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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 755 Session of  
2015

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INTRODUCED BY EICHELBERGER, SCAVELLO, FOLMER, VANCE, MENSCH,  
WAGNER, AUMENT, ALLOWAY, STEFANO, SMUCKER, BROWNE AND YAW,  
JUNE 4, 2015

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REFERRED TO FINANCE, JUNE 4, 2015

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AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania  
2 Consolidated Statutes, providing for a municipal alternative  
3 retirement plan.

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

6 Section 1. Title 53 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 93

9 MUNICIPAL ALTERNATIVE RETIREMENT PLAN

10 Subchapter

11 A. Preliminary Provisions

12 B. Municipal Alternative Retirement Plan

13 C. Membership

14 D. Contributions

15 E. Vesting

16 F. Member Accounts

17 G. Distributions

18 H. Military Service

1 I. In-Service Withdrawals

2 SUBCHAPTER A

3 PRELIMINARY PROVISIONS

4 Sec.

5 9301. Definitions.

6 § 9301. Definitions.

7 The following words and phrases when used in this chapter  
8 shall have the meanings given to them in this section unless the  
9 context clearly indicates otherwise:

10 "Account." The entries maintained in the records of the  
11 trustee which represent the member's interest in the trust.

12 "Alternate payee." Any spouse, former spouse, child or other  
13 dependent of a member who is recognized by a qualified domestic  
14 relations order as having a right to receive all or a portion of  
15 the member's vested account balance.

16 "Annual additions." For any limitation year, the sum of the  
17 following:

18 (1) the aggregate after-tax employee contributions that  
19 the member contributes during the year to all qualified  
20 retirement plans maintained by the municipality;

21 (2) the amount of municipality contributions allocated  
22 to the member's municipality contribution account under this  
23 plan as of any date within the year; and

24 (3) the amount of municipality contributions and  
25 forfeitures allocated to the member under any qualified  
26 defined contribution plan that may be maintained by the  
27 municipality, other than this plan, as of any date within the  
28 year.

29 "Benefit commencement date." For any member or designated  
30 beneficiary, the date the first benefit payment, including a

1 single sum from the member's account, is due, other than  
2 pursuant to a withdrawal under section 9382 (relating to  
3 retirement age).

4 "Break in service." Shall be as follows:

5 (1) Except as provided in paragraph (2) or (3), any plan  
6 year in which an employee is not credited with more than 500  
7 hours of service.

8 (2) For the purpose of calculating a break in service,  
9 an employee shall receive credit for an hour of service for  
10 each hour of service that the employee would have earned had  
11 the employee continued to be actively employed during the  
12 period of absence if the employee is absent for one or more  
13 of the following reasons:

14 (i) layoff for a period of not more than one year;

15 (ii) leave of absence that is protected under the  
16 Family and Medical Leave Act of 1993 (Public Law 103-3,  
17 29 U.S.C. § 2601 et seq.); or

18 (iii) leave of absence for any other reason with the  
19 approval of the plan administrator for a period of not  
20 more than one year.

21 (3) If an employee is absent from work by reason of  
22 pregnancy, childbirth or placement in connection with an  
23 adoption, the employee shall be credited with the hours of  
24 service that the employee would have received but for the  
25 absence. If the hours of service cannot be determined, the  
26 employee shall receive eight hours of service per normal  
27 workday. The total number of hours to be treated as hours of  
28 service under this provision shall not exceed 501. The hours  
29 of service described in this provision shall be credited to  
30 the plan year in which the hours of service would have

1 otherwise occurred.

2 "Compensation." Shall be as follows:

3 (1) For any plan year, subject to the limitations set  
4 forth below, the total wages as reported on an employee's  
5 Form W-2 from the municipality for the plan year, including:

6 (i) basic contributions and elective contributions  
7 that are not included in gross income pursuant to section  
8 125, 132(f), 402(e)(3), 402(h)(1)(B) or 402(k) of the IRS  
9 Code (26 U.S.C. § 125, 132(f), 402(e)(3), 402(h)(1)(B) or  
10 402(k)); and

11 (ii) compensation deferred under an eligible  
12 deferred compensation plan within the meaning of section  
13 457(b) of the IRS Code (26 U.S.C. § 457(b)).

14 (2) If an employee is severed from employment,  
15 compensation must be paid or made available to an employee  
16 within the limitation year and must be paid or treated as  
17 paid to the employee prior to his or her severance from  
18 employment. For purposes of Subchapter D (relating to  
19 contributions), compensation shall also include compensation  
20 paid by the later of two and one-half months after the  
21 employee's severance from employment or the end of the  
22 limitation year in which the employee has a severance from  
23 employment if payment is regular compensation for services  
24 during the employee's regular working hours, or compensation  
25 for services outside the employee's regular working hours,  
26 commissions, bonuses or similar payments, and the payment  
27 would have been made to the employee if he or she had  
28 continued in employment with the municipality, or the payment  
29 is for unused accrued bona fide sick, vacation or other leave  
30 that the employee would have been able to use if the employee

1 had continued in employment with the municipality.

2 (3) With respect to any plan year, only compensation not  
3 in excess of the amount to which the limit of section 401(a)  
4 (17) of the IRS Code (26 U.S.C. § 401(a)(17)) has been  
5 indexed shall be taken into account.

