributed to the participant
28 or the participant's beneficiary in accordance with the terms of
29 the agreement between the participant and the board. All such
30 assets and income withheld by the employer shall be held in

1 trust as set forth in this subsection in a special fund created
2 within the State Treasury of which the State Treasurer shall be
3 custodian.

4 (b) Trustees.--The members of the board shall be the
5 trustees of the trust established under subsection (a).

6 (c) Attachment.--Notwithstanding any other provision of law,
7 any benefit or interest available under the program, any right
8 to receive or direct payments under the program or any
9 distribution of payment made under the program shall not, except
10 as expressly specified by the program, be subject to assignment,
11 alienation, garnishment, attachment, transfer, anticipation,
12 sale, mortgage, pledge, hypothecation, commutation, execution or
13 levy, whether by voluntary or involuntary act of any interested
14 person.

15 § 5947. Investments.

16 Investment of contributions by any corporation, institution,
17 insurance company or custodial bank that the board has approved
18 shall not be unreasonably delayed, and in no case shall the
19 investment of contributions be delayed more than 30 days from
20 the date of payroll deduction to the date that funds are
21 invested. Any interest earned on the funds pending investment
22 shall be allocated to the Commonwealth and credited to the
23 accounts of participants who are then participating in the
24 program unless the interest is used to defray administrative
25 costs and fees that would otherwise be required to be borne by
26 participants who are then participating in the program.

27 § 5948. Participant contributions.

28 Regular participant contributions shall be made to the
29 program on behalf of each active member for current service in
30 an amount equal to 6% of the participant's compensation. The

1 employer shall cause required participant contributions for
2 current service to be made and deducted from each payroll.
3 § 5949. Employer contributions.

4 The Commonwealth or any other employer of a participant shall
5 make payments to the trust fund on behalf of the participant in
6 an amount equal to 6% of the participant's total compensation.
7 § 5950. Vesting.

8 A participant shall be vested after completing one year of
9 State service during which he or she is a participant in the
10 program with respect to employer contributions paid on behalf of
11 the participant to the program plus interest and earnings on the
12 employer contributions but minus investment fees and
13 administrative charges.

14 Section 4. This act shall take effect immediately.