

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 802

Session of
1985

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J. J. TAYLOR AND FOX, APRIL 9, 1985

REFERRED TO COMMITTEE ON FINANCE, APRIL 9, 1985

AN ACT

1 Providing for an ad hoc postretirement adjustment for certain
2 retired members of municipal police and firefighters pension
3 plans.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Special Ad
8 Hoc Municipal Police and Firefighters Postretirement Adjustment
9 Act.

10 Section 2. Definitions.

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

14 "Active employment." The situation of a person, other than
15 an independent contractor, who performs for compensation regular

1 services for a municipality on active duty in the municipal fire
2 department or municipal police department and who is regularly
3 entered on the payroll of the municipality.

4 "Commission." The Public Employee Retirement Study
5 Commission.

6 "Firefighter." A person who is engaged in the full-time
7 duties of firefighting; who holds a position or office in the
8 fire department of a municipality; and who has retirement
9 coverage provided by a pension plan to which an allocation of
10 the proceeds of the foreign fire insurance premium tax under the
11 act of June 28, 1895 (P.L.408, No.289), is ultimately payable.

12 "Municipal pension plan." A relationship between a
13 municipality and a municipal employee with respect to the
14 provision of benefits in the event of retirement from active
15 employment, whether established under the laws of this
16 Commonwealth, a municipal ordinance or resolution or an
17 instrument to which the municipality is a party on behalf of its
18 municipal employees.

19 "Municipality." A city, borough, incorporated town, township
20 or home rule municipality.

21 "Police officer." A person who is engaged in the full-time
22 duties of protecting the safety and property of others, with the
23 exception of duties performed by a paid firefighter; who has the
24 power to arrest by warrant under the laws of this Commonwealth;
25 and who has retirement coverage provided by a pension plan to
26 which an allocation of the proceeds of the foreign casualty
27 insurance premium tax under the act of May 12, 1943 (P.L.259,
28 No.120), referred to as the Foreign Casualty Insurance Premium
29 Tax Allocation Law, is ultimately payable.

30 "Postretirement adjustment." An increase in or change in the

1 amount of a retirement annuity, retirement benefit, disability
2 benefit or service pension granted or effective after the date
3 on which active employment ceases.

4 Section 3. Special ad hoc municipal police and firefighters
5 postretirement adjustments.

6 (a) Entitlement.--A person may receive a special ad hoc
7 municipal police and firefighters postretirement adjustment from
8 the municipal pension plan calculated under this section if all
9 of the following apply:

10 (1) The person has terminated active employment with a
11 municipality as a police officer or a firefighter.

12 (2) The person is receiving a retirement annuity,
13 retirement benefit, service pension or disability benefit
14 from a municipal police or paid firefighters pension plan on
15 the basis of that active employment.

16 (3) The person has commenced receipt of that annuity,
17 pension or benefit on or prior to December 31, 1981.

18 (b) Amount.--The amount of the special ad hoc municipal
19 police and firefighters postretirement adjustment shall be an
20 amount equal to the number of full years during which the person
21 has received an annuity, pension or benefit from the municipal
22 police or paid firefighters pension plan multiplied by 3.125%
23 and applied to the annuity, pension or benefit amount initially
24 payable upon retirement. If the person is receiving a benefit
25 other than a disability benefit and began receipt of that
26 benefit at an age earlier than the age of 55 years or had credit
27 for less than 25 years of active service at the time of
28 retirement, the number of full years for use in calculating the
29 amount of the postretirement adjustment shall be reduced by the
30 number of years by which the person was under the age of 55

1 years at the time of retirement or by the number of years by
2 which the active service to the credit of the person is less
3 than 25 years, whichever is greater. If the municipality from
4 which the police officer or firefighter retired had a
5 superannuation age lower than 55 years, then there shall be no
6 reduction if the police officer or firefighter had reached the
7 superannuation age provided for in the pension plan of that
8 municipality.

