
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1340 Session of
2008

INTRODUCED BY BROWNE, ORIE, WOZNIAK, EARLL, WASHINGTON AND
FOLMER, APRIL 3, 2008

REFERRED TO FINANCE, APRIL 3, 2008

AN ACT

1 Providing for the establishment of investment trusts for certain
2 postemployment benefits offered by certain governmental
3 entities; and imposing powers and duties on the Board of
4 Finance and Revenue.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Other
9 Postemployment Benefit Trust 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 "Annual required contribution" or "ARC." A dollar amount
15 determined annually by adding:

16 (1) the normal cost, using the entry age normal cost
17 method; and

18 (2) the portion of the unfunded actuarial accrued

1 liability to be amortized in the current period, where the
2 unfunded actuarial accrued liability is amortized over a
3 period of time not to exceed the working lifetime of the work
4 force.

5 "Board." The Board of Finance and Revenue.

6 "Commonwealth agency." The Governor and any department,
7 board, commission, authority and any other officer and agency of
8 the Commonwealth. The term includes any court or other officer
9 or agency of the unified judicial system, the General Assembly
10 and its officers and agencies and any independent agency and
11 State-affiliated entity.

12 "Entity." Any of the following:

13 (1) A Commonwealth agency.

14 (2) A political subdivision.

15 (3) A trust.

16 "Entry age normal cost method." An actuarial cost method
17 designed to fund a member's total plan benefit over the course
18 of the member's career and that is designed to produce stable
19 employer contributions in amounts that increase at the same rate
20 as the employer's payroll.

21 "GASB Statement 43." Statement 43, or its successor, issued
22 by the Governmental Accounting Standards Board.

23 "GASB Statement 45." Statement 45, or its successor, issued
24 by the Governmental Accounting Standards Board.

25 "Governing body." The governing body of a political
26 subdivision.

27 "Independent agency." A board, commission and other agency
28 and officer of the Commonwealth that is not subject to the
29 policy supervision and control of the Governor. The term does
30 not include any State-affiliated entity, any court or other

1 officer or agency of the unified judicial system, the General
2 Assembly and its officers and agencies, any State-related
3 institution, political subdivision or any local, regional or
4 metropolitan transportation authority.

5 "Other postemployment benefits" or "postemployment benefits."
6 Benefits, other than pension benefits, paid on behalf of former
7 employees or the former employees' beneficiaries after
8 separation from service, including, but not limited to, medical,
9 prescription drugs, dental, vision, hearing, Medicare Part B or
10 Part D premiums, life insurance, long-term care and long-term
11 disability.

12 "State-affiliated entity." A Commonwealth authority or a
13 Commonwealth entity. The term includes, but is not limited to,
14 the Pennsylvania Turnpike Commission, the Pennsylvania Housing
15 Finance Agency, the Pennsylvania Municipal Retirement System,
16 the Pennsylvania Infrastructure Investment Authority, the State
17 Public School Building Authority, the Pennsylvania Higher
18 Educational Facilities Authority, any State-related institution
19 and the State System of Higher Education. The term does not
20 include any court or other officer or agency of the unified
21 judicial system, the General Assembly and its officers and
22 agencies, political subdivision or any local, regional or
23 metropolitan transportation authority.

24 "State-related institution." The Pennsylvania State
25 University, the University of Pittsburgh, Lincoln University or
26 Temple University.

27 "Trust." Any of the following:

- 28 (1) the State Employees' Retirement System;
29 (2) the Pennsylvania Employee Benefit Trust Fund;
30 (3) a voluntary employee benefit association; or

(4) any other trust maintained for employees of a Commonwealth agency or political subdivision.

"Working lifetime." The period between the computed average age of the active work force and the average expected retirement age of this same active work force based upon the most recent actuarial valuation report.

Section 3. Funding of other postemployment benefits.

(a) General rule.--An entity that provides other postemployment benefits shall fund them only in accordance with this act and by utilizing the entry age normal cost method and annual required contributions.

(b) Initial contributions.--

(1) A Commonwealth agency subject to subsection (a) shall make the initial contribution into the trust fund established under section 4 on or before June 30, 2008.

(2) A political subdivision or trust subject to subsection (a) shall make the initial contribution into the investment trust established under section 4 within the first year that the political subdivision is subject to GASB Statement 43 or GASB Statement 45, as applicable.

Section 4. Establishment of investment trust.

(a) General rule.--Each entity that provides other postemployment benefits shall establish an investment trust for the purpose of prefunding other postemployment benefits accrued by employees of the Commonwealth agency or political subdivision to be paid as they come due in accordance with the arrangements between the entity, as the case may be, the plan members and their beneficiaries. This authorization shall be subject to the following conditions:

(1) The entity must establish a written plan of the

1 postemployment benefits provided.

2 (2) The entity or an investment committee of the entity
3 must adopt in writing an investment policy authorizing how
4 assets in the trust may be invested.

