

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 802

Session of
1985

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RIEGER, WOGAN, PRESSMANN, VEON AND RAYMOND, MARCH 26, 1985

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 20, 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

1 an independent contractor, who performs for compensation regular
2 services for a municipality on active duty in the municipal fire
3 department or municipal police department and who is regularly
4 entered on the payroll of the municipality.

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

7 "Firefighter." A person who is engaged in the full-time
8 duties of firefighting; who holds a position or office in the
9 fire department of a municipality; and who has retirement
10 coverage provided by a pension plan to which an allocation of
11 the proceeds of the foreign fire insurance premium tax under ~~the~~ <—
12 ~~act of June 28, 1895 (P.L.408, No.289)~~ CHAPTER 7 OF THE ACT OF <—
13 DECEMBER 18, 1984 (P.L.1005, NO.205), KNOWN AS THE MUNICIPAL
14 PENSION PLAN FUNDING STANDARD AND RECOVERY ACT, is ultimately
15 payable.

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

23 "Municipality." A city, borough, incorporated town, township
24 or home rule municipality.

25 "Police officer." A person who is engaged in the full-time
26 duties of protecting the safety and property of others, with the
27 exception of duties performed by a paid firefighter; who has the
28 power to arrest by warrant under the laws of this Commonwealth;
29 and who has retirement coverage provided by a pension plan to
30 which an allocation of the proceeds of the foreign casualty

1 insurance premium tax under ~~the act of May 12, 1943 (P.L.259,~~ <—
2 ~~No.120), referred to as the Foreign Casualty Insurance Premium~~
3 ~~Tax Allocation Law~~ CHAPTER 4 OF THE ACT OF DECEMBER 18, 1984 <—
4 (P.L.1005, NO.205), KNOWN AS THE MUNICIPAL PENSION PLAN FUNDING
5 STANDARD AND RECOVERY ACT, is ultimately payable.

6 "Postretirement adjustment." An increase in or change in the
7 amount of a retirement annuity, retirement benefit, disability
8 benefit or service pension granted or effective after the date
9 on which active employment ceases.

10 Section 3. Special ad hoc municipal police and firefighters
11 postretirement adjustments.

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

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

18 (2) The person is receiving a retirement annuity,
19 retirement benefit, service pension or disability benefit
20 from a municipal police or paid firefighters pension plan on
21 the basis of that active employment.

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

24 (b) Amount.--The amount of the special ad hoc municipal
25 police and firefighters postretirement adjustment shall be an
26 amount equal to the number of full years during which the person
27 has received an annuity, pension or benefit from the municipal
28 police or paid firefighters pension plan multiplied by 3.125%
29 and applied to the annuity, pension or benefit amount initially
30 payable upon retirement. If the person is receiving a benefit

1 other than a disability benefit and began receipt of that
2 benefit at an age earlier than the age of 55 years or had credit
3 for less than 25 years of active service at the time of
4 retirement, the number of full years for use in calculating the
5 amount of the postretirement adjustment shall be reduced by the
6 number of years by which the person was under the age of 55
7 years at the time of retirement or by the number of years by
8 which the active service to the credit of the person is less
9 than 25 years, whichever is greater. If the municipality from
10 which the police officer or firefighter retired had a
11 superannuation age lower than 55 years, then there shall be no
12 reduction if the police officer or firefighter had reached the
13 superannuation age provided for in the pension plan of that
14 municipality.