6 (4) For purposes of this definition, amounts under  
7 section 125 of the IRS Code (26 U.S.C. § 125) shall include  
8 any amounts not available to a member in cash in lieu of  
9 health coverage because the member is unable to certify that  
10 he or she has other health coverage. An amount will be  
11 treated as an amount under section 125 of the IRS Code only  
12 if the municipality does not otherwise request or collect  
13 information regarding the member's other health coverage as  
14 part of the enrollment process for the health plan.

15 "Designated beneficiary." Each eligible employee, upon  
16 becoming a member, shall designate a person or persons as the  
17 beneficiary to receive any distribution payable under the plan  
18 in the event of the member's death. The member may change the  
19 designation of a beneficiary from time to time in accordance  
20 with procedures established by the plan administrator. Any  
21 designation of a beneficiary shall only be effective if it is  
22 made in writing on the form prescribed by the plan administrator  
23 and is received by the plan administrator prior to the member's  
24 death. If the member has not named a beneficiary or if none of  
25 the named beneficiaries is living when a payment is to be made,  
26 one of the following shall apply:

27 (1) the spouse of the deceased member shall be the  
28 beneficiary;

29 (2) if the member has no spouse living at the time of  
30 such payment, the then-living children of the member shall be

1 the beneficiaries in equal shares; or

2 (3) if the member has neither spouse nor children living  
3 at the time of such payment, the estate of the member shall  
4 be the beneficiary.

5 "Eligible employee." Employees of a municipality who meet  
6 the requirements of section 9321 (relating to eligibility).

7 "Employment commencement date." For any employee, the date  
8 on which he or she is first entitled to be credited with an hour  
9 of service.

10 "Hour of service." Shall be as follows:

11 (1) In accordance with 29 CFR 2530.200b-2 (relating to  
12 hour of service), an hour of service shall be defined as:

13 (i) each hour that the employee is directly or  
14 indirectly paid or entitled to payment by the  
15 municipality for the performance of employment duties;

16 (ii) each hour the employee is entitled, either by  
17 award or agreement, to back pay from the municipality,  
18 irrespective of mitigation of damages; and

19 (iii) each hour the employee is directly or  
20 indirectly paid or entitled to payment by the  
21 municipality on account of a period of time during which  
22 no duties are performed due to vacation, holiday,  
23 illness, incapacity, including disability, jury duty,  
24 layoff, leave of absence or military duty.

25 (2) The following shall apply:

26 (i) No hours of service shall be credited to an  
27 employee for payments made under a plan maintained solely  
28 for the purpose of complying with applicable workers'  
29 compensation, unemployment compensation or disability  
30 insurance laws.

1           (ii) No more than 501 hours of service shall be  
2           credited to an employee under paragraph (1)(iii) for any  
3           single continuous period during which no duties are  
4           performed by the employee, except to the extent otherwise  
5           provided in the plan.

6           (iii) No hour of service shall be credited to an  
7           employee for payments for medical or medical-related  
8           expense reimbursement.

9           (iv) No hour of service shall be credited twice.

10          (v) Hours of service shall be credited at least as  
11          liberally as set forth by the rules in 29 CFR 2530.200b-  
12          2.

13          "Investment option." Any investment vehicle designated by a  
14          plan administrator.

15          "IRS Code." The Internal Revenue Code of 1986 (Public Law  
16          99-514, 26 U.S.C. § 1 et seq.).

17          "Limitation year." The 12-consecutive-month period that  
18          begins January 1 and ends the following December 31 of each  
19          year.

20          "Mandatory member contribution account." The individual  
21          investment account established by the municipality for employee  
22          contributions made under section 9332 (relating to mandatory  
23          member contributions), as adjusted for withdrawals,  
24          distributions, earnings, losses and expenses.

25          "Mandatory member contributions." For any member, the  
26          contributions made on his or her behalf as provided in section  
27          9332.

28          "Member." An individual who becomes a member under  
29          Subchapter C (relating to membership) and for whom one or more  
30          accounts are maintained under the plan.

1 "Municipality." A borough, incorporated town, township,  
2 regional police department or a city other than a city of the  
3 first class.

4 "Municipality contribution account." An account established  
5 by a municipality under section 9331 (relating to municipality  
6 contribution account).

7 "Municipality contributions." A municipality contribution to  
8 a member under section 9333 (relating to pick up of member  
9 contributions).

10 "Nonuniformed employee." An employee of a municipality who  
11 does not meet the requirements of section 9321 (relating to  
12 eligibility).

13 "Normal retirement age." The date that an employee becomes  
14 55 years of age.

15 "Plan." The defined contribution plan adopted by a  
16 municipality in accordance with this chapter and the tax-  
17 qualification requirements of section 401(a) of the IRS Code (26  
18 U.S.C. § 401(a)).

19 "Plan administrator." The committee or individual appointed  
20 by the municipality to supervise the administration of the plan  
21 under section 9312 (relating to plan administrator).

22 "Plan year." The 12-consecutive-month period that begins  
23 January 1 and ends the following December 31. A short plan year  
24 may exist when a municipality adopts the plan after January 1 of  
25 the plan year.

