
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 242 Session of
2013

INTRODUCED BY PETRI, CLYMER, D. COSTA, GINGRICH, GROVE, MILLARD,
MOUL, STEPHENS, SWANGER, TRUITT, GABLER, FARRY AND EVERETT,
JANUARY 23, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 23, 2013

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania
2 Consolidated Statutes, in retirement for State employees and
3 officers, further providing for definitions and for mandatory
4 and optional membership; and providing for the State
5 Employees' Optional Retirement 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 Employees' Optional Retirement Program." The
16 alternative defined contribution retirement program established
17 under Subchapter F of Chapter 59 (relating to State Employees'
18 Optional Retirement Program).

19 * * *

1 Section 2. Section 5301 of Title 71 is amended to read:

2 § 5301. 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 State
5 employees except the following:

6 (1) Governor.

7 (2) Lieutenant Governor.

8 (3) Members of the General Assembly.

9 (4) Heads or deputy heads of administrative departments.

10 (5) Members of any independent administrative board or
11 commission.

12 (6) Members of any departmental board or commission.

13 (7) Members of any advisory board or commission.

14 (8) Secretary to the Governor.

15 (9) Budget Secretary.

16 (10) Legislative employees.

17 (11) School employees who have elected membership in the
18 Public School Employees' Retirement System.

19 (12) School employees who have elected membership in an
20 independent retirement program approved by the employer,
21 provided that in no case, except as hereinafter provided,
22 shall the employer contribute on account of such elected
23 membership at a rate greater than the employer normal
24 contribution rate as determined in section 5508(b) (relating
25 to actuarial cost method). For the fiscal year 1986-1987 an
26 employer may contribute on account of such elected membership
27 at a rate which is the greater of 7% or the employer normal
28 contribution rate as determined in section 5508(b) and for
29 the fiscal year 1992-1993 and all years after that at a rate
30 of 9.29%.

1 (13) Persons who have elected to retain membership in
2 the retirement system of the political subdivision by which
3 they were employed prior to becoming eligible for membership
4 in the State Employees' Retirement System.

5 (14) Persons who are not members of the system and are
6 employed on a per diem or hourly basis for less than 100 days
7 or 750 hours in a 12-month period.

8 (15) Employees of the Philadelphia Regional Port
9 Authority who have elected to retain membership in the
10 pension plan or retirement system in which they were enrolled
11 as employees of the predecessor Philadelphia Port Corporation
12 prior to the creation of the Philadelphia Regional Port
13 Authority.

14 (16) Employees of the Juvenile Court Judges' Commission
15 who, before the effective date of this paragraph, were
16 transferred from the State System of Higher Education to the
17 Juvenile Court Judges' Commission as a result of an
18 interagency transfer of staff approved by the Office of
19 Administration and who, while employees of the State System
20 of Higher Education, had elected membership in an independent
21 retirement program approved by the employer.

22 (17) Any person who becomes a State employee on or after
23 January 1, 2014, and who elects to participate in the State
24 Employees' Optional Retirement Program under Subchapter F of
25 Chapter 59 (relating to State Employees' Optional Retirement
26 Program).

27 (b) Optional membership.--The State employees listed in
28 subsection (a) (1) through (11) shall have the right to elect
29 membership in the system; once such election is exercised,
30 membership shall continue until the termination of State

1 service.

2 (c) Prohibited membership.--The State employees listed in
3 subsection (a)(12), (13), (14) [and], (15) and (17) shall not
4 have the right to elect membership in the system.

5 (d) Return to service.--An annuitant who returns to service
6 as a State employee shall resume active membership in the system
7 as of the effective date of employment, except as otherwise
8 provided in section 5706(a) (relating to termination of
9 annuities), regardless of the optional membership category of
10 the position.

11 (e) Election prohibited.--Notwithstanding subsections (a)
12 (13) and (c), county employees who are transferred to State
13 employment and become State employees pursuant to 42 Pa.C.S. §
14 1905 (relating to county-level court administrators) shall not
15 have the election to remain a contributor in the retirement
16 system or pension plan of the county by which they were employed
17 prior to becoming eligible for membership in the State
18 Employees' Retirement System. Such employees shall be mandatory
19 members of the system provided they are otherwise eligible and
20 unless they are eligible for optional membership pursuant to
21 subsections (a)(1) through (11) and (b) or prohibited membership
22 pursuant to subsections (a)(14) and (c).

23 (f) Additional optional membership.--The State employees
24 listed in subsection (a)(16) shall be mandatory members of the
25 system as of the effective date of employment with the Juvenile
26 Court Judges' Commission unless they elect membership in an
27 independent retirement program approved by the Juvenile Court
28 Judges' Commission. Employees who elect membership in an
29 independent retirement program approved by the Juvenile Court
30 Judges' Commission shall be prohibited from being active members

1 in the system while employed by the Juvenile Court Judges'
2 Commission. If an employee described in this subsection becomes
3 a State employee with an employer other than the Juvenile Court
4 Judges' Commission, then membership for that employee shall be
5 determined as otherwise provided for in this part. The election
6 of membership in the independent retirement program approved by
7 the Juvenile Court Judges' Commission must be made by the
8 transferred employee filing written notice with the employer
9 while a State employee no later than 90 days after the effective
10 date of this subsection. Upon receipt of such an election, the
11 Juvenile Court Judges' Commission shall certify the election to
12 the board and the independent retirement program.

