

PA COUNTY GUIDE TO

# Pension Plan Best Practices



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County Pension Plan  
Best Practices

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# I. FOREWORD

The County Commissioners Association of Pennsylvania produced this Best Practices report, designed especially for the new class of commissioners entering county government in 1996. It proved to be a popular publication, and was updated in 2004. This 2015 update is intended to keep county officials and staff informed about changes to laws and process which have happened in the last nine years.

While the County Pension Law may be specific about many matters, there are numerous gray areas. This report examines these issues and discusses options for counties to consider. It is our hope counties will use this report as a way to evaluate the management of their pension plans, and to ensure that all pertinent issues have been addressed.

Note that this publication refers typically to "county commissioners," as is also the case in the relevant statutes. Home rule counties would substitute reference to the home rule equivalent.

This 2015 version is the result of reviews and additions provided by those listed below, whose assistance we gratefully acknowledge. Detailed contact information for the committee members can be found on pages 58 and 59.

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## **II. OVERVIEW OF COUNTY PENSION LAWS**

### ***Pension Plan Alternatives***

Counties have two options for the operation of their pension plans: Operating a plan as outlined under the County Pension Law<sup>1</sup> or joining the Pennsylvania Municipal Retirement System (PMRS).<sup>2</sup>

### ***Duties of the Commissioners***

The county commissioners must establish a pension plan for the county. Every two years each county must submit an actuarial valuation report to the Pennsylvania Public Employee Retirement Study Commission.<sup>3</sup>

### ***PMRS***

If the county wishes to join the Pennsylvania Municipal Retirement System, there are specific actions which the county needs to take.<sup>4</sup> Few counties have joined PMRS. The main membership of PMRS is cities, boroughs, towns and townships. Counties in PMRS make biennial actuarial valuation reports.<sup>5</sup> The chair of the county Pension Board<sup>6</sup> is responsible for making sure the actuarial reports are prepared and filed.<sup>7</sup> The costs of preparing the actuarial valuation report are an allowable administration expense and may be paid from the assets of the pension plan.<sup>8</sup>

See Other Pension References on page 57 for the address of PMRS and for additional information.

The PMRS structure, benefits and options are specific to that plan and apply only to counties opting into that plan and thus are not reviewed in this document.

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<sup>1</sup> 16 P.S. §§ 11651 et Seq.

<sup>2</sup> 16 P.S. §§ 881.101 et Seq.

<sup>3</sup> 53 P.S. § 895.201(a)

<sup>4</sup> See 53 §§ P.S. 881.107 et Seq.

<sup>5</sup> 53 P.S. § 895.201(a)

<sup>6</sup> The statute refers to “chief administrative officer.”

<sup>7</sup> 53 P.S. § 895.201(d)

<sup>8</sup> 53 P.S. § 895.207

## ***Operation Under The County Pension Law***

The rest of this section reviews the requirements for the operation of a county pension plan under the County Pension Law, commonly referred to as Act 96.

### ***Creation of the Pension Board, Members***

Upon the establishment of a county pension system, the commissioners must create a County Retirement Board, usually referred to as the Pension Board.<sup>9</sup> The Pension Board consists of five members: the three county commissioners, the controller and the treasurer.<sup>10</sup> If the county does not have an elected controller, the chief clerk becomes the fifth member of the Pension Board. Members of the Board shall not receive any compensation for their services, but shall be reimbursed for all expenses necessarily incurred in the performance of their duties.<sup>11</sup> These expenses may be paid from the county pension fund.

### ***Oath of Office - Pension Board Members***

Upon appointment to the Pension Board, each member must take an oath of office which indicates they will diligently and honestly administer the affairs of the board, and will not knowingly violate or permit to be violated any of the provisions of the law. The oath shall be subscribed to and filed with the records of the Pension Board.<sup>12</sup>

### ***Pension Board Meetings***

Meetings of the Pension Board are chaired by the chairman of the county commissioners.<sup>13</sup> Three members of the Pension Board constitutes a quorum.<sup>14</sup> The Pension Board may establish rules and regulations for meetings of the Pension Board.<sup>15</sup> Pension Board meetings are subject to the Sunshine Law and legal requirements for advertising and public attendance must be followed. The Pension Board should meet on a regular basis, at least quarterly and accurate minutes should be taken, with minutes of the prior meeting reviewed and approved at the beginning of each meeting. The minutes of Pension Board meetings are public documents and should be made available upon request.