26 "Qualified domestic relations order" or "QDRO." A domestic  
27 relations order which creates or recognizes an alternate payee's  
28 right, or assigns to an alternate payee the right, to receive  
29 all or a portion of the benefits payable under a plan, so long  
30 as the order satisfies State domestic relations requirements as

1 provided by law.

2 "Qualified military service." An employee's military service  
3 if the employee is entitled to reemployment with the  
4 municipality following the employee's military service.

5 "Returning veteran." An employee who on or after December  
6 12, 1994, returns from qualified military service to employment  
7 with a municipality within the period of time that the  
8 employee's reemployment rights are protected by law.

9 "Rollover contribution account." An account credited with a  
10 member's rollover contributions under the plan, adjusted for  
11 withdrawals and distributions, earnings, losses and expenses.

12 "Trust." The account established by a municipality under  
13 section 9383 (relating to plan assets to be held in trust).

14 "Trust agreement." Any agreement and declaration of trust  
15 executed under the plan.

16 "Trustee." The corporate trustee or one or more individuals  
17 collectively appointed and acting as trustee under the trust  
18 agreement.

19 "Uniformed services." Active duty of full-time service in  
20 any of the following:

21 (1) United States Armed Forces.

22 (2) Army National Guard.

23 (3) Air National Guard.

24 (4) Commissioned corps of the Public Health Service.

25 (5) Any other category of persons designated by the  
26 President of the United States in time of war or emergency.

27 "Valuation date." The last day of each plan year and each  
28 interim date on which the plan specifies that a valuation of the  
29 trust shall be made.

30 "Year of vesting service." For determining an employee's

1 vested status under the plan, an employee shall earn one year of  
2 vesting service for each plan year during which the employee is  
3 credited with at least 1,000 hours of service.

4 SUBCHAPTER B

5 MUNICIPAL ALTERNATIVE RETIREMENT PLAN

6 Sec.

7 9311. Establishment.

8 9312. Plan administrator.

9 9313. Powers and duties of the plan administrator.

10 9314. Plan assets to be held in trust.

11 9315. Managing plan assets.

12 9316. Plan expenses.

13 9317. Indemnification.

14 § 9311. Establishment.

15 A municipality may by ordinance establish a retirement plan  
16 for its eligible employees in place of, and as an alternative  
17 to, other retirement plans authorized under law prior to the  
18 effective date of this section.

19 § 9312. Plan administrator.

20 (a) Responsibilities.--A municipality that establishes a  
21 plan under section 9311 (relating to establishment) may be the  
22 plan administrator or may delegate any or all administrative  
23 responsibilities to a third party. The ordinance shall designate  
24 a trustee to hold the required accounts under the plan.

25 (b) Written agreement.--A municipality may enter into an  
26 agreement with one or more financial institutions or pension  
27 management organizations to administer the plan and the  
28 investment of funds held pursuant to the plan, which must be in  
29 writing. The administrator shall be selected in accordance with  
30 the following:

1           (1) the municipality shall solicit proposals from  
2 financial institutions and pension management organizations;  
3 and

4           (2) proposals shall be evaluated based on specific  
5 criteria adopted by the municipality, which shall include  
6 experience, customer service history and other relevant  
7 criteria.

8           (c) Rebid.--A contract to administer the plan under  
9 subsection (a) shall be rebid at least once every 10 years.

10 § 9313. Powers and duties of the plan administrator.

11           (a) General rule.--

12           (1) The plan administrator shall promulgate rules and  
13 computations and shall take other actions necessary for  
14 administering the plan.

15           (2) A plan administrator's rules, interpretations,  
16 computations and actions shall be final, conclusive and  
17 binding.

18           (b) Specific powers and duties.--The powers and duties of  
19 the plan administrator shall include the following:

20           (1) Comingle or pool assets with the assets of third  
21 parties.

22           (2) Pay administrative fees, costs and expenses of  
23 managing, investing and administering the plan, trust and  
24 individual investment accounts with funds from the balance of  
25 the individual investment accounts, except as funds may be  
26 appropriated from the General Fund.

27           (3) Establish investment guidelines and limits on the  
28 types of investments that participants may make, consistent  
29 with its fiduciary obligations.

30           (4) Change the terms of the plan as may be necessary to

1 maintain the tax-qualified status of the plan.

2 (5) Allow for eligible rollovers and transfers between  
3 trustees into the trust from qualified plans of other  
4 employers, regardless of whether the employers are private  
5 employers or public employers.

6 (6) Establish procedures to provide for the lawful  
7 payment of benefits.

8 (7) Establish procedures for distributions of small  
9 accounts as required.

10 (8) Establish procedures or promulgate rules and  
11 regulations as necessary for the administration and  
12 management of the plan, including, but not limited to,  
13 establishing:

14 (i) Procedures for eligible participants to change  
15 voluntary contribution amounts or their investment  
16 choices on a periodic basis or make other elections  
17 regarding their participation in the plan.

18 (ii) Procedures for deducting mandatory pickup  
19 participant contributions and voluntary contributions  
20 from a participant's compensation.

21 (iii) Procedures for rollovers and transfers between  
22 trustees as allowed under law and permitted by the plan.

23 (iv) Standards and criteria for providing at least  
24 six options from three or more providers of investment  
25 options to eligible individuals regarding the investment  
26 of amounts deferred under the plan.

