

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1961 Session of 2019

INTRODUCED BY SCHMITT, TOBASH, EVERETT, KEEFER, B. MILLER, RYAN, OWLETT, GREINER, MILLARD, ZIMMERMAN, MOUL, BERNSTINE, GLEIM, KORTZ, BROOKS, RADER, JONES, TOOHL, GILLEN AND DUSH, OCTOBER 18, 2019

SENATOR HUTCHINSON, FINANCE, IN SENATE, AS AMENDED, OCTOBER 6, 2020

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania
2 Consolidated Statutes, in administration relating to <--
3 retirement of State employees and officers, further providing <--
4 for administrative duties of the board. IN STATE EMPLOYEES'
5 DEFINED CONTRIBUTION PLAN, FURTHER PROVIDING FOR INDIVIDUAL
6 INVESTMENT ACCOUNTS, FOR PARTICIPANT CONTRIBUTIONS, FOR
7 EMPLOYER DEFINED CONTRIBUTIONS, FOR VESTING, FOR POWERS AND
8 DUTIES OF BOARD, FOR INVESTMENTS BASED ON PARTICIPANT'S
9 INVESTMENT ALLOCATION CHOICES AND FOR EXPENSES; IN
10 ADMINISTRATION, FUNDS, ACCOUNTS AND GENERAL PROVISIONS,
11 FURTHER PROVIDING FOR ADMINISTRATIVE DUTIES OF THE BOARD AND
12 FOR TAXATION, ATTACHMENT AND ASSIGNMENT OF FUNDS; AND MAKING
13 A RELATED REPEAL.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 5902 of Title 71 of the Pennsylvania <--
17 Consolidated Statutes is amended by adding a subsection to read:
18 § 5902. Administrative duties of the board.

19 * * *

20 SECTION 1. SECTIONS 5803, 5804(C), 5806(C), 5809(A) AND (B), <--
21 5812(2), 5814(B) AND 5815 OF TITLE 71 OF THE PENNSYLVANIA

1 CONSOLIDATED STATUTES ARE AMENDED TO READ:

2 § 5803. INDIVIDUAL INVESTMENT ACCOUNTS.

3 THE BOARD SHALL ESTABLISH IN THE TRUST AN INDIVIDUAL
4 INVESTMENT ACCOUNT FOR EACH PARTICIPANT IN THE PLAN. ALL
5 CONTRIBUTIONS BY A PARTICIPANT OR AN EMPLOYER FOR OR ON BEHALF
6 OF A PARTICIPANT SHALL BE CREDITED TO THE PARTICIPANT'S
7 INDIVIDUAL INVESTMENT ACCOUNT, TOGETHER WITH ALL INTEREST AND
8 INVESTMENT EARNINGS AND LOSSES. INVESTMENT AND ADMINISTRATIVE
9 FEES, COSTS AND EXPENSES SHALL BE CHARGED TO THE PARTICIPANTS'
10 INDIVIDUAL INVESTMENT ACCOUNTS EXCEPT AS OTHERWISE PROVIDED
11 UNDER THIS PART OR AS THE GENERAL ASSEMBLY OTHERWISE PROVIDES BY
12 APPROPRIATIONS FROM THE GENERAL FUND. EMPLOYER DEFINED
13 CONTRIBUTIONS SHALL BE RECORDED AND ACCOUNTED FOR SEPARATELY
14 FROM PARTICIPANT CONTRIBUTIONS, BUT ALL INTEREST, INVESTMENT
15 EARNINGS AND LOSSES, AND INVESTMENT AND ADMINISTRATIVE FEES,
16 COSTS AND EXPENSES CHARGED AGAINST INDIVIDUAL INVESTMENT
17 ACCOUNTS SHALL BE ALLOCATED PROPORTIONATELY.

18 § 5804. PARTICIPANT CONTRIBUTIONS.