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<sup>9</sup> 16 P.S. § 11654 (b)

<sup>10</sup> 16 P.S. § 11654 (b)

<sup>11</sup> 16 P.S. § 11654 (b)

<sup>12</sup> 16 P.S. § 11654 (b)

<sup>13</sup> 16 P.S. § 11654 (b)

<sup>14</sup> 16 P.S. § 11654 (b)

<sup>15</sup> 16 P.S. § 11656

### ***Pension Board Secretary - Duties and Salary***

The controller or the chief clerk, as the case may be, serves as the secretary of the Pension Board.<sup>16</sup> The secretary keeps a record of all of the proceedings of the Pension Board and the record shall be open to public inspection. The secretary's compensation shall be fixed by the county salary board, and is in addition to the normal compensation received by the controller/chief clerk. The secretary's compensation may be paid from the county pension fund.

In many counties, the secretary is responsible for the administration of the county pension fund. A 2014 survey of counties indicates the annual compensation for this responsibility ranges from zero to more than \$9,500 with the most frequent response being that no additional compensation is provided.

### ***Pension Boards in Home Rule Counties***

In counties with home rule or optional forms of government, the secretary of the Pension Board is appointed by the Pension Board.<sup>17</sup> The secretary's compensation shall be fixed by the county council.<sup>18</sup>

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<sup>16</sup> 16 P.S. § 11655

<sup>17</sup> 16 P.S. § 11655

<sup>18</sup> 16 P.S. § 11655

### **III. STATUTORY BASIS**

#### ***The Pennsylvania Constitution***

Authority for the Pennsylvania General Assembly to create and modify local government pension systems is found in the Pennsylvania Constitution. While the Constitution provides that “No bill shall be passed giving any extra compensation to any public officer, servant, employee, agent or contractor, after services shall have been rendered or contract made,”<sup>19</sup> it further provides that “nothing in this Constitution shall be construed to prohibit the General Assembly from authorizing the increase of retirement allowances or pensions of members of a retirement or pension system now in effect or hereafter legally constituted by the Commonwealth, its political subdivisions, agencies, or instrumentalities, after the termination of services of said member.”<sup>20</sup> Although cost of living adjustments applied on a uniform scale are lawful, other methods of increasing compensation to retirees may not be permitted.

#### ***The Americans With Disabilities Act (ADA)***

The ADA (42 U.S.C. Section 12101 et seq.) is aimed at providing equal opportunity for individuals with disabilities. The ADA provides that no covered entity (this includes county governments), may discriminate against a qualified individual with a disability with regard to, among other things, conditions and privileges of employment.<sup>21</sup> Consequently, the County Pension Law, including its disability provision (11670) must be properly applied equally in order to avoid violation of the ADA.

#### ***Other Pension Laws***

There are other pension laws which apply to county pension plan practice:

#### ***The Public Employee Retirement Commission Act (Act 66 of 1981)***<sup>22</sup>

This act created the Commission, which is responsible for reviewing legislation affecting public employee retirement systems, studying public employee retirement system policy as implemented at the state and local government level, and studying the actuarial soundness and costs of public employee retirement systems.

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<sup>19</sup> Pa. Const. Art. III, Section 26

<sup>20</sup> Pa. Const. Art. III, Section 26

<sup>21</sup> 42 U.S.C. §§ 12112, et Seq.

<sup>22</sup> 43 P.S. §§ 1401-1411

### **The Actuarial Reporting Act (Act 293 of 1972)<sup>23</sup>**

This Act gives the Public Employee Retirement Commission the responsibility to administer the actuarial valuation reporting system for county retirement systems and to publish these county retirement systems' data biennially.

