

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 385 Session of
2007

INTRODUCED BY PETRI, BARRAR, BEYER, BOYD, CAPPELLI, CLYMER,
GALLOWAY, GODSHALL, HENNESSEY, HERSHEY, HICKERNELL, HORNAMAN,
HUTCHINSON, McILHATTAN, MUSTIO, RAPP, REED, REICHLEY,
SCHRODER, STERN, SWANGER, VEREB, YOUNGBLOOD AND PICKETT,
FEBRUARY 13, 2007

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 13, 2007

AN ACT

1 Amending Title 24 (Education) of the Pennsylvania Consolidated
2 Statutes, further providing for definitions and for mandatory
3 and optional membership; and providing for the Public School
4 Employees' Optional Retirement Program.

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

7 Section 1. Section 8102 of Title 24 of the Pennsylvania
8 Consolidated Statutes is amended by adding a definition to read:
9 § 8102. Definitions.

10 The following words and phrases when used in this part shall
11 have, unless the context clearly indicates otherwise, the
12 meanings given to them in this section:

13 * * *

14 "Public School Employees' Optional Retirement Program." The
15 alternative defined contribution retirement program established
16 under Ch. 85 Subch. D (relating to Public School Employees'
17 Optional Retirement Program).

1 * * *

2 Section 2. Section 8301 of Title 24 is amended to read:

3 § 8301. 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 school
6 employees except the following:

7 (1) Any officer or employee of the Department of
8 Education, State-owned educational institutions, community
9 colleges, area vocational-technical schools, technical
10 institutes, or the Pennsylvania State University and who is a
11 member of the State Employees' Retirement System or a member
12 of another retirement program approved by the employer.

13 (2) Any school employee who is employed on a per diem or
14 hourly basis for less than 80 full-day sessions or 500 hours
15 in any fiscal year or annuitant who returns to school service
16 under the provisions of section 8346(b) (relating to
17 termination of annuities).

18 (3) Any officer or employee of a governmental entity who
19 subsequent to December 22, 1965 and prior to July 1, 1975
20 administers, supervises, or teaches classes financed wholly
21 or in part by the Federal Government so long as he continues
22 in such service.

23 (4) Any part-time school employee who has an individual
24 retirement account pursuant to the Federal act of September
25 2, 1974 (Public Law 93-406, 88 Stat. 829), known as the
26 Employee Retirement Income Security Act of 1974.

27 (5) Any person who becomes a school employee on or after
28 January 1, 2007, and who elects to participate in the Public
29 School Employees' Optional Retirement Program under Ch. 85
30 Subch. D (relating to Public School Employees' Optional

Retirement Program).

(b) Prohibited membership.--The school employees categorized in subsection (a)(1) [and], (2) and (5) shall not have the right to elect membership in the system.

(c) Optional membership.--The school employees categorized in subsection (a)(3) and, if otherwise eligible, subsection (a)(4) shall have the right to elect membership in the system. Once such election is exercised, membership shall commence from the original date of eligibility and shall continue until the termination of such service.

Section 3. Chapter 85 of Title 24 is amended by adding a subchapter to read:

SUBCHAPTER D

PUBLIC SCHOOL EMPLOYEES' OPTIONAL RETIREMENT PROGRAM

Sec.

8541. Definitions.

8542. Public School Employees' Optional Retirement Program.

8543. Powers and duties of board.

8544. Taxation.

8545. Investments and expenses.

8546. Trust.

8547. Investments.

8548. Participant contributions.

8549. Employer contributions.

8550. Vesting.

§ 8541. Definitions.

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

"Participant." A qualified employee who elects to

1 participate in the Public School Employees' Optional Retirement
2 Program, in lieu of becoming a member of the system.

3 "Program." The Public School Employees' Optional Retirement
4 Program.

5 "Qualified employee." Any individual who becomes a school
6 employee on or after January 1, 2007, and who is not a member of
7 the system or a school employee categorized in section
8 8301(a)(1) or (2) (relating to mandatory and optional
9 membership).

10 "Trust fund." The trust created under section 8546 (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 8545 (relating to investments
15 and expenses) and IRC § 401.

16 § 8542. Public School Employees' Optional Retirement Program.

17 The board shall establish and administer an optional defined
18 contribution retirement program to be known as the Public School
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 8548 (relating to participant contributions) and 8549
27 (relating to employer contributions).

28 § 8543. 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 pursuant to the
4 program. The program and any written agreement shall comply
5 with the IRC, including the plan qualification requirements
6 imposed on 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 making certain it continues to
16 meet all 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 school service or as otherwise permitted under the IRC.

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

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

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

29 § 8544. Taxation.

30 All amounts deferred under the program shall constitute

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

5 § 8545. Investments and expenses.

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

19 § 8546. Trust.

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

1 custodian.

2 (b) Members.--The members of the board shall be the trustees
3 of the trust established under this subchapter.

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

13 § 8547. Investments.

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

25 § 8548. Participant contributions.

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

1 § 8549. Employer contributions.

2 Each employer of a participant shall make payments to the
3 trust fund on behalf of the participant in an amount equal to 3%
4 of the participant's total compensation. The Commonwealth shall
5 make payments to the trust fund on behalf of each participant in
6 an amount equal to 3% of the participant's compensation.

7 § 8550. Vesting.

8 A participant shall be vested after completing one year of
9 school 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.