27 (v) Standards and criteria for disclosing to the  
28 participants the anticipated and actual income  
29 attributable to amounts invested, property rights and any  
30 fees, costs and expenses to be made against amounts

1 deferred to cover the costs and expenses of administering  
2 and managing the plan or trust.

3 (vi) Procedures, standards and criteria for the  
4 making of distributions from the plan upon termination  
5 from employment or death or other circumstances  
6 consistent with the purpose of the plan.

7 § 9314. Plan assets to be held in trust.

8 (a) General rule.--All contributions to the plan shall be  
9 held in trust by a trustee for investment and reinvestment and  
10 as provided under the terms of the trust agreement and this  
11 plan. The municipality shall appoint the initial trustee or  
12 trustees upon establishment of a plan under section 9311  
13 (relating to establishment).

14 (b) Prohibitions.--The corpus or income of the trust or  
15 custodial account may not be diverted to or used for any purpose  
16 other than the exclusive benefit of the members and  
17 beneficiaries of the members.

18 (c) Refunds and credits.--If the plan benefits are provided  
19 through the distribution of an annuity or insurance contract,  
20 any refunds or credits in excess of plan benefits shall be paid  
21 to the trust or custodial account.

22 § 9315. Managing plan assets.

23 (a) Fiduciary.--The plan administrator is the named  
24 fiduciary of the plan, and following the initial appointment of  
25 the trustee by the municipality, the plan administrator may:

26 (1) Appoint one or more trustees to hold all assets of  
27 the plan and may enter into a trust agreement with each  
28 trustee appointed by the plan administrator.

29 (2) Designate and monitor an investment manager and  
30 delegate fiduciary responsibility for selecting and

1 monitoring investment options to the investment manager.

2 (3) Determine whether an expense may be paid out of plan  
3 assets and, if so, how the expense will be divided among  
4 member and beneficiary accounts.

5 (4) Determine how revenue share funds will be allocated  
6 among the accounts.

7 (b) Power to appoint and remove.--After the initial  
8 appointment of a trustee, the plan administrator shall have the  
9 sole responsibility and power to appoint and remove any trustee  
10 or investment manager managing assets of the plan.

11 § 9316. Plan expenses.

12 (a) Payment.--All expenses of administering the plan shall  
13 be paid out of plan assets, except for such expenses as are paid  
14 by the municipality.

15 (b) Discretion of the plan administrator.--The plan  
16 administrator shall have sole discretion to determine whether a  
17 plan expense shall be paid by the municipality, which shall not  
18 be limited by a prior decision or practice regarding payment of  
19 plan expenses.

20 (c) Revenue share funds.--A plan expense shall first be paid  
21 with revenue share funds paid to the plan. If any revenue share  
22 funds are remaining after the payment of expenses, the funds  
23 shall be allocated to the account of each member, or member  
24 beneficiary, who is entitled to an allocation of municipality  
25 contributions for the plan year in which the revenue share  
26 amount was paid to the plan.

27 § 9317. Indemnification.

28 A municipality may purchase a bond and liability insurance to  
29 cover any of its potential liabilities regarding the plan and  
30 trust established by this act.



1 member on the first day of the payroll cycle following the  
2 employee's employment commencement date.

3 (b) Extension of membership.--Nonuniformed employees shall  
4 not be eligible for inclusion in the plan. A municipality may  
5 establish a separate defined contribution plan for its  
6 nonuniformed employees.

7 § 9323. Membership upon reemployment.

8 A former member whose employment with a municipality was  
9 terminated shall become a member upon reemployment with the  
10 municipality if the employee is an eligible employee upon  
11 reemployment.

12 § 9324. Participation in a defined benefit pension plan.

13 (a) Ineligibility.--Members of a plan established under this  
14 act shall be ineligible to participate in a defined benefit  
15 pension plan sponsored by the employee's municipality, except  
16 for a pension plan that the employee participated in prior to  
17 the establishment of the plan.

18 (b) Previous pension plans.--If an employee participated in  
19 another pension plan offered by the municipality prior to the  
20 establishment of a plan under this chapter, the benefits of that  
21 pension plan shall not be increased or decreased.

22 (c) Deferred compensation.--Members of a plan may  
23 participate in a supplemental deferred compensation plan  
24 established by the employee's municipality under section 457(b)  
25 of the IRS Code (26 U.S.C. § 457(b)).

26 § 9325. Termination of membership.

27 Membership in a plan shall terminate as of the later of:

28 (1) the date of a member's termination from employment  
29 with the sponsoring municipality; or

30 (2) the date no further benefits are payable to the

1 member under the plan.

2 SUBCHAPTER D

3 CONTRIBUTIONS

4 Sec.

5 9331. Municipality contribution account.

6 9332. Mandatory member contributions.

7 9333. Pick up of member contributions.

8 9334. Municipal contributions.

9 9335. Rollover contributions.

10 9336. Limitation on contributions.

11 9337. Corrections.

12 § 9331. Municipality contribution account.

13 A municipality shall establish an account into which are  
14 credited the municipality contributions allocated to a member  
15 under the plan, as adjusted for withdrawals, distributions,  
16 earnings, losses and expenses.

17 § 9332. Mandatory member contributions.

