

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1613 Session of
2009

INTRODUCED BY PETRI, JUNE 5, 2009

REFERRED TO COMMITTEE ON FINANCE, JUNE 5, 2009

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 Subchapter F of Chapter 59 (relating to State Employees'
17 Optional Retirement Program).

18 * * *

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

1 § 5301. Mandatory and optional membership.

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

5 (1) Governor.

6 (2) Lieutenant Governor.

7 (3) Members of the General Assembly.

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

9 (5) Members of any independent administrative board or
10 commission.

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

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

13 (8) Secretary to the Governor.

14 (9) Budget Secretary.

15 (10) Legislative employees.

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

18 (12) School employees who have elected membership in an
19 independent retirement program approved by the employer,
20 provided that in no case, except as hereinafter provided,
21 shall the employer contribute on account of such elected
22 membership at a rate greater than the employer normal
23 contribution rate as determined in section 5508(b) (relating
24 to actuarial cost method). For the fiscal year 1986-1987 an
25 employer may contribute on account of such elected membership
26 at a rate which is the greater of 7% or the employer normal
27 contribution rate as determined in section 5508(b) and for
28 the fiscal year 1992-1993 and all years after that at a rate
29 of 9.29%.

30 (13) Persons who have elected to retain membership in

1 the retirement system of the political subdivision by which
2 they were employed prior to becoming eligible for membership
3 in the State Employees' Retirement System.

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

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

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

21 (17) Any person who becomes a State employee on or after
22 July 1, 2009, and who elects to participate in the State
23 Employees' Optional Retirement Program under Subchapter F of
24 Chapter 59 (relating to State Employees' Optional Retirement
25 Program).

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

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

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

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

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

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

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

14 SUBCHAPTER F

15 STATE EMPLOYEES' OPTIONAL RETIREMENT PROGRAM

16 Sec.

17 5971. Definitions.

18 5972. State Employees' Optional Retirement Program.

19 5973. Powers and duties of board.

20 5974. Taxation.

21 5975. Investments and expenses.

22 5976. Trust.

23 5977. Investments.

24 5978. Participant contributions.

25 5979. Employer contributions.

26 5980. Vesting.

27 § 5971. Definitions.

28 The following words and phrases when used in this subchapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

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

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

5 "Qualified employee." Any individual who becomes a State
6 employee on or after July 1, 2009, and who is not a member of
7 the system or a State employee categorized in section 5301(a)
8 (12), (13), (14) or (15) (relating to mandatory and optional
9 membership).

10 "Trust fund." The trust created under section 5976 (relating
11 to trust) to hold the assets of the program in trust for the
12 exclusive benefit of the program's participants and
13 beneficiaries and for the payment of reasonable expenses of the
14 program in accordance with section 5975 (relating to investments
15 and expenses) and IRC § 401.

16 § 5972. State Employees' Optional Retirement Program.

17 The board shall establish and administer an optional defined
18 contribution retirement program to be known as the State
19 Employees' Optional Retirement Program under which retirement
20 benefits will be provided for qualified employees who elect to
21 participate in the program in lieu of membership in the system.
22 The benefits to be provided for or on behalf of participants in
23 the program shall be provided through participant-directed
24 investments, in accordance with IRC § 401(a). Participants and
25 employers shall contribute to the program in accordance with
26 sections 5978 (relating to participant contributions) and 5979
27 (relating to employer contributions).

28 § 5973. Powers and duties of board.

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

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

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

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

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

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

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

27 (7) Designing a comprehensive, balanced and impartial
28 educational program to assist qualified employees and
29 participants in their choice of investment options under the
30 program, which shall include retirement planning education

1 and financial planning guidance on matters such as investment
2 diversification, investment risks, investment costs and asset
3 allocation.

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

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

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

17 (11) Establishing procedures whereby any participant may
18 do one of the following:

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

22 (ii) Dispose of a participant's account under a
23 domestic relations order unless in conflict with the IRC.

24 (12) Administering the program in compliance with the
25 IRC.

26 (13) Promulgating regulations necessary to administer
27 this subchapter.

28 § 5974. Taxation.

29 All amounts deferred under the program shall constitute
30 taxable income for purposes of the act of March 4, 1971 (P.L.6,

No.2), known as the Tax Reform Code of 1971, and shall
constitute taxable income for State and local earned income
taxes.

§ 5975. Investments and expenses.

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

§ 5976. Trust.

(a) Establishment.--All assets and income that have been or
shall be withheld by the employer in accordance with this
subchapter shall be held in trust in any funding vehicle
permitted by applicable provisions of the IRC for the exclusive
benefit of the program's participants and their beneficiaries
until the time when the funds are distributed to the participant
or the participant's beneficiary in accordance with the terms of
the agreement between the participant and the board. All such
assets and income withheld by the employer shall be held in
trust as set forth in this subsection in a special fund created
within the State Treasury of which the State Treasurer shall be
custodian.

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

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

12 § 5977. Investments.

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

24 § 5978. Participant contributions.

25 Regular participant contributions shall be made to the
26 program on behalf of each active member for current service in
27 an amount equal to 6% of the participant's compensation. The
28 employer shall cause required participant contributions for
29 current service to be made and deducted from each payroll.

30 § 5979. Employer contributions.

1 The Commonwealth or any other employer of a participant shall
2 make payments to the trust fund on behalf of the participant in
3 an amount equal to 6% of the participant's total compensation.
4 \$ 5980. Vesting.

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

11 Section 4. This act shall take effect immediately.