

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 316 Session of 2015

INTRODUCED BY GREINER, GROVE, DAY, CUTLER, MENTZER, ZIMMERMAN, TURZAI, PHILLIPS-HILL, IRVIN, DIAMOND, MILLARD, WARD, SAYLOR, KAUFFMAN, TOBASH, TOOHIL, KNOWLES AND B. MILLER, MARCH 26, 2015

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 9, 2015

AN ACT

1 Providing for cash balance pension plans for certain municipal
2 employees, for administration, for benefits and for
3 disability.

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

CHAPTER 1

PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Municipal
10 Sustainability Act.

11 Section 102. Legislative findings and purposes.

12 The General Assembly finds and declares that:

13 (1) Local governments are facing severe challenges that
14 threaten the financial security and stability of our
15 communities.

16 (2) Our public safety employees are foundational in
17 having a strong and secure community.

1 (3) Our communities are most viable when our public
2 safety departments are strong.

3 (4) This Commonwealth has seen a startling decrease
4 recently in local public safety employees that has damaged
5 the security of our communities.

6 (5) A main reason for the decrease in our public safety
7 employees is the rising costs our taxpayers are forced to
8 pay.

9 (6) The increase in costs for municipalities is largely
10 driven by growing pension liabilities.

11 (7) By reforming the costs of pensions, the Commonwealth
12 can help sustain our municipalities that face difficult
13 financial choices in the future.

14 (8) Increasing the sustainability of our municipal
15 finances in turn would lead to increased hiring of more
16 public safety employees that make our communities stronger
17 and safer.

18 (9) Therefore, by providing pension reform, our
19 municipalities can grow their middle class and increase their
20 public safety officials while having sustainable finances.

21 Section 103. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Cash balance pension plan." The defined benefit plan
26 established in this act and effective on and after January 1,
27 ~~2017~~ 2016, under which a member's benefit is determined on the <--
28 basis of the member's savings account.

29 "Compensation." For purposes of determining member credits
30 and employer credits under a cash balance pension plan, a

1 member's base salary or wages paid by an employer, including
2 overtime payments to a member up to an amount no greater than
3 10% of the member's base salary. Overtime paid in the form of
4 compensatory time is not considered salary, regardless of
5 whether the 10% cap on the inclusion of overtime, is met. The
6 term does not include reimbursements, bonuses, overtime,
7 payments in excess of 10% of base salary, or payouts of accrued
8 sick or vacation pay, or any other form of used or unused paid
9 time off. The term includes any disability pay paid by an
10 employer as a result of a service-based disability. A member's
11 compensation for a calendar year shall not exceed the limit
12 prescribed by section 401(a)(17) of the IRC.

13 "Employer." A borough, town, township, regional police
14 department or city of the second class, second class A or third
15 class.

16 "Employer credit." The product of the employer crediting
17 rate times the annual compensation of a member, which amount
18 shall be credited to the member's savings account.

19 "Employer crediting rate." The employer crediting rate
20 established by this act.

21 "Interest credit." The product of the interest crediting
22 rate times the balance of a member savings account at the end of
23 the immediately preceding calendar month, which amount shall be
24 credited to the member's savings account.

25 "Interest crediting rate." The interest crediting rate
26 established by this act.

27 "IRC." The Internal Revenue Code of 1986 (Public Law 99-514,
28 26 U.S.C. § 1 et seq.).

29 "Member." A person who is employed by an employer and
30 eligible to participate in a cash balance pension plan.

1 "Member accumulated contributions." The sum of the member
2 credits together with interest credited thereon, at the interest
3 crediting rate, until the date of termination of service with
4 the employer. In the case of a vested member, interest shall be
5 credited until the later of superannuation age or the
6 determination date.

7 "Member contribution rate." The mandatory member
8 contribution rate established by this act.

9 "Member credit." The product of the member contribution rate
10 times the annual compensation of a member, which amount shall be
11 credited to the member's savings account.

12 "Member savings account." The individual ledger account
13 established and maintained for a member solely for purposes of
14 reflecting the accumulation of his member credits, employer
15 credits and interest credits.

16 "Pension fund." The entity which is the repository for the
17 assets of a cash balance pension plan and as reserved for
18 present and future retirement payments and benefits of active
19 and retired members of the cash balance pension plan.

20 "Pension plan." The various aspects of the relationship
21 between an employer and its employees with respect to the
22 retirement coverage provided by a municipality to its employees.

23 "Plan document." The law, ordinance, resolution or related
24 document or documents which governs the retirement coverage
25 provided by an employer to its employees, including retirement
26 payments and benefits, administration and funding.