15 ~~(c) Reduction of prior benefits. Nothing in this section~~ <—
16 ~~shall be construed to reduce the amount of an annuity, benefit~~
17 ~~or pension payable immediately prior to the effective date of~~
18 ~~this act.~~

19 (C) MODIFICATION IN AMOUNT OF POSTRETIREMENT ADJUSTMENT.--IF <—
20 A PERSON ENTITLED TO RECEIVE A SPECIAL AD HOC MUNICIPAL POLICE
21 AND FIREFIGHTERS POSTRETIREMENT ADJUSTMENT HAS, PRIOR TO THE
22 EFFECTIVE DATE OF THIS ACT, RECEIVED A POSTRETIREMENT ADJUSTMENT
23 FROM THE APPLICABLE MUNICIPAL POLICE OR PAID FIREFIGHTERS
24 PENSION PLAN, THE AMOUNT OF THE SPECIAL AD HOC POSTRETIREMENT
25 ADJUSTMENT SHALL BE REDUCED BY THE TOTAL AMOUNT OF ANY
26 POSTRETIREMENT ADJUSTMENT OR POSTRETIREMENT ADJUSTMENTS
27 PREVIOUSLY GRANTED. NOTHING IN THIS SECTION SHALL BE CONSTRUED
28 TO REDUCE THE AMOUNT OF ANY ANNUITY, BENEFIT OR PENSION PAYABLE
29 IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

30 (d) Payment.--The special ad hoc postretirement adjustment

1 shall be effective as of the date of payment of the annuity,
2 benefit or pension next following the effective date of this act
3 and shall be payable as soon as practicable thereafter. The
4 initial payment of the special ad hoc postretirement adjustment
5 shall include omitted payments payable between the effective
6 date of the ad hoc postretirement adjustment and the date of
7 initial payment.

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

9 (a) Municipal obligation.--Annually, the municipality shall
10 provide in its budget, and shall pay to the applicable municipal
11 pension plan, an amount equal to the required contribution to
12 amortize the liability attributable to the special ad hoc
13 postretirement adjustment on a level dollar basis over a ten-
14 year period from the effective date of the adjustment or the
15 total amount of the special ad hoc postretirement adjustment
16 anticipated as payable to entitled recipients during the
17 following 12-month period, whichever is greater. The municipal
18 obligation shall be payable on January 1 annually and shall be
19 made from the revenue of the municipality. Any amount of the
20 municipal obligation which remains unpaid after January 1 of the
21 year in which the municipal obligation is due shall remain
22 payable with interest from January 1 of the year in which the
23 municipal obligation was first due until the date the payment is
24 paid at a rate:

25 (1) Equal to the interest assumption used in connection
26 with the most recent actuarial valuation report of the
27 applicable pension plan or the discount rate applicable to
28 treasury bills issued by the Treasury Department of the
29 United States with a six-month maturity in effect as of the
30 last business day in December of the year preceding the year

1 in which the obligation was due, whichever rate is greater.

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

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

4 (1) A municipality may qualify to receive reimbursement
5 from the Commonwealth for a portion of the annual special ad
6 hoc postretirement adjustment payments for the preceding year
7 if the unfunded accrued actuarial liability of the municipal
8 pension plan for pension plan benefits other than the special
9 ad hoc postretirement adjustment is equal to or greater than
10 the annual covered payroll of plan participants, with the
11 applicable Commonwealth share percentage as follows:

| 12 | Unfunded Accrued | Applicable |
|----|----------------------------|------------------|
| 13 | Actuarial Liability as | Commonwealth |
| 14 | Percent of Covered Payroll | Share Percentage |
| 15 | 300 or greater | 75 |
| 16 | 200 to 299 | 50 |
| 17 | 100 to 199 | 25 |

18 The initial determination of the applicable Commonwealth
19 share percentage, and periodic redeterminations which shall
20 occur every four years thereafter, shall be based on the then
21 most recent municipal pension plan actuarial valuation report
22 filed with the Commonwealth.

23 (2) The special ad hoc municipal police and firefighters
24 postretirement adjustment reimbursement program shall be
25 funded from the required portion of the proceeds of the tax
26 on domestic casualty insurance premiums and the proceeds of
27 the tax on domestic fire insurance premiums in proportion to
28 the relationship that the proceeds of each tax bear to the
29 total proceeds of both taxes. Annually, the Department of the
30 Auditor General shall certify to the General Assembly the

1 applicable Commonwealth share percentage for each eligible
2 municipality and for all eligible municipalities in total,
3 which shall be based on certifications by the applicable
4 municipalities of the annual amount of special ad hoc
5 municipal police and firefighters postretirement adjustments
6 actually paid during the preceding calendar year. The
7 reimbursement shall be made on the first business day in
8 August. The Department of the Auditor General is authorized
9 and directed to promulgate regulations specifying the form
10 and contents of certifications provided by municipalities.