5 (3) The trust must conform to all applicable laws, rules
6 and regulations of the Internal Revenue Service, if any.

7 (4) The trust document, the written plan of benefits and
8 the investment policy, as well as any other information or
9 documentation as determined by the board, must be submitted
10 by the entity for approval.

11 (b) Pooling structure.--Commonwealth agencies and political
12 subdivisions may enter into governmental cooperation agreements
13 to pool their funding obligations for other postemployment
14 benefits, provided that the pool is a trust that satisfies the
15 requirements of this act.

16 (c) Existing trusts.--An entity that on the effective date
17 of this section has an investment trust that includes funding
18 for other postemployment benefits may continue to operate the
19 trust for the postemployment benefits provided that there is a
20 separate accounting that complies with the provisions of this
21 act.

22 Section 5. Trust conditions.

23 (a) General rule.--The assets of a trust established under
24 this act shall be irrevocable and shall be preserved, invested
25 and expended solely pursuant to and for the purposes of this act
26 and shall not be loaned or otherwise transferred or used for any
27 other purpose. The assets of the trust shall be expended solely
28 to:

29 (1) Make payments for other postemployment benefits
30 pursuant to and in accordance with the terms of the

1 respective postemployment benefit plan.

2 (2) Pay the cost of administering the trust.

3 (b) Powers and duties.--A trust so created shall have the
4 powers, privileges and immunities of a corporation, and all of
5 its business shall be transacted, all of its funds invested and
6 all of its cash and securities and other property held in trust
7 for the purpose for which received.

8 (c) Protection of trust.--Notwithstanding any law to the
9 contrary, all assets, income and distributions of the trust
10 shall be protected against the claims of creditors of the
11 Commonwealth agency, political subdivision, plan administrators
12 and plan participants, and shall not be subject to execution,
13 attachment, garnishment, the operation of bankruptcy, the
14 insolvency laws or other process whatsoever, nor shall any
15 assignment thereof be enforceable in any court.

16 Section 6. Powers and duties.

17 In addition to the powers granted by any other provisions of
18 this act, an entity that establishes a trust under this act
19 shall have the powers necessary or convenient to carry out the
20 purposes and provisions of this act and the purposes and
21 objectives of the trust, including, but not limited to, the
22 following:

23 (1) Invest any funds of the trust in any instrument,
24 obligation, security or property that constitutes legal
25 investments as provided in the investment policy adopted by
26 the trust, subject, however, to the exercise of that degree
27 of judgment, skill and care, under the circumstances then
28 prevailing which persons of prudence, discretion and
29 intelligence, who are familiar with such matters, exercise in
30 the management of their own affairs not in regard to

1 speculation, but in regard to the permanent disposition of
2 the funds, considering the probable income to be derived
3 therefrom, as well as the probable safety of their capital.

4 (2) Contract for the provision of all or any part of the
5 services necessary for the management and operation of the
6 trust.

7 (3) Contract with financial consultants, auditors and
8 other consultants as necessary to carry out its
9 responsibilities under this act.

10 (4) Contract with an actuary in determining the level of
11 funding necessary by the entity to fund the other
12 postemployment benefits offered by the entity.

13 (5) Prepare annual financial reports, including
14 financial statements, following the close of each fiscal year
15 relative to the activities of the trust. Such statements and
16 reports shall contain such information as shall be prescribed
17 by the board and be prepared in accordance with the
18 Governmental Accounting Standards Board.

19 (6) Upon the request of the Board of Finance and
20 Revenue, file the annual report and financial statements with
21 the board. The report and statements shall be filed with the
22 board within 90 calendar days from the date of the request,
23 unless the board extends such time in writing.

24 Section 7. Audit.

25 The annual report, including financial statements, all books,
26 accounts and financial records of any trust created under this
27 act, shall be subject to audit by the Auditor General. Any
28 entity maintaining a trust under this act may, with the prior
29 approval of the Auditor General, engage licensed independent
30 public accountants to perform the audits. The audit contract

1 between the entity and the independent public accountant shall
2 be on contract forms prescribed by the Auditor General. The
3 entity shall reimburse the costs of audits prepared by the
4 Auditor General and the payment of fees for audits prepared by
5 licensed independent public accountants.

6 Section 8. Publication of actuarial report.

7 An entity subject to the provisions of section 3 shall
8 publish the actuarial report required by GASB Statement 43 or
9 GASB Statement 45, as applicable, in an unabridged format on the
10 entity's Internet website prior to the end of each fiscal year
11 and shall make written copies of the actuarial report available
12 to the public upon request.

13 Section 9. Construction.

14 Nothing in this act shall be construed to define or otherwise
15 grant any rights or privileges to other postemployment benefits.
16 Such rights and privileges, if any, shall be governed by the
17 terms of the respective postemployment benefit plan.

18 Section 20. Effective date.

19 This act shall take effect in 60 days.