19 * * *

20 (C) PROHIBITED CONTRIBUTIONS.--NO CONTRIBUTIONS MAY BE
21 ALLOWED THAT WOULD CAUSE A VIOLATION OF THE LIMITATIONS RELATED
22 TO CONTRIBUTIONS APPLICABLE TO GOVERNMENTAL PLANS CONTAINED IN
23 IRC § 415 OR IN OTHER PROVISIONS OF LAW. IN THE EVENT THAT ANY
24 DISALLOWED CONTRIBUTIONS ARE MADE, ANY PARTICIPANT CONTRIBUTIONS
25 IN EXCESS OF THE LIMITATIONS AND INVESTMENT EARNINGS ON THOSE
26 CONTRIBUTIONS, BUT MINUS INVESTMENT FEES AND ADMINISTRATIVE
27 CHARGES APPLIED AGAINST THOSE CONTRIBUTIONS, SHALL BE REFUNDED
28 TO THE PARTICIPANT BY THE BOARD.

29 § 5806. EMPLOYER DEFINED CONTRIBUTIONS.

30 * * *

1 (C) LIMITATIONS ON CONTRIBUTIONS.--NO CONTRIBUTIONS MAY BE
2 ALLOWED THAT WOULD CAUSE A VIOLATION OF THE LIMITATIONS RELATED
3 TO CONTRIBUTIONS APPLICABLE TO GOVERNMENTAL PLANS CONTAINED IN
4 IRC § 415 OR IN OTHER PROVISIONS OF LAW. IN THE EVENT THAT ANY
5 DISALLOWED CONTRIBUTIONS ARE MADE, ANY EMPLOYER DEFINED
6 CONTRIBUTIONS IN EXCESS OF THE LIMITATIONS AND INVESTMENT
7 EARNINGS ON THE CONTRIBUTIONS, BUT MINUS INVESTMENT FEES AND
8 ADMINISTRATIVE CHARGES APPLIED AGAINST THOSE CONTRIBUTIONS,
9 SHALL BE REFUNDED TO THE EMPLOYER BY THE BOARD.
10 § 5809. VESTING.

11 (A) PARTICIPANT AND VOLUNTARY CONTRIBUTIONS.--SUBJECT TO THE
12 FORFEITURE AND ATTACHMENT PROVISIONS OF SECTION 5953 (RELATING
13 TO TAXATION, ATTACHMENT AND ASSIGNMENT OF FUNDS) OR OTHERWISE AS
14 PROVIDED BY LAW, A PARTICIPANT SHALL BE VESTED IMMEDIATELY WITH
15 RESPECT TO ALL MANDATORY PICKUP PARTICIPANT CONTRIBUTIONS AND
16 VOLUNTARY CONTRIBUTIONS PAID BY OR ON BEHALF OF THE PARTICIPANT
17 TO THE TRUST IN ADDITION TO INTEREST AND INVESTMENT GAINS OR
18 LOSSES ON THE PARTICIPANT CONTRIBUTIONS BUT MINUS INVESTMENT
19 FEES AND ADMINISTRATIVE CHARGES APPLIED AGAINST THOSE
20 CONTRIBUTIONS.

21 (B) EMPLOYER DEFINED CONTRIBUTIONS.--

22 (1) SUBJECT TO THE FORFEITURE AND ATTACHMENT PROVISIONS
23 OF SECTION 5953 OR OTHERWISE AS PROVIDED BY LAW, A
24 PARTICIPANT SHALL BE VESTED WITH RESPECT TO ALL EMPLOYER
25 DEFINED CONTRIBUTIONS PAID TO THE PARTICIPANT'S INDIVIDUAL
26 INVESTMENT ACCOUNT IN THE TRUST IN ADDITION TO INTEREST AND
27 INVESTMENT GAINS AND LOSSES ON THE EMPLOYER DEFINED
28 CONTRIBUTIONS BUT MINUS INVESTMENT FEES AND ADMINISTRATIVE
29 CHARGES APPLIED AGAINST THOSE CONTRIBUTIONS ACCORDING TO THE
30 FOLLOWING SCHEDULE:

1 (I) UNTIL SUCH TIME AS A PARTICIPANT HAS EARNED
2 THREE ELIGIBILITY POINTS AS A MEMBER OF THE SYSTEM OR
3 PARTICIPANT IN THE PLAN, 0%;

4 (II) AT AND AFTER THE ATTAINMENT OF THREE
5 ELIGIBILITY POINTS AS A MEMBER OF THE SYSTEM OR
6 PARTICIPANT IN THE PLAN, 100%.

7 (2) FOR PURPOSES OF THIS SUBSECTION, ALL ELIGIBILITY
8 POINTS CREDITED TO A MEMBER OF THE SYSTEM IN ANY CLASS OF
9 SERVICE SHALL BE USED FOR DETERMINING VESTED STATUS IN THE
10 PLAN EVEN IF THE EMPLOYEE WAS NOT A PARTICIPANT IN THE PLAN
11 AT THE TIME THE ELIGIBILITY POINTS WERE EARNED.

12 (3) NONVESTED EMPLOYER DEFINED CONTRIBUTIONS AND THE
13 INTEREST AND INVESTMENT GAINS AND LOSSES ON THE NONVESTED
14 EMPLOYER DEFINED CONTRIBUTIONS THAT ARE FORFEITED WHEN A
15 PARTICIPANT TERMINATES STATE SERVICE BEFORE ACCRUING THREE
16 ELIGIBILITY POINTS AS PROVIDED UNDER SECTION 5307(C)(3)
17 (RELATING TO ELIGIBILITY POINTS) [ARE CREDITED TO THE
18 PARTICIPANT'S MOST RECENT EMPLOYER'S FUTURE OBLIGATION
19 ASSESSED UNDER SECTION 5509 (RELATING TO APPROPRIATIONS AND
20 ASSESSMENTS BY THE COMMONWEALTH).] SHALL BE RETAINED BY THE
21 BOARD AND USED FOR THE PAYMENT OF THE ADMINISTRATIVE FEES,
22 COSTS AND EXPENSES OF THE PLAN.

23 * * *

24 § 5812. POWERS AND DUTIES OF BOARD.

25 THE BOARD, IN ADDITION TO ITS POWERS AND DUTIES SET FORTH IN
26 CHAPTER 59 (RELATING TO ADMINISTRATION, FUNDS, ACCOUNTS, GENERAL
27 PROVISIONS), SHALL HAVE THE FOLLOWING POWERS AND DUTIES TO
28 ESTABLISH THE PLAN AND TRUST AND ADMINISTER THE PROVISIONS OF
29 THIS CHAPTER AND PART:

30 * * *

1 (2) THE BOARD SHALL PAY ALL ADMINISTRATIVE FEES, COSTS
2 AND EXPENSES OF MANAGING, INVESTING AND ADMINISTERING THE
3 PLAN, THE TRUST AND THE INDIVIDUAL INVESTMENT ACCOUNTS FROM
4 THE BALANCE OF SUCH INDIVIDUAL INVESTMENT ACCOUNTS EXCEPT AS
5 OTHERWISE PROVIDED UNDER THIS PART OR AS THE GENERAL ASSEMBLY
6 OTHERWISE PROVIDES BY APPROPRIATIONS FROM THE GENERAL FUND.
7 THE BOARD MAY ASSESS, AND EACH EMPLOYER SHALL PAY, AN ANNUAL
8 PER-PARTICIPANT CHARGE FOR THE PAYMENT OF ADMINISTRATIVE
9 FEES, COSTS AND EXPENSES UNDER THIS PARAGRAPH.

10 * * *

11 § 5814. INVESTMENTS BASED ON PARTICIPANT'S INVESTMENT
12 ALLOCATION CHOICES.