11 (3) If a municipality is financially distressed, the
12 funding procedure and the amount of the special ad hoc
13 postretirement adjustment shall be modified. A municipality
14 is financially distressed if it files with the commission a
15 municipal resolution stating that conclusion and providing
16 sufficient substantiation for that conclusion and if the
17 commission certifies ~~its determination~~ PURSUANT TO CHAPTER 5 <—
18 OF THE ACT OF DECEMBER 18, 1984 (P.L.1005, NO.205), KNOWN AS
19 THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT,
20 THAT THE MUNICIPALITY IS FINANCIALLY DISTRESSED.

21 Section 5. Failure to enact legislation.

22 (a) Remedy--Should any municipality fail to enact this
23 required legislation, any police officer or firefighter may, by
24 suit in mandamus, compel the municipal authorities to enact the
25 legislation.

26 (b) Generally.--In the event that a municipality fails to
27 enact this required legislation, the failure may be remedied by
28 the institution of legal proceedings for mandamus. Every
29 municipality is, by this act on notice as to its duty to enact
30 this required legislation. No other remedy at law shall be

1 deemed to be sufficiently adequate and appropriate to bar the
2 commencement of this action. A person or entity who institutes
3 the action shall be deemed to have been injured by the failure
4 of the municipality to comply with its legal duty to enact this
5 legislation, and that injury shall be deemed to be immediate. No
6 issuance of mandamus shall be deemed to threaten the creation of
7 confusion, disorder or excessive burden on the municipality or
8 to threaten a result which is detrimental to the public
9 interest.

10 (c) Persons beneficially interested.--A person who is
11 beneficially interested in the affairs of the municipal pension
12 plan shall have standing to institute a legal proceeding for
13 mandamus as provided for in this section. A beneficially
14 interested person is a person who does one of the following:

15 (1) Has the relationship with the municipal pension plan
16 of:

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

20 (ii) an inactive member with a vested right to
21 deferred receipt of a retirement benefit;

22 (iii) a retired member;

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

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

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

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

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

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

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

16 (e) Scope of remedy.--A mandamus under this section may
17 compel the addition by the municipality to the current municipal
18 budget of any omitted amount of the minimum obligation of the
19 municipality and the subsequent payment of any budgeted amount,
20 or the immediate or scheduled periodic payment of any omitted
21 amount of minimum obligation of the municipality, with interest
22 at the applicable compound rate, whichever is applicable.

23 (f) Reimbursement for certain costs.--In an action pursuant
24 to this section which is instituted or joined by a person who is
25 beneficially interested, unless the court otherwise directs,
26 party costs, disbursements, reasonable attorney fees and witness
27 fees relating to the action shall be allowed to the prevailing
28 party upon a motion by the prevailing party if one of the
29 following applies:

30 (1) The prevailing party is a person who is beneficially

1 interested and, prior to the issuance of mandamus, has given
2 the opposing party timely notice of intent to claim an award.

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

7 Section 6. Enforcement proceedings by commission.

8 Whenever the commission is of the opinion that a municipality
9 has failed, omitted, neglected or refused to perform any duty
10 enjoined upon it under this act, the commission has the power
11 and duty to order compliance by the municipality with that duty.
12 If the municipality fails, omits, neglects or refuses to comply
13 with a lawful order of the commission, then the commission may
14 institute legal proceedings for injunction, mandamus or other
15 appropriate remedy at law or equity to enforce compliance with,
16 or restrain violation of, the order of the commission.

17 Section 7. Effective date.

18 This act shall take effect in 60 days.