

Allowing Third Class Cities to Establish An Optional Retirement System
ACT 362 OF 1945 (P.L. 903, NO. 362)
Article 43-A of Title 53 of Purdon's

AN ACT

Authorizing cities of the third class to establish an optional retirement system for officers and employes independently of any pension system or systems existing in such cities.

Whereas, the laws of this Commonwealth authorize cities of the third class to create and maintain pension systems for the benefit of firemen, police and other employes, and

Whereas, no authority is now vested in such cities to provide an adequate and complete retirement or compensation system for officers and employes, who by reason of age or infirmities and involuntary retirement are unprotected, therefore:

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

Section 1. The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

“Person,” an officer or employe of the city.

“Employe,” a person in the service of the city, who is either, or who is not now adequately protected under all circumstances by pensions authorized by the laws of this Commonwealth and in force at the time of the passage of this act.

“Officers,” a person elected or appointed to city service.

“Board,” Officers and Employes Retirement Board.

“City” or “Cities,” all third class cities adopting this act.

“Fund,” Officers and Employes Retirement Fund.

“Compensation,” retirement allowance or compensation.

“He,” the masculine and feminine pronouns.

“Joint Coverage Member” of the retirement system shall mean a city employe who shall have become a member of the retirement system subsequent to the last date permitted by such city for statement of preference concerning social security coverage, or who, having become a member on or before such date, shall have filed with the Retirement Board a written statement that he or she elects Social Security coverage under an agreement with the Federal Secretary of Health, Education and Welfare entered into by the Commonwealth.

(Par. added June 14, 1957, P.L. 323, No. 172)

“Single Coverage Member” of the retirement system shall mean a city employe who shall have become a member of the retirement system on or before the last date permitted by such city for statement of preference concerning social security coverage, and who either shall have filed with the Retirement Board a written statement that he or she does not elect social security coverage under any agreement with the Federal Secretary of Health, Education and Welfare entered into by the Commonwealth, or shall not have filed with the Retirement Board any written statement.

(Par. added June 14, 1957, P.L. 323, No. 172)

“Years of Service” shall include any time not exceeding six years spent by the employe on active duty with the armed forces of the United States, providing that he received an honorable discharge or a certificate of satisfactory service and he pays to the board an amount equal to three per centum of his last monthly salary or wage prior to entering on active duty for each month he is not employed by the city because of his active duty with the armed forces.

(Par. added Dec. 30, 1959, P.L. 2060, No. 752)

Section 2. That all cities of the third class may create a retirement system for officers and employes of said cities, whether or not such officers and employes are protected by pension authorized by the laws of this Commonwealth and in force at the time of the passage of this act, in the manner, under the conditions, and subject to the qualifications following:

Section 3. In any such city which creates such retirement system there shall be created a board to be known as the “Officers and Employes Retirement Board,” consisting of the mayor, the city controller, the director of finance, two employes to be chosen by the employes contributing to the retirement fund, a retired city employe, and, if members of council participate in the retirement fund and are members of the fund, a member of council, chosen by council. A retired city employe receiving a city pension shall be a member of the board appointed using the following procedure:

- (1) if the city is a strong-mayor form of government, the appointment shall be made by the mayor subject to confirmation by council;
- (2) if the city is a council-manager form of government, the appointment shall be made by the manager subject to confirmation by council; or
- (3) in all other cases, council shall, by majority vote, appoint.

Where a retired city employe association exists, nominations for appointment shall be accepted by the appointing authority. It shall be the duty of said board to register all persons employed by the said city, and to administer the collections and distribution of the fund, herein provided for, and make such reasonable rules in the premises as such board may deem necessary to carry into effect the provisions of this act.

(3 amended June 11, 1992, P.L. 297, No. 49)

Section 4. (a) That every person now or hereafter elected or appointed to an office of, or employed by, any city which has created such retirement system and such board, as hereinafter

provided, of the age of sixty (60) years and upwards who shall have so served as an officer or employe for a period of twenty (20) years, or more, shall, upon application to the board, be retired from service, and shall during the remainder of his life receive the compensation fixed by this act, subject to such qualifications as are hereinafter contained.