### **Part One of Subchapter D of the Internal Revenue Code of 1986**

Although counties are generally exempt from income tax as political subdivisions, they must still comply with other provisions of the tax law. Compliance with this subchapter of the Internal Revenue Code (nondiscriminatory provisions regarding pension plans) is necessary to ensure that the plan constitutes and operates as a qualified plan and thus receives favorable tax treatment for both the county and its employees.

### **ERISA**

The Employee Retirement and Income Security Act (ERISA) is a federal pension law. County pension plans are not subject to most of the provisions of this Act.<sup>24</sup>

### **The Fiduciary Code**

The County Pension Board has fiduciary responsibility for the plan. As such, the Pension Board has the ultimate responsibility for management of the pension plan funds, even if the Pension Board hires a firm or firms to manage and invest the assets of the plan. This ultimate responsibility also carries with it liability if the funds are not managed in a responsible manner, often referred to as the "prudent person rule."

The Fiduciary Code provides that a fiduciary "may accept, hold, invest in, and retain....investments....and shall not be liable for loss on such investments so long as (he) exercises due care and prudence in the performance of (his) duties in regard to them."<sup>25</sup> A fiduciary has acted accordingly if purchases or retentions of investments are made by exercising the degree of judgment and care that a person of prudence, discretion and intelligence would exercise in the management of his/her own affairs.

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<sup>23</sup> 53 P.S. §§ 730.1-730.5

<sup>24</sup> Over the years there has been considerable discussion by Congress regarding enactment of a public sector version of ERISA, commonly referred to as PERISA. As of the date of this publication, there is no such enactment and none pending; however, counties should consider utilization of the provisions of ERISA not as precedent but as guidelines for implementation of county pension law.

<sup>25</sup> 20 Pa.C.S.A. § 7302

### ***Home Rule Applicability***

Although home rule chartered counties may perform any function not denied by the Constitution of Pennsylvania, by the home rule charter, or by the General Assembly, this flexibility does not apply to pension plans. All counties that establish a pension plan are bound to the provisions of the County Pension Law.<sup>26</sup>

Similarly, operating under a home rule charter does not absolve the county from complying with the provisions of PMRS if it elects to join that system.

The Home Rule Charter provisions specifically state that a home rule municipality may not “enact any provision inconsistent with any statute heretofore enacted by the General Assembly affecting the rights, benefits or working conditions of any employee of a political subdivision.”<sup>27</sup> Under the charter, the county is not given the power to diminish the rights or privileges of any former county employee in his or her pension or retirement system.<sup>28</sup>

### ***Domestic Relations Orders***

According to the Pennsylvania Divorce Code<sup>29</sup> and the interpretation of the Code by the courts, pension benefits accrued while a county employee up to the date of their termination or retirement are marital property subject to equitable distribution. The allocation between marital and non-marital portions is solely by use of a coverture fraction. In order for counties to pay benefits to an alternate payee, a Domestic Relations Order, signed by a judge and filed with the court, is required.

All pension plans must comply with Domestic Relations Orders entered by a court of competent jurisdiction. Adherence to these Orders is required by the Internal Revenue Code and necessary for any tax qualified plan.

### ***The Public Employee Forfeiture Act***

This act provides that “no public official or public employee nor any beneficiary designated by such public official or public employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of the contribution paid into any pension fund without interest, if such public official or public employee is convicted or pleads guilty or no defense” to certain crimes related to public office or public employment.<sup>30</sup>

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<sup>26</sup> 16 P.S. § 11653

<sup>27</sup> 16 P.S. § 11563(b)(v) and 16 P.S. § 1-404

<sup>28</sup> 16 P.S. § 1-302(b)

<sup>29</sup> Act 175 of 2004, §3501

<sup>30</sup> 43 P.S. §§ 1311-1315.