27 "Superannuation age." The date on which a member with a
28 vested benefit under a cash balance pension plan attains age 55
29 and has or would have completed 25 years of service with the
30 employer.

1 CHAPTER 3

2 ADMINISTRATION

3 Section 301. Establishment of cash balance pension plan.

4 An employer shall amend its plan document to establish and
5 effectuate a cash balance pension plan in accordance with the
6 provisions of this act. The cash balance pension plan shall be
7 administered as an additional benefit tier within the existing
8 defined benefit plan structure.

9 Section 302. Eligibility to participate in cash balance pension
10 plan.

11 The following employees shall be eligible for and shall
12 participate in the cash balance pension plan administered by the
13 pension fund:

14 (1) Each regular, full-time police officer who is
15 employed by a borough, town, township or regional police
16 department maintaining a police force of three or more full-
17 time members who was hired on or after January 1, ~~2015~~ 2016. <--

18 (2) Each regular, full-time police officer who is
19 employed by a city of the second class, second class A or
20 third class or regional police department and who was hired
21 on or after January 1, ~~2015~~ 2016. <--

22 (3) Each regular, full-time firefighter who is employed
23 by a city of the second class, second class A or third class
24 and who was hired on or after January 1, ~~2015~~ 2016. <--

25 Section 303. Applicable crediting rates.

26 (a) Member contribution rate.--The mandatory member
27 contribution rate shall be 6% for a member who participates in
28 Social Security and 9% for a member who does not participate in
29 Social Security.

30 (b) Employer crediting rate.--The employer crediting rate

1 shall be 4.5%.

2 (c) Interest crediting rate.--

3 (1) The interest crediting rate for any calendar month
4 within a given calendar year shall be one-twelfth of the 30-
5 year yield on United States Treasury Securities for the last
6 business day of the preceding calendar year.

7 (2) The minimum interest crediting rate for any calendar
8 month shall be 0%, and the maximum interest crediting rate
9 for any calendar month shall be 0.375%.

10 (3) Interest credits continue until benefits commence to
11 be paid from the cash balance pension plan.

12 Section 304. Member savings account.

13 (a) Credits to account.--

14 (1) The member savings account shall be the ledger
15 account to which shall be credited member credits, employer
16 credits and interest credits.

17 (2) Member credits and employer credits shall be
18 allocated to the member savings accounts each payroll period,
19 or on such other frequency as the employer shall determine
20 with the approval of the pension fund, but not less
21 frequently than annually.

22 (3) Interest credits shall be allocated to member
23 savings accounts on a monthly basis.

24 (b) Charges to account.--

25 (1) Upon the payment to a member, or his designated
26 beneficiary, of a benefit from the cash balance pension plan,
27 the payment shall be charged to the member's savings account.

28 (2) Upon the election of a member to withdraw his member
29 accumulated contributions in lieu of receiving a pension from
30 the cash balance pension plan, the entire balance of the

1 member's savings account shall be deemed forfeited and
2 charged to the member's savings account.

3 Section 305. Return of member accumulated contributions.

4 (a) General rule.--A member whose employment terminates with
5 less than eight years of credited service shall receive his
6 member accumulated contributions in a lump sum.

7 (b) Members who may elect.--A member may elect to receive
8 his member accumulated contributions upon termination of service
9 in lieu of any benefit to which the member is entitled under the
10 cash balance pension plan.

11 CHAPTER 5

12 BENEFITS

13 Section 501. Vesting.

14 (a) General rule.--A member with 12 or more years of
15 credited service shall have a 100% vested interest in his member
16 savings account.

17 (b) Partial vesting.--A member with 8 or more, but less than
18 12, years of credited service shall have a 50% vested interest
19 in his member savings account.

20 (c) Member accumulated contributions.--Notwithstanding
21 subsections (a) and (b), a member shall always be 100% vested in
22 his member accumulated contributions.

23 Section 502. Benefit options.

24 (a) General rule.--Vested benefits under the cash balance
25 pension plan shall be payable to a member who has terminated
26 service with the employer as of the first day of the month
27 coincident with or next following the member's attainment of
28 superannuation age or, if later, the date of his termination of
29 service with the employer, in an annuity which is actuarially
30 equivalent to the balance of the member's savings account.

1 (b) Annuity options.--Annuity options shall be established
2 by the cash balance pension plan and shall include single and
3 joint and survivor life annuity forms.

4 (c) Actuarial factors to be published.--Actuarial factors to
5 be used to convert accrued benefits under the cash balance
6 pension plan into annuity and other optional forms of benefits
7 shall be published by the pension fund.