If any person shall have served twenty (20) years and voluntarily retires he shall, by continuing his contributions until the age of fifty-five (55), be entitled to the above compensation.

During the lifetime of any such person he shall be entitled to receive as compensation annually from the fund set aside for the purpose, fifty (50) per centum of the amount which would constitute the highest average annual salary or wages which he earned during any five (5) years of his service for the city, or which would be determined by the rate of the monthly pay of such person at the date of retirement, whichever is the higher. Said compensation to be paid in semi-monthly payments.

((a) amended May 9, 1961, P.L. 177, No. 87)

(b) (1) Except as otherwise provided under clause (3), where an officer or employe shall have served for twelve (12) years, or more, and shall have attained the age of sixty (60) years and his tenure of office or employment shall be terminated without his voluntary action before the expiration of twenty (20) years of service, he shall, in such event, during the remainder of his life, be entitled to receive such portion of the full compensation as the period of his service up to date of its termination bears to the full twenty-year period of service; where an officer or employe shall have served for twelve (12) years, or more, and shall not have attained the age of sixty (60) years, and his tenure of office or employment shall be terminated without his voluntary action before the expiration of twenty (20) years of service, he shall, in such event, during the remainder of his life, after attaining the age of sixty (60) years, be entitled to receive such portion of the full compensation as the period of his service up to date of its termination bears to the full twenty-year period of service; where an officer or employe who has served for twenty (20) years, or more, and his tenure of office or employment shall be terminated without his voluntary action, then he shall be entitled to full compensation for the remainder of his life, after attaining age fifty-five, and conditioned upon his continuing his contributions into the fund at the same rate as when he was dismissed until he attains age fifty-five.

(2) Should an officer or employe, however, become so permanently disabled as to render him unable to perform the duties of his position or office after fifteen (15) years of service, and before attaining the age of fifty-five (55) years, he shall be entitled to full compensation during such disability. Proof of such disability shall consist of the sworn statement of three (3) practicing physicians, designated by the board, that the employe is in a condition of health which would permanently disable him from performing the duties of his position or office. Such person shall thereafter be subject to physical examination at any reasonable time or times, upon order of the board, and upon his refusal to submit to any such examination, his compensation shall cease.

(3) (i) Any pension ordinance may provide for a limited vested benefit if it would conform to section 305 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the "Municipal Pension Plan Funding Standard and Recovery Act." Under the provisions of the benefit, a member who has

completed twelve (12) years or more of full-time continuous service but shall not have attained the minimum age and minimum period of continuous service may be entitled to vest his retirement benefits subject to all of the following conditions:

- (A) the member must file with the management board of the fund a written notice of his intention to vest;
- (B) the member must include in the notice the date the member intends to terminate his service;
- (C) the termination date shall be at least thirty (30) days later than the date of notice to vest;
- (D) the member must be in good standing with the city on the date of notice to vest; and
- (E) the board shall indicate on the notice to vest the rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any five (5) years of service preceding that date, whichever is higher.

(ii) Upon reaching the date which would have been the member's retirement date had the member continued employment with the city, the member shall notify the board in writing that the member desires to collect his pension. The amount of retirement benefits the member is entitled to receive under this section shall be computed as follows:

- (A) the initial determination of the member's base retirement benefits shall be computed on the salary indicated on the notice to vest; and
- (B) the portion of the base retirement due the member shall be determined by applying to the base amounts the percentage that his years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the city until his minimum retirement date. As used in this section, the term "salary" means the fixed amount of compensation paid at regular, periodic intervals by the city to the member and from which pension contributions have been deducted.

((b) amended June 11, 1992, P.L. 297, No. 49)

(c) Where a city has entered into an agreement with the Commonwealth to place certain employees under the Federal Social Security Act, the compensation to be paid joint coverage members according to the provisions of subsections (a) and (b) of this section payable after the age and upon that portion of annual compensation on which social security benefits are payable, shall be reduced by an amount equal to forty (40) per centum of the primary insurance amount of social security paid or payable to the member. Such reduction shall be subject to the following provisions:

(i) Upon attainment of the age at which social security benefits are payable by a beneficiary receiving compensation according to provisions of subsections (a) and (b) of this section or upon retirement of a contributor after attaining that age, his eligibility to the old age insurance benefit and the primary insurance amount of social security, upon which the reduction in the compensation shall be based, shall be computed by the board in the manner specified in the Federal Social Security Act, except that in determining such eligibility and such amount only wages or compensation for services performed in the employ of the city shall be included.