Prior to taking any action on a member's account, the Pension Board must obtain a certified copy of the judgment from the appropriate court to ascertain whether any action will be taken by the Board to forfeit the pension benefits of a member's account. This determination must be made with the advice of legal counsel.<sup>31</sup>

***Uniformed Services Employment and Reemployment Rights Act***

The federal Uniformed Services Employment and Reemployment Rights Act ("USERRA") grants reemployment rights and benefits to employees who leave civilian jobs to perform military service.<sup>32</sup> Although USERRA focuses on the duty to reemploy returning service members, pension plans are subject to a provision that governs returning service members' pension rights and benefits.<sup>33</sup> Under section 4318 of USERRA, the Pension Board has an obligation to credit for retirement purposes intervening military leave to county employees who return to county employment after military service. It is important to recognize that USERRA does not apply to military service performed by an employee prior to their County employment. These issues are addressed in "Military Service Credit" on page 33 of this publication.

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<sup>31</sup> 4 Pa. Code § 250.12

<sup>32</sup> 38 U.S.C. §§ 4301 et Seq.

<sup>33</sup> 38 U.S.C. § 4318(a)(1)(A).

## V. PLAN ADMINISTRATION

### ***Actuary***

Act 96 mandates that the Pension Board appoint an actuary whose compensation shall be determined by the Board. The Act requires the actuary to keep such data as is necessary for actuarial valuation purposes.<sup>34</sup> There is no definition of an actuary or listing of qualifications in Act 96. For guidance in selecting an actuary, counties may wish to use the definition of an "approved actuary" from the Municipal Pension Plan Funding Standard and Recovery Act which relates to municipal pension plans:<sup>35</sup>

"Approved actuary," a person who has at least five years of actuarial experience with public pension plans and who is either enrolled as a member of the American Academy of Actuaries or enrolled as an actuary pursuant to the Federal Employee Retirement Income Security Act of 1974 (ERISA).

The services of an actuary are essential for the proper administration of the county's pension plan. The actuary evaluates the accrued and projected benefits of the membership of the pension plan in order to provide a reasonable estimate of the contributions required to fund the promised benefits. This is an important element in establishing the funding policy of the pension plan. Periodically, the actuary should perform a valuation of the plan, preferably annually. The valuation is an estimate of the long-term cost of the pension plan, and should include estimates of the liabilities created by three distinct groups of members of the retirement plan - active members, inactive members (terminated but vested) and retired members. The total liabilities for these three groups are then compared to the assets held by the pension plan to determine the contribution rate necessary to fund both the unfunded liability and normal costs. Unfunded liabilities are the benefit amounts to be paid by the plan which are not yet funded. They are created when the pension plan starts, by subsequent benefit increases, and by variations between actual and assumed experience. Normal costs are liabilities associated with an estimate of future service.

The Pension Board should request that the actuary also perform an actuarial valuation when changes are proposed in the benefit structure or eligibility requirements, prior to taking action on those changes. The county should utilize the actuary as an advisor and ask for advice before making any changes in the plan's benefits, contributions, or other options. This will allow the county to fully consider the impact and cost of the proposed changes.

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<sup>34</sup> 53 P.S. § 895.102

<sup>35</sup> 53 P.S. § 895.102

The Pension Board needs to be aware of the assumptions being used by the actuary when actuarial valuations are conducted. Several assumptions must be made on the future status of the pension plan, including rate of future investment return, inflation, asset valuation method, funding method, the probability of death or employment termination, age and disability retirement rates, salary increases, system expenses, and future membership size.

These assumptions are necessary because county pension plans are usually assumed to continue to operate indefinitely and are not expected to terminate. The actuary advises and assists the Pension Board in selecting the actuarial cost method best suited to the plan, and in setting reasonable assumptions.

The actuary also performs special calculations for the Pension Board for disclosure in the system's annual financial reports (such as the Act 293 report). Other services provided by the actuary include the projection of the cash flow needed to fund benefits, reviews of the system's experience to determine if any adjustments are needed, and assistance in the calculation and certification of individual benefit amounts.