13 * * *

14 (B) INVESTMENT OF CONTRIBUTIONS MADE BY ENTITIES OTHER THAN
15 THE COMMONWEALTH.--INVESTMENT OF CONTRIBUTIONS BY ANY
16 CORPORATION, INSTITUTION, INSURANCE COMPANY, CUSTODIAL BANK OR
17 OTHER ENTITY THAT THE BOARD HAS APPROVED SHALL NOT BE
18 UNREASONABLY DELAYED, AND IN NO CASE MAY THE INVESTMENT OF
19 CONTRIBUTIONS BE DELAYED MORE THAN 30 DAYS FROM THE DATE OF
20 PAYROLL DEDUCTION OR THE DATE VOLUNTARY CONTRIBUTIONS ARE MADE
21 TO THE DATE THAT FUNDS ARE INVESTED. ANY INTEREST EARNED ON THE
22 FUNDS PENDING INVESTMENT SHALL BE USED TO PAY ADMINISTRATIVE
23 [COSTS AND FEES THAT WOULD OTHERWISE BE REQUIRED TO BE BORNE BY
24 PARTICIPANTS WHO ARE THEN PARTICIPATING IN THE PLAN OR PAID BY
25 APPROPRIATIONS FROM THE GENERAL FUND] FEES, COSTS AND EXPENSES
26 OF THE PLAN.

27 § 5815. EXPENSES.

28 ALL FEES, COSTS AND EXPENSES OF ESTABLISHING AND
29 ADMINISTERING THE PLAN AND THE TRUST AND INVESTING THE ASSETS OF
30 THE TRUST SHALL BE BORNE BY THE PARTICIPANTS AND PAID FROM

1 ASSESSMENTS AGAINST THE BALANCES OF THE INDIVIDUAL INVESTMENT
2 ACCOUNTS AS ESTABLISHED BY THE BOARD, EXCEPT THAT THE FEES,
3 COSTS AND EXPENSES OF ESTABLISHING AND ADMINISTERING THE PLAN
4 AND THE TRUST THAT ARE NOT PAID UNDER SECTIONS 5809 (RELATING TO
5 VESTING), 5812(2) (RELATING TO POWERS AND DUTIES OF BOARD),
6 5814(B) (RELATING TO INVESTMENTS BASED ON PARTICIPANT'S
7 INVESTMENT ALLOCATION CHOICES) AND 5953(A)(2)(II) (RELATING TO
8 TAXATION, ATTACHMENT AND ASSIGNMENT OF FUNDS) SHALL BE PAID BY
9 THE COMMONWEALTH THROUGH ANNUAL APPROPRIATIONS.

10 SECTION 2. SECTION 5902(C)(3) OF TITLE 71 IS AMENDED AND THE
11 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

12 § 5902. ADMINISTRATIVE DUTIES OF THE BOARD.

13 * * *

14 (C) EXPENSES.--

15 * * *

16 (3) FOR FISCAL YEARS ENDING ON OR BEFORE JUNE 30, 2020,
17 AND FOR ANY ADDITIONAL FISCAL YEARS AS THE GENERAL ASSEMBLY
18 MAY PROVIDE, SUCH EXPENSES OF THE PLAN AS APPROVED BY THE
19 GENERAL ASSEMBLY IN AN APPROPRIATION BILL SHALL BE PAID FROM
20 THE GENERAL FUND. FOR FISCAL YEARS BEGINNING ON OR AFTER JULY
21 1, 2020, SUCH EXPENSES OF THE PLAN AS APPROVED BY THE GENERAL
22 ASSEMBLY THAT ARE NOT PAID UNDER SECTIONS 5809 (RELATING TO
23 VESTING), 5812(2) (RELATING TO POWERS AND DUTIES OF BOARD),
24 5814(B) (RELATING TO INVESTMENTS BASED ON PARTICIPANT'S
25 INVESTMENT ALLOCATION CHOICES) AND 5953(A)(2)(II) (RELATING
26 TO TAXATION, ATTACHMENT AND ASSIGNMENT OF FUNDS) SHALL BE
27 PAID [FROM INTEREST UNDER SECTION 5814(B) (RELATING TO
28 INVESTMENTS BASED ON PARTICIPANT'S INVESTMENT ALLOCATION
29 CHOICES) OR ASSESSMENTS ON THE BALANCES OF THE PARTICIPANTS'
30 INDIVIDUAL INVESTMENT ACCOUNTS OR] AS OTHERWISE PROVIDED IN