13 Section 3. Chapter 59 of Title 71 is amended by adding a
14 subchapter to read:

15 SUBCHAPTER F

16 STATE EMPLOYEES' OPTIONAL RETIREMENT PROGRAM

17 Sec.

18 5971. Definitions.

19 5972. State Employees' Optional Retirement Program.

20 5973. Powers and duties of board.

21 5974. Taxation.

22 5975. Investments and expenses.

23 5976. Trust.

24 5977. Investments.

25 5978. Participant contributions.

26 5979. Employer contributions.

27 5980. Vesting.

28 § 5971. Definitions.

29 The following words and phrases when used in this subchapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Participant." A qualified employee who elects to
3 participate in the State Employees' Optional Retirement Program,
4 in lieu of becoming a member of the system.

5 "Program." The State Employees' Optional Retirement Program.

6 "Qualified employee." Any individual who becomes a State
7 employee on or after January 1, 2014, and who is not a member of
8 the system or a State employee categorized in section 5301(a)
9 (12), (13), (14) or (15) (relating to mandatory and optional
10 membership).

11 "Trust fund." The trust created under section 5976 (relating
12 to trust) to hold the assets of the program in trust for the
13 exclusive benefit of the program's participants and
14 beneficiaries and for the payment of reasonable expenses of the
15 program in accordance with section 5975 (relating to investments
16 and expenses) and IRC § 401.
17 § 5972. State Employees' Optional Retirement Program.

18 The board shall establish and administer an optional defined
19 contribution retirement program to be known as the State
20 Employees' Optional Retirement Program under which retirement
21 benefits will be provided for qualified employees who elect to
22 participate in the program in lieu of membership in the system.
23 The benefits to be provided for or on behalf of participants in
24 the program shall be provided through participant-directed
25 investments, in accordance with IRC § 401(a). Participants and
26 employers shall contribute to the program in accordance with
27 sections 5978 (relating to participant contributions) and 5979
28 (relating to employer contributions).

29 § 5973. Powers and duties of board.

30 In order to establish and administer the program, the powers

1 and duties of the board shall include all of the following:

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

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

13 (3) Arranging for a deduction, from the compensation of
14 participants, of employee contributions to the program.

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

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

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

28 (7) Designing a comprehensive, balanced and impartial
29 educational program to assist qualified employees and
30 participants in their choice of investment options under the

1 program, which shall include retirement planning education
2 and financial planning guidance on matters such as investment
3 diversification, investment risks, investment costs and asset
4 allocation.

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

11 (9) Establishing processes for election to participate
12 in the program. The election period shall begin on the date
13 that an individual becomes a qualified employee and shall end
14 90 days from that date.

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

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

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

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

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

27 (13) Promulgating regulations necessary to administer
28 this subchapter.

29 § 5974. Taxation.

30 All amounts deferred under the program shall constitute

1 taxable income for purposes of the act of March 4, 1971 (P.L.6,
2 No.2), known as the Tax Reform Code of 1971, and shall
3 constitute taxable income for State and local earned income
4 taxes.

5 § 5975. Investments and expenses.

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

19 § 5976. Trust.

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

1 custodian.

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

4 (c) Attachment.--Notwithstanding any other provision of law,
5 any benefit or interest available under the program, any right
6 to receive or direct payments under the program or any
7 distribution of payment made under the program shall not, except
8 as expressly specified by the program, be subject to assignment,
9 alienation, garnishment, attachment, transfer, anticipation,
10 sale, mortgage, pledge, hypothecation, commutation, execution or
11 levy, whether by voluntary or involuntary act of any interested
12 person.

13 § 5977. Investments.

14 Investment of contributions by any corporation, institution,
15 insurance company or custodial bank that the board has approved
16 shall not be unreasonably delayed, and in no case shall the
17 investment of contributions be delayed more than 30 days from
18 the date of payroll deduction to the date that funds are
19 invested. Any interest earned on the funds pending investment
20 shall be allocated to the Commonwealth and credited to the
21 accounts of participants who are then participating in the
22 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 § 5978. Participant contributions.

26 Regular participant contributions shall be made to the
27 program on behalf of each active member for current service in
28 an amount equal to 6% of the participant's compensation. The
29 employer shall cause required participant contributions for
30 current service to be made and deducted from each payroll.

1 § 5979. Employer contributions.

2 The Commonwealth or any other employer of a participant shall
3 make payments to the trust fund on behalf of the participant in
4 an amount equal to 6% of the participant's total compensation.

5 § 5980. Vesting.

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

12 Section 4. This act shall take effect immediately.