8 (d) Lump sum payments.--In lieu of an annuity form of
9 benefit, a member may elect to receive his benefit under the
10 cash balance pension plan as a lump sum payment equal to the
11 balance of the member's savings account.

12 Section 503. Election upon termination of service.

13 (a) General rule.--A member who terminates service with the
14 employer prior to attainment of superannuation age may elect, on
15 the form prescribed by the pension fund and duly attested by the
16 member or the member's legally constituted representative, to:

17 (1) withdraw his member accumulated contributions in
18 accordance with section 305; or

19 (2) if vested, receive a benefit in the form of a lump
20 sum payment or an annuity.

21 (b) Timing of payment.--The withdrawal, lump sum benefit or
22 annuity shall be paid, or commence to be paid, as soon as
23 practicable after the pension fund's receipt of the election,
24 but in no event later than the first day of the month coincident
25 with or next following the member's attainment of superannuation
26 age.

27 (c) Portability.--When a member withdraws the member's
28 accumulated contributions or receives a benefit in the form of a
29 lump sum payment, the member shall be permitted to directly
30 rollover the amount distributed to an eligible retirement plan,

1 including another cash balance pension plan as defined in
2 section 103. Direct rollovers shall be in conformance with
3 section 901 of this act and the applicable provisions of the
4 IRC.

5 Section 504. Preretirement surviving spouse benefits.

6 (a) General rule.--In the event that a member who is married
7 and has a vested benefit under the cash balance plan dies prior
8 to receiving, or commencing to receive, his benefit or his
9 member accumulated contributions, the vested portion of the
10 member's savings account shall be paid to the member's surviving
11 spouse in an actuarially equivalent annuity for the life of the
12 surviving spouse or, at the spouse's election on a form
13 prescribed by the pension fund, in a lump sum.

14 (b) Timing of payment.--The preretirement surviving spouse
15 benefit shall be paid, or commence to be paid, at the spouse's
16 election on the first day of the month following the member's
17 death or the first day of any month thereafter, but not later
18 than the first day of the month coincident with or next
19 following the member's superannuation age, unless the member
20 dies after superannuation age.

21 Section 505. Ineligibility for other defined benefit pension
22 plan benefits.

23 (a) General rule.--A member of a cash balance pension plan
24 shall be ineligible for the pension benefits provided to
25 employees of the employer who were hired before January 1, 2015 <--
26 2016, under any other defined benefit pension plan maintained by <--
27 the employer.

28 (b) Construction.--Nothing in this section shall be
29 construed as preventing or limiting an employer's ability to
30 establish or participate in programs that provide long-term

1 disability benefits.

2 Section 506. Eligibility for other benefits.

3 (a) General rule.--A member shall be eligible for all
4 preretirement benefits for employees as otherwise provided by
5 law, including, but not limited to, benefits under:

6 (1) the act of June 2, 1915 (P.L.736, No.338), known as
7 the Workers' Compensation Act;

8 (2) the act of June 28, 1935 (P.L.477, No.193), referred
9 to as the Enforcement Officer Disability Benefits Law;

10 (3) the act of December 5, 1936 (2nd Sp.Sess., 1937
11 P.L.2897, No.1), known as the Unemployment Compensation Law;

12 (4) the act of June 24, 1976 (P.L.424, No.101), referred
13 to as the Emergency and Law Enforcement Personnel Death
14 Benefits Act; and

15 (5) the Public Safety Officers' Benefit Act of 1976
16 (Public Law 94-430, 42 U.S.C. § 3796).

17 (b) Supplemental deferred compensation plans.--Each employer
18 authorized to establish a cash balance pension plan described in
19 this act may establish a supplemental deferred compensation plan
20 that satisfies the requirements of section 457(b) of the IRC,
21 provided that the employer shall not be required to make
22 employer contributions to the supplemental deferred compensation
23 plan.

24 Section 507. No increase or diminishment in benefits under
25 existing defined benefit plans.

26 (a) Employees covered.--The following employees shall
27 maintain their existing rights and benefits pursuant to defined
28 benefit pension plans:

29 (1) Each regular, full-time police officer who is
30 employed by a borough, town, township or regional police

1 department maintaining a police force of three or more full-
2 time members and who was hired on or before December 31, ~~2014~~<--
3 2015. <--

4 (2) Each regular, full-time police officer who is
5 employed by a city of the second class, second class A or
6 third class or regional police department and who was hired
7 on or before December 31, ~~2014~~ 2015. <--

8 (3) Each regular, full-time firefighter who is employed
9 by a city of the second class, second class A or third class
10 and who was hired on or before December 31, ~~2014~~ 2015. <--

11 (b) Increased benefits prohibited.--The benefits established
12 through the existing defined benefit pension plans applicable to
13 employees identified in subsection (a) shall not be increased on
14 or after the effective date of this section.