9 (c) Reduction of prior benefits.--Nothing in this section
10 shall be construed to reduce the amount of an annuity, benefit
11 or pension payable immediately prior to the effective date of
12 this act.

13 (d) Payment.--The special ad hoc postretirement adjustment
14 shall be effective as of the date of payment of the annuity,
15 benefit or pension next following the effective date of this act
16 and shall be payable as soon as practicable thereafter. The
17 initial payment of the special ad hoc postretirement adjustment
18 shall include omitted payments payable between the effective
19 date of the ad hoc postretirement adjustment and the date of
20 initial payment.

21 Section 4. Funding of special ad hoc postretirement adjustment.

22 (a) Municipal obligation.--Annually, the municipality shall
23 provide in its budget, and shall pay to the applicable municipal
24 pension plan, an amount equal to the required contribution to
25 amortize the liability attributable to the special ad hoc
26 postretirement adjustment on a level dollar basis over a ten-
27 year period from the effective date of the adjustment or the
28 total amount of the special ad hoc postretirement adjustment
29 anticipated as payable to entitled recipients during the
30 following 12-month period, whichever is greater. The municipal

1 obligation shall be payable on January 1 annually and shall be
2 made from the revenue of the municipality. Any amount of the
3 municipal obligation which remains unpaid after January 1 of the
4 year in which the municipal obligation is due shall remain
5 payable with interest from January 1 of the year in which the
6 municipal obligation was first due until the date the payment is
7 paid at a rate:

8 (1) Equal to the interest assumption used in connection
9 with the most recent actuarial valuation report of the
10 applicable pension plan or the discount rate applicable to
11 treasury bills issued by the Treasury Department of the
12 United States with a six-month maturity in effect as of the
13 last business day in December of the year preceding the year
14 in which the obligation was due, whichever rate is greater.

15 (2) Expressed as a monthly rate and compounded monthly.

16 (b) Commonwealth reimbursement in certain cases.--

17 (1) A municipality may qualify to receive reimbursement
18 from the Commonwealth for a portion of the annual special ad
19 hoc postretirement adjustment payments for the preceding year
20 if the unfunded accrued actuarial liability of the municipal
21 pension plan for pension plan benefits other than the special
22 ad hoc postretirement adjustment is equal to or greater than
23 the annual covered payroll of plan participants, with the
24 applicable Commonwealth share percentage as follows:

25	Unfunded Accrued	Applicable
26	Actuarial Liability as	Commonwealth
27	Percent of Covered Payroll	Share Percentage
28	300 or greater	75
29	200 to 299	50
30	100 to 199	25

1 The initial determination of the applicable Commonwealth
2 share percentage, and periodic redeterminations which shall
3 occur every four years thereafter, shall be based on the then
4 most recent municipal pension plan actuarial valuation report
5 filed with the Commonwealth.

6 (2) The special ad hoc municipal police and firefighters
7 postretirement adjustment reimbursement program shall be
8 funded from the required portion of the proceeds of the tax
9 on domestic casualty insurance premiums and the proceeds of
10 the tax on domestic fire insurance premiums in proportion to
11 the relationship that the proceeds of each tax bear to the
12 total proceeds of both taxes. Annually, the Department of the
13 Auditor General shall certify to the General Assembly the
14 applicable Commonwealth share percentage for each eligible
15 municipality and for all eligible municipalities in total,
16 which shall be based on certifications by the applicable
17 municipalities of the annual amount of special ad hoc
18 municipal police and firefighters postretirement adjustments
19 actually paid during the preceding calendar year. The
20 reimbursement shall be made on the first business day in
21 August. The Department of the Auditor General is authorized
22 and directed to promulgate regulations specifying the form
23 and contents of certifications provided by municipalities.

24 (3) If a municipality is financially distressed, the
25 funding procedure and the amount of the special ad hoc
26 postretirement adjustment shall be modified. A municipality
27 is financially distressed if it files with the commission a
28 municipal resolution stating that conclusion and providing
29 sufficient substantiation for that conclusion and if the
30 commission certifies its determination.