18 (a) General rule.--Each member shall make a mandatory  
19 contribution to the plan each payroll period and the following  
20 shall apply:

21 (1) The plan shall establish in the trust an individual  
22 investment account for each member. All contributions by a  
23 member and vested municipality contributions for or on behalf  
24 of a member shall be credited to the member's individual  
25 investment account, together with all interest and investment  
26 earnings and losses. Investment and administrative fees,  
27 costs and expenses shall be charged to the member's  
28 individual investment accounts. Employer defined  
29 contributions shall be recorded and accounted for separately  
30 from participant contributions, but all interest, investment

1 earnings and losses, and investment and administrative fees  
2 and costs and expenses shall be allocated proportionately.

3 (2) The account shall separately track participant  
4 contributions, including investment gains and losses, and  
5 employer contributions, including investment gains and  
6 losses, but all interest, investment gains and losses and  
7 administrative fees, costs and expenses shall be allocated  
8 proportionately.

9 (b) Amount of contribution.--The mandatory contribution  
10 shall be 6% of the total compensation for a member who pays into  
11 Social Security or 9% of the total compensation for a member who  
12 does not pay into Social Security.

13 § 9333. Pick up of member contributions.

14 (a) General rule.--The municipality shall adopt an ordinance  
15 to "pick up" mandatory employee contributions under section  
16 414(h) of the IRS Code (26 U.S.C. § 414(h)).

17 (b) Deductions.--Mandatory member contributions that are  
18 picked up by the sponsoring municipality will be deducted  
19 through regular payroll deductions on a pretax basis.

20 (c) Treatment of picked up contributions.--Member  
21 contributions that are picked up by the municipality are treated  
22 as municipality contributions for Federal income tax purposes  
23 and shall not be treated as taxable contributions to the member.

24 § 9334. Municipal contributions.

25 (a) General rule.--For each plan year, a municipality that  
26 has established a plan under section 9311 (relating to  
27 establishment) shall make a contribution to the plan on behalf  
28 of each member.

29 (b) Amount of contribution.--The contribution shall be 4.5%  
30 of a member's total compensation.

1 (c) Date of credit.--A municipal contribution shall be  
2 credited to a member account each payroll period, or any other  
3 frequency as the municipality determines appropriate, but not  
4 less frequently than annually.

5 § 9335. Rollover contributions.

6 (a) General rule.--Subject to the plan administrator's  
7 approval, a plan may accept rollovers from eligible employees.

8 (b) Qualifying rollover accounts.--A plan may accept  
9 rollovers of qualifying distributions of pretax contributions  
10 from plans described in IRS Code sections 401(a) and (k) and  
11 403(a) and (b), governmental IRS Code section 457(b) plans and  
12 traditional individual retirement accounts.

13 § 9336. Limitation on contributions.

14 (a) General rule.--The annual additions allocated to a  
15 member's accounts for any limitations year shall not exceed the  
16 lesser of the following:

17 (1) fifty-three thousand dollars, as adjusted for  
18 increases in the cost-of-living index under section 415(d) of  
19 the IRS Code (26 U.S.C. § 415(d)); or

20 (2) one hundred percent of the member's compensation for  
21 the limitations year.

22 (b) Excess additions.--If a member's annual additions would  
23 exceed the limits under section 415 of the IRS Code (26 U.S.C. §  
24 415), such annual additions shall be reduced by reducing the  
25 components thereof in the order in which they are listed in the  
26 definition of annual additions in Subchapter A (relating to  
27 preliminary provisions).

28 § 9337. Corrections.

29 If the limitations under section 415 of the IRS Code (26  
30 U.S.C. § 415) would otherwise fail to be satisfied, a correction

1 may be made, as determined by the plan administrator.

2 SUBCHAPTER E

3 VESTING

4 Sec.

5 9341. Member contribution account.

6 9342. Municipality contribution account.

7 9343. Normal retirement age, death or disability.

8 9344. Rollover contribution account.

9 9345. Forfeitures.

10 9346. Termination.

11 § 9341. Member contribution account.

12 A member shall become fully vested in all contributions,  
13 mandatory or otherwise, to the member's individual investment  
14 account immediately.

15 § 9342. Municipality contribution account.

16 A member shall become vested in the member's municipality  
17 contribution account according to the following schedule:

<u>Years of vesting service</u>	<u>Percentage vested</u>
<u>4</u>	<u>25%</u>
<u>6</u>	<u>50%</u>
<u>8</u>	<u>75%</u>
<u>10</u>	<u>100%</u>

23 § 9343. Normal retirement age, death or disability.

24 Notwithstanding anything in this chapter to the contrary, a  
25 member shall become fully vested in a member contribution  
26 account if, prior to severance from employment, the member  
27 reaches his normal retirement age, has died or has become  
28 disabled.

29 § 9344. Rollover contribution account.

30 A member shall become fully vested immediately for any

1 amounts credited to his rollover contribution account.

2 § 9345. Forfeitures.

3 (a) General rule.--A member who has a severance from  
4 employment prior to completing the vesting requirements in  
5 section 9342 (relating to municipality contribution account)  
6 shall forfeit the unvested portion of the employee's  
7 municipality contribution account.

8 (b) Use of forfeited plan funds.--A plan administrator may  
9 use plan forfeitures to pay reasonable administrative expenses  
10 incurred by the plan. Any forfeited amounts not used to pay  
11 reasonable administrative expenses shall be used to reduce  
12 municipality contributions.