15 (c) Construction.--The following apply:

16 (1) Nothing in this section shall be construed to
17 diminish the rights or benefits established and provided
18 through the existing defined benefit pension plans applicable
19 to employees identified in subsection (a).

20 (2) A provision in a defined benefit plan or cash
21 balance plan or an enabling statute for either plan may not
22 be construed as implying an obligation by the employing city
23 of the third class, city of the second class A, city of the
24 second class, regional police department, township, town or
25 borough to maintain or provide the killed in service benefits
26 required under the act of June 24, 1976 (P.L.424, No.101),
27 referred to as the Emergency and Law Enforcement Personnel
28 Death Benefits Act.

29 CHAPTER 7

30 DISABILITY

1 Section 701. Work-related disability.

2 (a) Benefits.--A vested member who terminates service with
3 the employer prior to attaining superannuation age due to
4 becoming unable to perform the duties of a police officer or
5 firefighter as a direct result of an injury suffered while
6 performing the duties prior to the member's superannuation date
7 shall elect to receive a benefit under the cash balance pension
8 plan in accordance with section 502, except that the disability
9 benefit shall become payable on the first day of the month next
10 following the determination of the member's permanent disability
11 status.

12 (b) Offsets.--The disability benefit under subsection (a)
13 shall be offset by a workers' compensation or Social Security
14 disability benefit for which the member may be eligible for the
15 same injury and by another disability benefit or income
16 replacement benefit for which the member is eligible that was
17 funded, in whole or in part, by the employer that is paid for
18 the same injury. If the other disability benefit or income
19 replacement benefit is paid for only in part by the employer,
20 the offset taken by the employer shall be prorated according to
21 the employer's contribution. The offset shall continue until the
22 member reaches the member's superannuation date, at which point
23 the disability benefit shall cease and the member shall be
24 entitled to receive a vested benefit in accordance with section
25 502 in an annuity which is actuarially equivalent to the
26 remaining balance of the member's savings account at the time
27 without the offsets under this subsection.

28 Section 702. Disability insurance.

29 An employer may provide disability insurance for a member who
30 terminates service with the employer prior to vesting or the

1 attainment of superannuation age due to becoming unable to
2 perform the duties of a police officer or firefighter as a
3 direct result of an injury suffered while performing the
4 member's duties as a police officer or firefighter that
5 permanently preclude the member from working as a police officer
6 or firefighter. If provided, the benefit shall be provided
7 through the disability insurance carrier. If the benefit is
8 provided by the employer, the definition of disability shall be
9 provided by the insurance carrier. The benefit may be paid by
10 the insurance carrier and under the policy until the member is
11 able to be gainfully employed in another occupation or, if the
12 member is not able to be employed in other gainful employment,
13 until the member's superannuation date. The benefit may only be
14 provided by the employer subject to the following conditions:

15 (1) The income provided by the insurance is not greater
16 than 66.6% of the member's base wage as a police officer or
17 firefighter at the time of the injury.

18 (2) The work-related disability insurance benefit shall
19 be subject to the following conditions and offsets that shall
20 be noted in the applicable policy:

21 (i) An offset negotiated into the disability
22 insurance policy.

23 (ii) Another disability benefit or income
24 replacement benefit received by the disabled member that
25 was paid for, in whole or in part, by the employer or
26 that the member received without a financial contribution
27 as a result of the member's employment or due to the
28 injury occurring in the performance of the member's
29 duties as a police officer or firefighter, including, but
30 not limited to, Social Security disability benefits,

1 workers' compensation benefits and a benefit to which the
2 disabled member may be eligible to receive in accordance
3 with section 702 regardless of whether the disabled
4 member is receiving the benefit. The offsets shall be
5 required regardless of whether set forth in the
6 disability insurance policy. If the other disability
7 benefit or income replacement benefit is paid for only in
8 part by the employer, the offset taken by the employer or
9 insurance carrier shall be prorated according to the
10 employer's contribution.

11 (iii) There shall be an elimination period of 180
12 days that commences the day following the member
13 terminating employment due to the disability.

14 CHAPTER 9

15 MISCELLANEOUS PROVISIONS

16 Section 901. Tax qualification requirements.

17 The additional benefit tier of the plan, as provided under
18 section 301, shall be administered to maintain the tax qualified
19 status of the plan with respect to government plans under the
20 IRC.

21 Section 902. Effective date.

22 This act shall take effect in 60 days.