1 THIS PART EXCEPT AS THE GENERAL ASSEMBLY OTHERWISE PROVIDES
2 BY APPROPRIATIONS FROM THE GENERAL FUND.

3 * * *

4 (r) Additional report on investment performance.--In
5 addition to any other report required to be made by the board
6 under this part, the board shall prepare a separate report of
7 the investment performance of the State Employees' Retirement
8 System for the period of July 1 through June 30 of each year.

9 ~~Section 2. The addition of 71 Pa.C.S. § 5902(r) shall apply <--~~
10 ~~beginning with the first period of July 1 through June 30 that~~
11 ~~commences after the effective date of this section.~~

12 ~~Section 3. This act shall take effect in 30 days.~~

13 SECTION 3. SECTION 5953(A)(2)(II) OF TITLE 71 IS AMENDED TO <--
14 READ:

15 § 5953. TAXATION, ATTACHMENT AND ASSIGNMENT OF FUNDS.

16 (A) GENERAL RULE.--

17 * * *

18 (2) * * *

19 (II) IN ACCORDANCE WITH SECTION 16(B) OF ARTICLE V
20 OF THE CONSTITUTION OF PENNSYLVANIA AND NOTWITHSTANDING
21 THIS PARAGRAPH, THE PUBLIC EMPLOYEE PENSION FORFEITURE
22 ACT, OR 42 PA.C.S. § 3352 (RELATING TO PENSION RIGHTS),
23 THE ACCUMULATED MANDATORY PARTICIPANT CONTRIBUTIONS AND
24 ACCUMULATED VOLUNTARY CONTRIBUTIONS STANDING TO THE
25 CREDIT OF A PARTICIPANT SHALL NOT BE FORFEITED BUT SHALL
26 BE AVAILABLE FOR PAYMENT OF FINES AND RESTITUTION AS
27 PROVIDED BY LAW. IN ACCORDANCE WITH SECTION 16(B) OF
28 ARTICLE V OF THE CONSTITUTION OF PENNSYLVANIA, AMOUNTS IN
29 THE TRUST THAT HAVE BEEN ORDERED TO BE DISTRIBUTED TO AN
30 ALTERNATE PAYEE AS THE RESULT OF AN EQUITABLE

1 DISTRIBUTION OF MARITAL PROPERTY AS PART OF AN APPROVED
2 DOMESTIC RELATIONS ORDER ENTERED BEFORE THE DATE OF THE
3 ORDER OR ACTION IN A COURT OR OTHER TRIBUNAL RESULTING IN
4 A FORFEITURE OF A PARTICIPANT'S INTEREST IN THE TRUST
5 SHALL NOT BE SUBJECT TO THE PROVISIONS OF THE PUBLIC
6 EMPLOYEE PENSION FORFEITURE ACT OR 42 PA.C.S. § 3352. ANY
7 ACCUMULATED EMPLOYER DEFINED CONTRIBUTIONS FORFEITED AS A
8 RESULT OF THIS PARAGRAPH OR OTHER LAW SHALL BE RETAINED
9 BY THE BOARD AND NOTWITHSTANDING SECTIONS 5812(2)
10 (RELATING TO POWERS AND DUTIES OF BOARD), 5815 (RELATING
11 TO EXPENSES) AND 5902(C) (RELATING TO ADMINISTRATIVE
12 DUTIES OF THE BOARD) USED FOR THE PAYMENT OF
13 ADMINISTRATIVE FEES, COSTS AND EXPENSES OF THE PLAN.

