

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2796 Session of  
2006

INTRODUCED BY PETRI, BALDWIN, CRAHALLA, GODSHALL, GOOD, HERSHEY,  
REED, REICHLEY, SAYLOR, SEMMEL, STERN, E. Z. TAYLOR AND  
WANSACZ, JUNE 19, 2006

REFERRED TO COMMITTEE ON EDUCATION, JUNE 19, 2006

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).

18 \* \* \*

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

2 § 8301. Mandatory and optional membership.

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

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

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

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

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

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

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

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

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

12 SUBCHAPTER D

13 PUBLIC SCHOOL EMPLOYEES' OPTIONAL RETIREMENT PROGRAM

14 Sec.

15 8541. Definitions.

16 8542. Public School Employees' Optional Retirement Program.

17 8543. Powers and duties of board.

18 8544. Taxation.

19 8545. Investments and expenses.

20 8546. Trust.

21 8547. Investments.

22 8548. Participant contributions.

23 8549. Employer contributions.

24 8550. Vesting.

25 § 8541. Definitions.

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

29 "Participant." A qualified employee who elects to  
30 participate in the Public School Employees' Optional Retirement

1 Program, in lieu of becoming a member of the system.

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

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

9 "Trust fund." The trust created under section 8546 (relating  
10 to trust) to hold the assets of the program in trust for the  
11 exclusive benefit of the program's participants and  
12 beneficiaries, and for the payment of reasonable expenses of the  
13 program in accordance with section 8545 (relating to investments  
14 and expenses) and IRC § 401.

15 § 8542. Public School Employees' Optional Retirement Program.

16 The board shall establish and administer an optional defined  
17 contribution retirement program to be known as the Public School  
18 Employees' Optional Retirement Program under which retirement  
19 benefits will be provided for qualified employees who elect to  
20 participate in the program in lieu of membership in the system.  
21 The benefits to be provided for or on behalf of participants in  
22 the program shall be provided through participant-directed  
23 investments, in accordance with IRC § 401(a). Participants and  
24 employers shall contribute to the program in accordance with  
25 sections 8548 (relating to participant contributions) and 8549  
26 (relating to employer contributions).

27 § 8543. Powers and duties of board.

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

30 (1) Entering into written agreements with financial or

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

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

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

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

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

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

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

diversification, investment risks, investment costs and asset allocation.

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

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

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

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

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

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

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

(13) Promulgating regulations necessary to administer this subchapter.

#### § 8544. Taxation.

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

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

4 § 8545. Investments and expenses.

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

18 § 8546. Trust.

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

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

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 § 8547. Investments.

13 Investment of contributions by any corporation, institution,  
14 insurance company or custodial bank which 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 which would otherwise be required to be borne by  
23 participants who are then participating in the program.

24 § 8548. 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 § 8549. Employer contributions.



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

6    § 8550.    Vesting.

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

13       Section 4.    This act shall take effect immediately.