(ii) The reduction shall not apply to compensation for total and permanent disability payable under subsection (b) of this section.

(iii) Whenever the amount of the reduction from the compensation shall have been once determined, it shall remain fixed for the duration of the compensation, except that any decrease in the primary insurance amount under the Social Security Act shall result in a corresponding decrease in the amount of the reduction from the compensation.

(iv) The total sum, including social security benefits, to be received upon retirement by an employe who is a member of the system at the time of the agreement, shall not be less than the compensation that would be paid by the retirement system in the absence of the agreement.

(c.1) Where a city has entered into an agreement with the Commonwealth to place certain employes under the Federal Social Security Act, the retirement board may authorize any joint coverage member of the retirement system to elect according to the provisions of this subsection to receive compensation without the reduction provided for in subsection (c) of this section, provided he shall make a lump-sum payment to the retirement board equal to the difference between the amount of the accumulated fund to his credit in the fund as of the last date for which salary or wages was paid and the amount which would have been to his credit in such fund if contributions had been made on that portion of his salary or wages on which social security allowances are payable at the same rate as made on that portion of his salary or wages in excess thereof from the time that such salary or wages became subject to social security coverage. Such election shall be made, in writing, in the form prescribed by the retirement board, and shall be accompanied by the lump-sum payment herein required.

The retirement board may authorize any such member to make the election herein provided at any time, and if made prior to retirement, such member shall, in addition to any lump-sum payments required, pay to the board contributions on his entire salary or wages thereafter received at the rate provided in section 10.1 of this act for monthly salary or wages in excess of that on which social security allowances are payable.

((c.1) added Aug. 13, 1963, P.L. 678, No. 357)

(d) If council elects by ordinance to make such payments, the widow or widower of an employe who retires on pension or being eligible for pension but is still employed full time, dies or is killed in the service on or after January 1, 1960, shall, during her or his lifetime or so long as she or he does not remarry, be entitled to receive a pension calculated at the rate of fifty (50) per centum of the pension the employe was receiving or would have been receiving had he or she been retired at the time of his or her death. Any employe who is unmarried at the time council elects to make payments to widows or widowers of employes, may elect, within thirty (30) days after the adoption of the ordinance, not to have a widow or widower receive such payments, and the employe shall not be responsible for payments to secure such coverage.

((d) amended June 30, 1969, P.L. 112, No. 44)

(e) In addition to the retirement allowance which is authorized to be paid from the pension fund by this act, notwithstanding the limitations therein placed upon such retirement allowances and upon contributions, every contributor who shall become entitled to the retirement allowance may also by ordinance be entitled to the payment of a "service increment" in accordance with and subject to the conditions hereinafter set forth.

(1) Service increment shall be the sum obtained by computing the number of whole years after having served twenty (20) years, required by this act, during which a contributor has been employed by such city and paid out of the city treasury and multiplying the said number of years so computed by an amount equal to one-fortieth (1/40) of the retirement allowance which has become payable to such contributor in accordance with the provisions of this act. In computing the service increment, no employment after the contributor has reached the age of sixty-five (65) years shall be included.

(2) Each contributor, who so chooses to become entitled to the service increments provided by this act, shall, from and after the effective date of this amendment, pay into the retirement fund a monthly sum in addition to his or her retirement contribution, which shall be equal to one-half of one per centum of his or her salary: Provided, That such service increment contribution shall not be paid after a contributor has reached the age of sixty-five (65) years.

(3) Persons who are contributors on the effective date of this amendment who have already reached the age of sixty-five (65) years shall have his or her service increment computed on the years of employment prior to the date of reaching his or her sixty-fifth (65th) birthday.

(4) Service increment contributions shall be paid at the same time and in the same manner as retirement contributions, and may be withdrawn in full, without interest, by persons who leave the employment of such city, subject to the same conditions by which retirement contributions may be withdrawn, or by persons who retire before becoming entitled to any service increment.