14 * * *

15 SECTION 4. THE FOLLOWING SHALL APPLY:

16 (1) THE AMENDMENT OF 71 PA.C.S. §§ 5803, 5804(C),
17 5806(C), 5809(A) AND (B), 5812(2), 5814(B), 5815, 5902(C) (3)
18 AND 5953(A) (2) (II):

19 (I) SHALL NOT BE CONSTRUED TO MEAN THAT A METHOD OF
20 FUNDING OR PAYING THE ADMINISTRATIVE FEES, COSTS AND
21 EXPENSES OF THE STATE EMPLOYEES' DEFINED CONTRIBUTION
22 PLAN WAS NOT IN ACCORDANCE WITH THE PROVISIONS OF 71
23 PA.C.S. PT. XXV, OTHER APPLICABLE LAW OR ANY TRUST OR
24 PLAN DOCUMENT ESTABLISHED UNDER 71 PA.C.S. PT. XXV PRIOR
25 TO THE EFFECTIVE DATE OF THIS SECTION; AND

26 (II) IN RELATION TO THE REQUIREMENTS FOR PROVIDING
27 FOR THE FUNDING OR PAYMENT OF THE ADMINISTRATIVE FEES,
28 COSTS AND EXPENSES OF THE STATE EMPLOYEES' DEFINED
29 CONTRIBUTION PLAN, ANY CONSTRUCTION OF 71 PA.C.S. PT. XXV
30 AS AMENDED BY THE AMENDMENT OF §§ 5803, 5804(C), 5806(C),

1 5809(A) AND (B), 5812(2), 5814(B), 5815, 5902(C)(3),
2 5953(A)(2)(II) OR ANY RULE, REGULATION, TRUST OR PLAN
3 DOCUMENT ADOPTED OR ESTABLISHED UNDER 71 PA.C.S. PT. XXV,
4 SHALL NOT CREATE IN ANY PARTICIPANT OF THE STATE
5 EMPLOYEES' DEFINED CONTRIBUTION PLAN OR IN ANY OTHER
6 PERSON CLAIMING AN INTEREST IN THE ACCOUNT OF ANY
7 PARTICIPANT A CONTRACTUAL RIGHT, EITHER EXPRESS OR
8 IMPLIED, IN METHOD OR AMOUNT OF FUNDING OR PAYMENT OF THE
9 FEES, COSTS AND EXPENSES OF THE STATE EMPLOYEES' DEFINED
10 CONTRIBUTION PLAN.

11 (2) THE AMENDMENT OF 71 PA.C.S. § 5809(B)(3) SHALL ONLY
12 APPLY TO FORFEITURES AFTER JUNE 30, 2020.

13 (3) THE ADDITION OF 71 PA.C.S. § 5902(R) SHALL APPLY
14 BEGINNING WITH THE FIRST PERIOD OF JULY 1 THROUGH JUNE 30
15 THAT COMMENCES AFTER THE EFFECTIVE DATE OF THIS SECTION.

16 SECTION 5. REPEALS ARE AS FOLLOWS:

17 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
18 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE AMENDMENT OF 71
19 PA.C.S. §§ 5803, 5804(C), 5806(C), 5812(2), 5814(B), 5815,
20 5902(C)(3) AND 5953(A)(2)(II).

21 (2) SECTION 1748-E OF THE ACT OF APRIL 9, 1929 (P.L.343,
22 NO.176), KNOWN AS THE FISCAL CODE, IS REPEALED.

23 SECTION 6. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

24 (1) THE ADDITION OF 71 PA.C.S. § 5902(R) SHALL TAKE
25 EFFECT IN 30 DAYS.

26 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
27 IMMEDIATELY.