13 § 9346. Termination.

14 Upon termination of the plan, all members shall become fully  
15 vested in their accounts to the extent funded.

16 SUBCHAPTER F

17 MEMBER ACCOUNTS

18 Sec.

19 9351. Accounts.

20 9352. Valuation of accounts.

21 § 9351. Accounts.

22 The following accounts, as applicable, shall be maintained by  
23 the trustee for each member:

24 (1) Mandatory member contribution account.

25 (2) Municipality contribution account.

26 (3) Rollover contribution account.

27 § 9352. Valuation of accounts.

28 Each member account shall be valued at fair market value and  
29 adjusted as of each valuation date to reflect income, gains,  
30 losses, expenses and all other transactions associated with the

1 member's account since the last valuation date.

2 SUBCHAPTER G

3 DISTRIBUTIONS

4 Sec.

5 9361. Time of distribution.

6 9362. Distribution amount.

7 9363. Form of distribution.

8 9364. Election of annuity benefit.

9 9365. Default form of payment.

10 9366. Rollovers from the plan.

11 9367. Distribution upon death.

12 9368. Required minimum distributions.

13 9369. Definitions.

14 § 9361. Time of distribution.

15 (a) General rule.--A member's vested account balance shall  
16 be distributable as soon as practicable following the member's  
17 severance from employment with a municipality. If the  
18 distribution is to commence prior to the member's attainment of  
19 normal retirement age, the member must consent in writing to the  
20 distribution. If a member fails to request a distribution of his  
21 account or there was no consent to an earlier distribution, the  
22 member's vested account balance shall be distributed no later  
23 than the 60th day following the later of:

24 (1) the last day of the plan year in which the member  
25 has a severance from employment with a municipality; or

26 (2) the last day of the plan year in which the member  
27 attains normal retirement age.

28 (b) Exception.--Notwithstanding the foregoing, a member's  
29 vested account balance shall be paid by April 1 of the calendar  
30 year following the later of:

1           (1) the calendar year in which the member attains 70.5  
2           years of age; or

3           (2) the calendar year in which the member retires.

4   § 9362. Distribution amount.

5           Upon severance from employment, a member shall be entitled to  
6           his vested account balance, which shall be the value as of the  
7           valuation date on or most recently preceding the date of  
8           distribution.

9   § 9363. Form of distribution.

10           By filing the prescribed forms with the plan administrator  
11           prior to the commencement of benefits, a member may elect to  
12           have his vested account balance paid in one of the following  
13           forms:

14           (1) Single lump sum.

15           (2) Annuity.

16           (3) Substantially equal installments occurring at least  
17           annually for a specified number of years.

18   § 9364. Election of annuity benefit.

19           (a) Default option.--The default annuity option is a  
20           straight life annuity.

21           (b) Election other than life annuity.--If a member elects to  
22           receive his benefit as an annuity that is a form other than a  
23           straight life annuity, the member shall receive a benefit that  
24           is the actuarial equivalent of the straight life annuity  
25           benefit.

26           (c) Third-party annuity.--The plan administrator may  
27           purchase an annuity contract from a third-party insurance  
28           company to provide any annuity benefit selected by a member, and  
29           the following shall apply:

30           (1) The plan shall be the named owner and the member

1 shall be the named annuitant of the annuity contract.

2 (2) The terms of the plan shall control where there is a  
3 conflict between the terms of the plan and the terms of an  
4 annuity contract issued hereunder.

5 § 9365. Default form of payment.

6 If, by the date payment is to be made, a member fails to  
7 elect the form in which his vested account balance is to be  
8 paid, the member's vested account balance shall be paid to the  
9 member as follows:

10 (1) fifty percent in a lump sum; and

11 (2) fifty percent in a straight life annuity.

12 § 9366. Rollovers from the plan.

13 An eligible member may elect, at the time and in the manner  
14 prescribed by the plan administrator, to have any portion of an  
15 eligible rollover distribution from the plan paid directly to an  
16 eligible retirement plan in a direct rollover, as described in  
17 section 401(a)(31) of the IRS Code (26 U.S.C. § 401(a)(31)).

18 § 9367. Distribution upon death.

19 (a) Death before distributions begin.--If a member dies  
20 while he is still employed with a municipality, the member's  
21 designated beneficiary shall be entitled to an amount equal to  
22 the value of the member's account determined as of the valuation  
23 date on or most recently preceding the date of distribution.

24 (b) Death following severance from employment.--

25 (1) If a member dies after his severance from employment  
26 with the municipality but before his vested account balance  
27 has been fully distributed, the member's designated  
28 beneficiary shall be entitled to an amount equal to the value  
29 of the member's account determined as of the valuation date  
30 on or most recently preceding the date of distribution to the

1 beneficiary.

2 (2) If a distribution commenced in the form of  
3 installments prior to the member's death, the member's  
4 remaining account balance shall be paid to the designated  
5 beneficiary at least as rapidly as the method in effect prior  
6 to the member's death.

7 (3) If a distribution commenced in the form of an  
8 annuity prior to the member's death, the member's remaining  
9 account balance shall be paid in accordance with the method  
10 of payment in effect.