(5) All persons who are now contributors to the retirement fund and all those employed by the city after the effective date of this amendment, if required to become contributors to the retirement fund, shall be subject to the provisions of this act.

((e) added Oct. 19, 1967, P.L. 465, No. 220)

(4 amended June 14, 1957, P.L. 323, No. 172)

Section 4.1. (a) The board may, subject to the approval required under subsection (b), increase the compensation of any member of the fund by reason of and after the termination of the services of such member of the fund. Such increases shall be in conformity with a uniform scale, which shall be based on the Consumer Price Index for all urban consumers calculated by the Bureau of Labor Statistics of the United States Department of Labor, but the total of any such allowance shall not at any time exceed one-half of the current salary being paid to nonuniformed employes of the highest pay grade.

(b) The board may recommend the increase described in subsection (a) to the city council at any time. Provided that the provisions of section 305 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the "Municipal Pension Plan Funding Standard and Recovery Act," have been satisfied, the council, by ordinance, may approve this increase subject, however, to the approval of the mayor.

(4.1 added June 11, 1992, P.L. 297, No. 49)

Section 4.2. (a) (1) An employe of a water authority created by a city that commenced operations after September 30, 1991, who satisfies the requirements of clause (2), may file a written election with the board and the water authority to remain a member of the retirement system established pursuant to this act. The qualified employe shall file the written election within one (1) year after the effective date of this section or within one (1) year after becoming an employe of the water authority, whichever is later.

(2) In order to qualify for the option under clause (1), an employe must satisfy both of the following requirements when becoming an employe of the water authority:

- (i) be an employe of the city that established the water authority; and
- (ii) be an active member of the city's retirement system established pursuant to this act.

(3) For any employe who files an election under clause (1), the affected water authority shall:

- (i) deduct from the employe's salary an amount equal to the employe contribution that would have been deducted had the employe continued to be a city employe and shall pay the deducted amount to the fund; and
- (ii) pay to the fund an employer contribution equal to the employer normal cost plus anticipated administrative expenses and amortization payments less general municipal pension system State aid expressed as a percentage of the system's total payroll as calculated by the city pursuant to the act of December 18, 1984 (P.L. 1005, No. 205), known as the "Municipal Pension Plan Funding Standard and Recovery Act," and applied to the payroll of the employe.

(b) All employes who elect to remain in the retirement system shall be treated as city employes in determining the city's annual allocation of general municipal pension system State aid pursuant to section 402(e) of the "Municipal Pension Plan Funding Standard and Recovery Act."

(4.2 added June 11, 1992, P.L. , No. 49)

Section 5. The officers and employes of any city, creating such fund and board, shall, upon the acceptance of this act, pay unto said board monthly an amount equal to three (3) per centum of their monthly salaries or wages, and if the council elects to make such payments, an additional amount not to exceed one per centum if deemed necessary by the council to provide sufficient funds for payments to widows and widowers of members retired on pension or killed in the service, except as hereinafter provided concerning laborers, which shall be applied to the purpose of this act.

(Par. amended Oct. 19, 1967, P.L. 465, No. 220)

If any compensation be granted to a person who has not been a contributor to the fund, as herein provided, for an aggregate period of twenty (20) years, such person shall be required to pay unto the board for the benefit of the fund, monthly, an amount equal to three (3) per centum of his compensation until such time as his contribution shall have been extended to a period of twenty (20) years.

If for any cause any person contributing to the fund who has served less than twelve (12) years shall cease to be in the service of the city, he shall become entitled to the total amount of the contributions paid into the fund by him, without interest. Any person, who has served for a period of less than twenty (20) years, and who has not reached the age of fifty-five (55) years, and who voluntarily retires from such service, shall be entitled only to the return of his total contributions to the fund without interest.

If for any cause any person contributing to the fund shall cease to be in the service of any city before he shall have become entitled to any compensation, the total amount of the contributions paid into the fund by him shall be refunded, in full, without interest: Provided, however, If any such person shall have returned to him the amount contributed, as aforesaid, and shall afterwards re-enter the service of the city, he shall not be entitled to the compensation designated, unless he shall return to the fund the amount withdrawn, in which event, the required period of service under this act shall be computed from the time he first entered the service of the city; otherwise the date of his period of service shall commence upon re-entry. In the event of the death of any person after he becomes entitled to any compensation and has not elected to retire, the total amount of contributions paid into the fund by him shall be paid over to his estate, without interest.

