

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 867 Session of 2011

INTRODUCED BY D. WHITE, ORIE, FOLMER, VOGEL, YAW, SMUCKER,  
ALLOWAY, PIPPY, BRUBAKER, EICHELBERGER, RAFFERTY, VANCE,  
WAUGH, MENSCH, GREENLEAF, WARD AND WOZNIAK, MARCH 28, 2011

REFERRED TO FINANCE, MARCH 28, 2011

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania  
2 Consolidated Statutes, further providing for definitions, for  
3 mandatory and optional membership and for classes of service;  
4 and providing for State Legislators' Defined Contribution  
5 Program.

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

8 Section 1. Section 5102 of Title 71 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a definition to read:

10 § 5102. Definitions.

11 The following words and phrases as used in this part, unless  
12 a different meaning is plainly required by the context, shall  
13 have the following meanings:

14 \* \* \*

15 "State Legislators' Defined Contribution Program." The  
16 defined contribution program established under Ch. 56 (relating  
17 to State Legislators' Defined Contribution Program).

18 \* \* \*

19 Section 2. Section 5301(a)(3) and (c) of Title 71 are

1 amended and subsection (a) is amended by adding paragraphs to  
2 read:

3 § 5301. 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 State  
6 employees except the following:

7 \* \* \*

8 (3) Members of the General Assembly, other than members  
9 of the General Assembly described under paragraphs (17) and  
10 (18).

11 \* \* \*

12 (17) Any person who is not a member of the General  
13 Assembly on November 30, 2012, and who becomes a member of  
14 the General Assembly on or after December 1, 2012.

15 (18) Any person who is a member of the General Assembly  
16 on November 30, 2012, and who is reelected to serve as a  
17 member of the General Assembly beginning on or after December  
18 1, 2012.

19 \* \* \*

20 (c) Prohibited membership.--

21 (1) The State employees listed in subsection (a)(12),  
22 (13), (14) [and (15)], (15) and (17) shall not have the right  
23 to elect membership in the system.

24 (2) A member of the General Assembly described under  
25 subsection (a)(18) shall have no right to be an active member  
26 of the system and accrue credited service for State service  
27 as a member of the General Assembly subsequent to November  
28 30, 2012.

29 \* \* \*

30 Section 3. Section 5306(a.2)(1) of Title 71, amended

1 November 23, 2010 (P.L.1269, No.120), is amended to read:

2 § 5306. Classes of service.

3 \* \* \*

4 (a.2) Class of membership for members of the General  
5 Assembly.--

6 (1) A person who:

7 (i) becomes a member of the General Assembly and an  
8 active member of the system after June 30, 2001, and  
9 before December 1, 2010; or

10 (ii) is a member of the General Assembly on July 1,  
11 2001, but is not an active member of the system because  
12 membership in the system is optional pursuant to section  
13 5301 and who becomes an active member after June 30,  
14 2001, and before December 1, 2010;

15 and who was not a State police officer on or after July 1,  
16 1989, shall be classified as a Class D-4 member for State  
17 service as a member of the General Assembly performed prior  
18 to December 1, 2012 and receive credit as a Class D-4 member  
19 for all State service as a member of the General Assembly  
20 performed prior to December 1, 2012, upon payment of regular  
21 member contributions for Class D-4 service and, subject to  
22 the limitations contained in subsection (a.1)(7), if  
23 previously a member of Class A or employed in a position for  
24 which Class A service could have been earned, shall receive  
25 Class AA service credit for all Class A State service, other  
26 than State service performed as a State police officer or for  
27 which a class of service other than Class A or Class D-4 was  
28 or could have been elected or credited.

29 \* \* \*

30 Section 4. Title 71 is amended by adding a chapter to read:

1 CHAPTER 56

2 STATE LEGISLATORS' DEFINED CONTRIBUTION PROGRAM

3 Sec.

4 5601. Definitions.

5 5602. Establishment.

6 5603. State Legislators' Defined Contribution Program.

7 5604. Powers and duties of board.

8 5605. Prohibited interests.

9 5606. Investments and expenses.

10 5607. Trust fund.

11 5608. Election period.

12 5609. Participant contributions.

13 5610. Employer contributions.

14 5611. Vesting.

15 5612. Prohibition.

16 § 5601. Definitions.

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

20 "Participant." A qualified employee who elects to  
21 participate in the State Legislators' Defined Contribution  
22 Program.

23 "Program." The State Legislators' Defined Contribution  
24 Program.

25 "Qualified employee." Any of the following:

26 (1) A person who is not a member of the General Assembly  
27 on November 30, 2012, and who becomes a member of the General  
28 Assembly on or after December 1, 2012.

29 (2) A person who is a member of the General Assembly on  
30 November 30, 2012, and who is reelected to serve as a member

of the General Assembly beginning on or after December 1,  
2012.

"Trust fund." The trust created under section 5607 (relating  
to trust fund).

§ 5602. Establishment.

The State Legislators' Defined Contribution Program is  
established in accordance with this chapter.

§ 5603. State Legislators' Defined Contribution Program.

The board shall administer the program, which shall be a  
defined contribution retirement program for participants. The  
board shall permit qualified employees to elect to participate  
in the program. The benefits to be provided for or on behalf of  
participants in the program shall be provided through  
participant-directed investments, in accordance with IRC §  
401(a). Participants and employers shall contribute to the  
program in accordance with sections 5609 (relating to  
participant contributions) and 5610 (relating to employer  
contributions).

§ 5604. Powers and duties of board.