11 (4) If a member dies after his severance from employment  
12 with the municipality and has received a distribution of his  
13 entire account, no further amount shall be paid to anyone.

14 (c) Distributions to designated beneficiaries.--

15 (1) The amount payable to a designated beneficiary under  
16 subsections (a) and (b) shall be payable in a single lump sum  
17 no later than 12 months after the date of the member's death  
18 except, however, if annuity or installment payments have  
19 begun, they may continue to be paid in accordance with the  
20 method payment in effect.

21 (2) If the deceased member's spouse is the sole  
22 designated beneficiary, the spouse may elect to delay receipt  
23 of the member's vested account balance until a time that is  
24 no later than December 31 of the later of the calendar year  
25 following the calendar year in which the member died or the  
26 calendar year the member would have attained 70.5 years of  
27 age.

28 (3) If the surviving spouse dies before distributions  
29 begin, the deceased member's vested account balance shall be  
30 distributed as if the surviving spouse were the member.

1 § 9368. Required minimum distributions.

2 The following shall apply:

3 (1) Notwithstanding any provisions of this chapter to  
4 the contrary, all distributions under the plan shall be made  
5 in accordance with a reasonable and good faith interpretation  
6 of section 401(a)(9) of the IRS Code (26 U.S.C. § 401(a)(9)),  
7 including the incidental death benefit requirement of section  
8 401(a)(9)(G), the corresponding treasury regulation.

9 (2) The provisions of the IRS Code and treasury  
10 regulation specified in paragraph (1) shall override any  
11 inconsistent distribution options under the plan.

12 § 9369. Definitions.

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

16 "Eligible member." A member, member's surviving spouse,  
17 member's spouse or former spouse who is an alternate payee under  
18 a QDRO or member's designated beneficiary who is not the  
19 member's spouse.

20 "Eligible retirement plan." Shall be as follows:

21 (1) An individual retirement account described in  
22 section 408(a) of the IRS Code (26 U.S.C. § 408(a)), an  
23 individual retirement annuity described in section 408(b) of  
24 the IRS Code (26 U.S.C. § 408(b)), an annuity plan described  
25 in section 403(a) of the IRS Code (26 U.S.C. § 403(a)), a  
26 qualified trust described in section 401(a) of the IRS Code  
27 (26 U.S.C. § 401(a)), an annuity contract described in  
28 section 403(b) of the IRS Code (26 U.S.C. § 403(b)), a  
29 governmental deferred compensation plan under section 457(b)  
30 of the IRS Code (26 U.S.C. § 457(b)) or a Roth individual

1 retirement account described in section 408A of the IRS Code  
2 (26 U.S.C. § 408A).

3 (2) With respect to a designated beneficiary who is not  
4 the member's spouse, an eligible retirement plan is an  
5 individual retirement account described in section 408(a) of  
6 the IRS Code, a Roth individual retirement account described  
7 in section 408A of the IRS Code, or individual retirement  
8 annuity described in section 408(b) of the IRS Code, other  
9 than an endowment contract, established on behalf of the  
10 designated beneficiary and treated as an inherited individual  
11 retirement account or annuity in accordance with section  
12 401(c)(11) of the IRS Code (26 U.S.C. § 401(c)(11)).

13 "Eligible rollover distribution." Any distribution of all or  
14 any portion of a member's account if the amount was not rolled  
15 over to an eligible retirement plan, except that an eligible  
16 rollover distribution does not include:

17 (1) A distribution that is one of a series of  
18 substantially equal periodic payments, but not less  
19 frequently than annually, made for the life or life  
20 expectancy of an eligible member or the joint lives or joint  
21 life expectancies of the eligible member and his or her  
22 beneficiary, or for a specified period of 10 years or more.

23 (2) A distribution to the extent such distribution is  
24 required under section 401(a)(9) of the IRS Code (26 U.S.C. §  
25 401(a)(9)).

26 SUBCHAPTER H

27 MILITARY SERVICE

28 Sec.

29 9371. Qualified military service.

30 9372. Survivor benefits.

1 § 9371. Qualified military service.

2 (a) General rule.--Notwithstanding any provision of this  
3 plan to the contrary, contributions, benefits and service credit  
4 with respect to qualified military service will be provided in  
5 accordance with section 414(u) of the IRS Code (26 U.S.C. §  
6 414(u)).

7 (b) Missed mandatory employee contributions.--A returning  
8 veteran has up to three times the period of military service,  
9 but not to exceed five years, to make up any missed mandatory  
10 employee contributions, and the following shall apply:

11 (1) The contributions are subject to the limits that  
12 would have applied during the military service period.

13 (2) A municipality shall pick up the contributions if  
14 the contributions would have been picked up by the  
15 municipality absent the period of military service.

16 (c) Municipality contributions.--

17 (1) For a member returning from qualified military  
18 leave, a municipality shall contribute any municipality  
19 contributions that would have been made during the military  
20 service period.

21 (2) Municipality contributions made under paragraph (1)  
22 shall be calculated by using the same rate of compensation  
23 the rehired member would have received during the military  
24 service period. If this is not reasonably certain, the  
25 municipality may use the employee's average compensation  
26 during the 12-month period immediately preceding the  
27 qualified military service.

28 § 9372. Survivor benefits.