Section 6. No person holding a position in any city as a laborer, at a per diem wage, shall be compelled to pay or contribute toward the fund herein provided for, but he shall have the option or choice of so doing, and shall only, upon electing to contribute to the fund, become entitled to the compensation provided by this act: Provided, however, That he shall be required to contribute three (3) per centum of his wages and the same percentage upon any amount of compensation he receives after his retirement.

Section 7. All officers and employes, except elected officers, eligible for full pension hereunder, shall retire at the age of seventy (70) years.

Section 8. The head of every department and office, employing persons entitled under the provisions of this act to receive compensation, shall certify to the board all persons so employed, and the amount of salary or wages which is paid to said employe, together with dismissals, resignations or terminations of service, and from the records of their office or department shall furnish such other relative information as the board shall require.

Section 9. It shall be the duty of the board to receive and retain and, when deemed advisable, to invest the funds payable in accordance with the provisions of this act, and to pay over by warrant or check, the amount due to said officers and employes.

Section 10. The councils of the cities shall annually set aside, apportion and appropriate out of all taxes and income of such city unto the board, a sum sufficient to maintain the compensation due under this act and any additional amount deemed necessary, to provide sufficient funds for payments to widows of members retired on pension or killed in the service.

(10 amended July 15, 1968, P.L. 340, No. 165)

Section 10.1. Determination of Liability Upon Extension of Social Security. Where a city has entered into an agreement with the Commonwealth to place its employees under the Federal Social Security Act, the board shall appoint an actuary, and may fix his compensation. The actuary shall determine the present value of the liability on account of pensions payable under the provisions of section four of this act to employees who are members of the system on the effective date of the agreement, and shall offset the value of any assets in the pension fund to determine the unfunded liability. The city may make such payments as it desires towards the unfunded liability until the accumulated reserve equals the present value of the liability. The actuary shall also determine the amount which shall be contributed, annually, into the fund on account of service of all new and original members subsequent to the date of the agreement.

Officers and employes shall pay to the board, monthly, an amount equal to three and one-half per centum of that portion of monthly compensation on which social security allowances are payable and five per centum of any monthly compensation in excess of that on which social security allowances are payable. The remainder of the needed annual contribution for service subsequent to the date of the agreement, as determined by the actuary, shall become the obligation of the city and shall be paid by it to the board by annual appropriations. The provisions of this section shall, in all applicable cases, supersede the provisions relating to contributions in section 5 and section 10 of this act.

(10.1 amended July 21, 1959, P.L. 552, No. 168)

Section 11. The benefits conferred by this act shall apply to all persons employed in any capacity, by or holding positions in the cities creating a fund and board in accordance with its provisions, except as hereinafter provided.

Section 12. The time of service herein specified shall be computed from the time of the first or original service to the city, and need not be continuous.

Section 13. The compensation, herein mentioned, shall not be subject to attachment or execution, and shall be payable only to the beneficiary designated by this act, and shall not be subject to assignment or transfer.

Section 14. Where a city elects to create a retirement system established by this act and is then maintaining a retirement or pension system or systems covering its municipal officers and employes, those officers and employes, so covered, shall not become members of the retirement system established by this act, unless at the time the municipality elects to create the system the members of such existing pension system or systems shall, by the affirmative vote of seventy-five per centum (75%) of all the members thereof, elect to be covered by the retirement system established by this act, and the acceptance by any city of this act, by ordinance, shall constitute a repeal of any existing system or systems covering officers and employes contemplated under this act. In any such case, provision shall be made for the transfer of the moneys and

securities in its pension fund or funds to the fund established by this act.

Section 15. It is the intent of this act to permit cities of the third class to adopt a new Municipal Officers and Employees Retirement System, and does not affect the provisions of the act of June twenty-third, one thousand nine hundred thirty-one (Pamphlet Laws, nine hundred thirty-two), Article forty-three, sections four thousand three hundred forty to four thousand three hundred fifty-three, inclusive, or existing firemen and policemen pension systems.