1 Section 5. Failure to enact legislation.

2 (a) Remedy--Should any municipality fail to enact this
3 required legislation, any police officer or firefighter may, by
4 suit in mandamus, compel the municipal authorities to enact the
5 legislation.

6 (b) Generally.--In the event that a municipality fails to
7 enact this required legislation, the failure may be remedied by
8 the institution of legal proceedings for mandamus. Every
9 municipality is, by this act on notice as to its duty to enact
10 this required legislation. No other remedy at law shall be
11 deemed to be sufficiently adequate and appropriate to bar the
12 commencement of this action. A person or entity who institutes
13 the action shall be deemed to have been injured by the failure
14 of the municipality to comply with its legal duty to enact this
15 legislation, and that injury shall be deemed to be immediate. No
16 issuance of mandamus shall be deemed to threaten the creation of
17 confusion, disorder or excessive burden on the municipality or
18 to threaten a result which is detrimental to the public
19 interest.

20 (c) Persons beneficially interested.--A person who is
21 beneficially interested in the affairs of the municipal pension
22 plan shall have standing to institute a legal proceeding for
23 mandamus as provided for in this section. A beneficially
24 interested person is a person who does one of the following:

25 (1) Has the relationship with the municipal pension plan
26 of:

27 (i) an active member, whether or not any minimum
28 service requirement for acquiring a vested right to a
29 retirement benefit has been met;

30 (ii) an inactive member with a vested right to

deferred receipt of a retirement benefit;

(iii) a retired member;

(iv) a recipient of retirement benefit other than a retire member;

(v) a former member with member contributions to the credit of the member with the municipal pension plan; or

(vi) a spouse, child or other potential beneficiary pursuant to the terms of the plan document of the municipal pension plan of a person described in subparagraphs (i) or (v).

(2) Serves in the position of a fiduciary with respect to the municipal pension plan.

(3) Represents active members of the municipal pension plan as collective bargaining agent.

(4) Serves as an elected or appointed official of the municipality.

(d) Others with standing to bring action.--The commission shall have standing to institute a legal proceeding for mandamus as provided for in this section. The Attorney General or the district attorney of the county in which the municipality is located, in addition to any other powers and duties conferred on that office by law, shall also proceed in the name of the Commonwealth, upon request of the commission or upon the person's own motion, to institute a legal proceeding for mandamus as provided for in this section.

(e) Scope of remedy.--A mandamus under this section may compel the addition by the municipality to the current municipal budget of any omitted amount of the minimum obligation of the municipality and the subsequent payment of any budgeted amount, or the immediate or scheduled periodic payment of any omitted

1 amount of minimum obligation of the municipality, with interest
2 at the applicable compound rate, whichever is applicable.

3 (f) Reimbursement for certain costs.--In an action pursuant
4 to this section which is instituted or joined by a person who is
5 beneficially interested, unless the court otherwise directs,
6 party costs, disbursements, reasonable attorney fees and witness
7 fees relating to the action shall be allowed to the prevailing
8 party upon a motion by the prevailing party if one of the
9 following applies:

10 (1) The prevailing party is a person who is beneficially
11 interested and, prior to the issuance of mandamus, has given
12 the opposing party timely notice of intent to claim an award.

13 (2) The prevailing party is the municipality and the
14 complaining party has brought an action which the complaining
15 party knew or ought to have known was groundless, frivolous,
16 without merit and without a basis in fact.

17 Section 6. Enforcement proceedings by commission.

18 Whenever the commission is of the opinion that a municipality
19 has failed, omitted, neglected or refused to perform any duty
20 enjoined upon it under this act, the commission has the power
21 and duty to order compliance by the municipality with that duty.
22 If the municipality fails, omits, neglects or refuses to comply
23 with a lawful order of the commission, then the commission may
24 institute legal proceedings for injunction, mandamus or other
25 appropriate remedy at law or equity to enforce compliance with,
26 or restrain violation of, the order of the commission.

27 Section 7. Effective date.

28 This act shall take effect in 60 days.