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

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

(2) Establishing procedures whereby qualified employees  
may elect to participate in the program and participants may  
change their investment choices on a periodic basis, as

1 determined by the board, which shall not be less frequently  
2 than quarterly.

3 (3) Arranging for a deduction, from the compensation of  
4 participants, of participant contributions to the program.

5 (4) Establishing standards and criteria for selection by  
6 the board of the financial institutions, insurance companies  
7 or other organizations that may be qualified as managers, on  
8 behalf of the board, of funds accumulated under the program  
9 on behalf of any participant.

10 (5) Establishing standards and criteria for providing  
11 options to qualified employees and participants concerning  
12 the method of investing amounts accumulated under the  
13 program. The investment options shall represent a broad cross  
14 section of asset classes and risk profiles and shall include  
15 lifestyle funds that are based upon age and projected  
16 retirement date.

17 (6) Establishing procedures for informing qualified  
18 employees and participants of specific options offered by  
19 qualified managers.

20 (7) Designing a comprehensive, balanced and impartial  
21 educational program to assist qualified employees and  
22 participants in their choice of investment options under the  
23 program, which shall include retirement planning education  
24 and financial planning guidance on matters such as investment  
25 diversification, investment risks, investment costs and asset  
26 allocation.

27 (8) Establishing standards and criteria for the  
28 disclosure to qualified employees and participants of the  
29 anticipated and actual income attributable to the amounts,  
30 property and rights and all fees, costs and charges to be

1 made against the amounts accumulated to cover the costs of  
2 administering and managing the funds.

3 (9) Establishing a process for election to participate  
4 in the program.

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

8 (11) Allowing for rollovers into the program from plans  
9 of other employers, regardless of the employer being a  
10 private employer or a public employer.

11 (12) Allowing a former participant to maintain his or  
12 her account within the program.

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

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

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

20 (14) Administering the program in compliance with the  
21 IRC.

22 (15) Promulgating regulations necessary to administer  
23 this chapter.

24 (16) Establishing procedures to provide for the lawful  
25 payment of benefits.

26 § 5605. Prohibited interests.

27 No member or employee of the board shall have any direct or  
28 indirect financial interest in any of the investment products  
29 that are made available to participants under the program.

30 § 5606. Investments and expenses.

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

14     (b) Investment.--Investment of contributions by any  
15 corporation, institution, insurance company or custodial bank  
16 that the board has approved shall not be unreasonably delayed  
17 and the investment of contributions shall not be delayed more  
18 than 30 days from the date of payroll deduction to the date that  
19 funds are invested. Any interest earned on the funds pending  
20 investment shall be allocated to the Commonwealth and credited  
21 to the accounts of participants who are then participating in  
22 the 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 § 5607. Trust fund.

26     (a) Establishment.--All assets and income that have been or  
27 shall be withheld by the employer in accordance with this  
28 chapter shall be held in trust in any funding vehicle permitted  
29 by applicable provisions of the IRC for the exclusive benefit of  
30 the program's participants and their beneficiaries until the



1 time when the funds are distributed to the participant or the  
2 participant's beneficiary in accordance with the terms of the  
3 agreement between the participant and the board. All such assets  
4 and income withheld by the employer shall be held in trust as  
5 set forth in this subsection in a special fund created within  
6 the State Treasury of which the State Treasurer shall be  
7 custodian. The assets of the program shall be held in trust for  
8 the exclusive benefit of the program's participants and  
9 beneficiaries and for the payment of reasonable expenses of the  
10 program in accordance with section 5606 (relating to investments  
11 and expenses) and IRC § 401.

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

14 (c) Attachment.--Notwithstanding any other provision of law,  
15 any benefit or interest available under the program, any right  
16 to receive or direct payments under the program or any  
17 distribution of payment made under the program shall not, except  
18 as expressly specified by the program, be subject to assignment,  
19 alienation, garnishment, attachment, transfer, anticipation,  
20 sale, mortgage, pledge, hypothecation, commutation, execution or  
21 levy, whether by voluntary or involuntary act of any interested  
22 person.

23 § 5608. Election period.

24 A qualified employee may elect to participate in the program  
25 by filing written notice with the board, in accordance with  
26 procedures established by the board under section 5604(2)  
27 (relating to powers and duties of board) within 90 days after  
28 the date on which he or she become a qualified employee.

29 § 5609. Participant contributions.

30 Regular participant contributions shall be made to the

1 program on behalf of each participant for current service in an  
2 amount equal to a percentage of the participant's pensionable  
3 compensation. The employer shall cause participant contributions  
4 for current service to be made and deducted from each payroll.  
5 Participants may elect to contribute to the program on their  
6 behalf to the extent permitted by law.

7 § 5610. Employer contributions.

8 The General Assembly shall make payments to the trust fund on  
9 behalf of the participant. The amount of the payments shall  
10 match the contribution made by the participant under section  
11 5609 (relating to participant contributions) dollar for dollar,  
12 but shall not exceed 4% of the participant's pensionable  
13 earnings.

14 § 5611. Vesting.

15 A participant shall be vested after completing three years of  
16 service as a member of the General Assembly during which he or  
17 she is a participant in the program with respect to employer  
18 contributions paid on behalf of the participant to the program  
19 plus interest and earnings on the employer contributions but  
20 minus investment fees and administrative charges.

21 § 5612. Prohibition.

22 No qualified employee may make an election to participate in  
23 the program prior to December 1, 2012.

24 Section 5. This act shall take effect in 60 days.