29 The survivor of a member who has died while performing  
30 qualified military service shall be entitled to any additional

1 benefits that would be provided under the plan if the member had  
2 resumed employment and then terminated employment on account of  
3 death.

4 SUBCHAPTER I

5 IN-SERVICE WITHDRAWALS

6 Sec.

7 9381. General.

8 9382. Retirement age.

9 9383. Payments to alternate employees under a QDRO.

10 9384. Alterations to plans.

11 § 9381. General.

12 Except as permitted by section 9382 (relating to retirement  
13 age), a member may not withdraw any portion of the member's  
14 vested account while employed with a municipality.

15 § 9382. Retirement age.

16 Upon written request to the plan administrator on the forms  
17 as the plan administrator may require, a member who has attained  
18 59.5 years of age may request a withdrawal of all or a portion  
19 of the employee's vested account balance.

20 § 9383. Payments to alternate employees under a QDRO.

21 (a) Distributions.--Any distribution to an alternate payee  
22 pursuant to a domestic relations order, including any interest  
23 in a member's account awarded to an alternate payee by a  
24 domestic relations order, shall be made as soon as practicable  
25 after such order is determined by the plan administrator to be a  
26 QDRO and otherwise acceptable under the terms of the plan,  
27 unless the QDRO has specified a time of distribution.

28 (b) Alternate payee accounts.--If distributions are not made  
29 as soon as practicable under subsection (a), any interest in a  
30 member's accounts assigned or made payable or distributable to

1 the alternate payee under a QDRO shall be transferred to a  
2 separate account established for such alternate payee. If a  
3 single amount or a single percentage of the vested portion of  
4 such member's accounts is assigned or made payable or  
5 distributable to the alternate payee under a QDRO, the transfers  
6 to the alternate payee account shall be made pro rata from the  
7 member's accounts, unless otherwise provided by the QDRO.

8 (c) Beneficiary designation.--

9 (1) An alternate payee may, on the form prescribed by  
10 and filed with the plan administrator, designate a  
11 beneficiary to receive the benefits assigned to the alternate  
12 payee by a QDRO in the event of the alternate payee's death  
13 prior to receipt of all or any portion of the benefits.

14 (2) If the alternate payee has not designated a  
15 beneficiary or if the designated beneficiary is not living  
16 when a distribution is scheduled, the benefits shall be paid  
17 to the alternate payee's estate, except as a QDRO may  
18 otherwise provide.

19 (d) Latest time of distribution.--Distribution to an  
20 alternate payee of an employee's alternate payee account shall  
21 be made as of the date specified in the QDRO, or, if earlier,  
22 the time described under this section if the alternate payee so  
23 elects. However, payment shall be made no later than the date  
24 the member's vested account balance is distributed or is  
25 scheduled to be distributed.

26 § 9384. Alterations to plans.

27 (a) General rule.--If a municipality establishes a plan  
28 under section 9311 (relating to establishment), the provisions  
29 of this chapter shall constitute the exclusive benefits to be  
30 provided to employee members and the following shall apply:

1       (1) No ordinance or resolution enacted by a municipality  
2 after establishment of a plan under this act shall alter the  
3 provisions thereof, nor shall the benefits to be provided by  
4 a plan be altered by any subsequent award of an arbitrator  
5 under the act of June 24, 1968 (P.L.237, No.111), referred to  
6 as the Policemen and Firemen Collective Bargaining Act.

7       (2) A plan administrator shall have the authority to  
8 amend the plan as necessary or desirable to maintain the  
9 qualified status of the plan under sections 401(a) of the IRS  
10 Code (26 U.S.C. § 401(a)) or to facilitate the administration  
11 or operation of the plan to the extent the amendment would  
12 not materially increase the cost of the plan or significantly  
13 alter the benefits payable under the plan.

14       (b) Limitations.--Notwithstanding subsection (a)(2), a  
15 municipality, trustee or plan administrator may not divert any  
16 part of the assets of the plan to purposes other than the  
17 exclusive purposes of providing benefits to members and their  
18 designated beneficiaries who have an interest in the plan and of  
19 defraying the reasonable expenses of administering the plan.

20       (c) Existing plans.--For an existing defined benefit plan,  
21 nothing in this chapter shall be construed to diminish the  
22 established benefits for current employee members. On and after  
23 the effective date of this section, it shall be unlawful for a  
24 municipality to improve a benefit formula or to add or improve  
25 any feature of an existing plan that would result in additional  
26 cost to the municipality, nor shall the benefits provided by an  
27 existing plan be altered by any subsequent award of an  
28 arbitrator under the Policemen and Firemen Collective Bargaining  
29 Act.

30       (d) Assignment of a plan.--The interest and rights of any

1 person in the plan, trust or any distribution to be made under  
2 the plan shall not be subject to option nor be assignable either  
3 by voluntary or involuntary assignment or by operation of law,  
4 including, without limitation, bankruptcy, wage garnishment,  
5 attachment or other creditor's process, and the following shall  
6 apply:

7       (1) Any action in violation of this section shall be  
8 void.

9       (2) Pursuant to a QDRO, the assignment of a member's  
10 account shall not constitute a violation of this section as  
11 long as the order is approved by the plan administrator.

12 Section 2. This act shall take effect immediately.