### ***Accountants and Auditors***

There is nothing in the law requiring an audit of the county pension fund, but an annual audit is highly recommended. Some counties have this done by their elected auditors. Often the independent auditors who perform the county's financial statement and single audit also audit the pension fund, and this is usually sufficient, if the auditors hired by the county are qualified to audit pension plans. Particular emphasis should be placed on prior experience with public pension plans. An independent audit of the fund should probably not be done by the county controller due to an apparent conflict of interest when the county controller and pension board secretary positions are held by the same person.

In any case, a contract or letter of agreement including fees for the services to be rendered should be executed.

Accounting firms are not generally record keepers for the county pension plan; this is usually done by the plan's custodian. If an accounting firm is used, they should not be doing the independent audit of the plan.

### ***Legal Counsel***

Most county Pension Boards avail themselves of either in house or contracted legal counsel to provide advice and information on pension matters. It is probably best to hire a solicitor who has experience and

knowledge in the area of county pensions. If the county solicitor is used as solicitor for the Pension Board, it is advisable to confirm that there are no conflicts of interest and to have a separate contract between the attorney and the Pension Board outlining what services are to be performed, and the amount of the annual retainer for these services. If an issue arises which results in conflict of interest, the Pension Board may need to hire a separate attorney.

The legal counsel to the Pension Board will typically assist in drafting resolutions, and will be needed to deal with issues such as Domestic Relations Orders. Unfortunately, often the legal counsel is not always involved in all Pension Board meetings unless a hot issue arises. Regular involvement of the legal counsel should be encouraged.

### ***Investment Managers and Investment Consultants***

There are a variety of investment advisors for pension plans. An investment firm and/or manager is responsible for the actual investment of the plan's assets. Their fees are usually based on the market value of the assets they manage, usually on a sliding scale. For county pension plans, their total fees typically run from a low of 0.3 percent to as much as one percent. The size of the plan's assets is a major factor in determining the percentage.

When does a county need an investment firm and/or manager? The answer is usually dependent on the level of assets of the fund. To make this decision, counties need to examine costs and economies of scale.

An investment consultant fills a different role for a Pension Board. They assist the county in developing investment policies and guidelines and determining strategic asset allocation. Typical roles for a consultant would be performance review and reconciliation, or assisting the county with a search for an investment manager. Fees for investment consultants can be on a fixed basis arrangement for services provided or can be based on a percentage of assets under advisement.

The County Pension Law does provide qualifications for investment managers or consultants.<sup>36</sup> Most counties select independent investment firms and consultants. However, the County Pension Law does not prohibit the use of a single firm that provides investment management, custody and consulting services.

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<sup>36</sup> 16 P.S. § 1167

It is essential when selecting an investment manager or consultant that the contract be carefully reviewed so the county has the ability to change the manager/consultant when it desires, without any penalty or encumbrance of the plan's assets. There should be no penalty for early withdrawal from any management agreement.

The Pension Board needs to be aware of the potential for conflicts of interest when hiring investment firms and consultants of any kind. This is especially true when hiring a firm to review and rate the performance of an investment manager. Counties should consider, although it is not required, using a consultant to conduct performance reviews, separately and independently from the firm providing investment management services and custody.

The Pension Board should thoughtfully consider diversification of risk. It is important to note that having multiple investment managers does not, itself, diversify risk. For example, hiring two investment managers with identical investment strategies does not diversify the pension plan portfolio. Diversification is achieved by using a mix of investment securities, for example, bonds, equities, real estate, notes, commercial paper, etc.

The Pension Board needs an effective check and balance to verify the investment manager's reported fund value. This is typically done by the consultant using custodian statements. If the county employs the same firm as investment manager and custodian, it is important to closely monitor reports, at least quarterly, to make sure values are accurate. If this cannot be done in house the county might want to consider a periodic review (for example, annually) by an independent consultant.

The Pension Board should require investment managers to prepare reports which adhere to the Global Investment Performance Standards (GIPS) promulgated by the GIPS Executive Committee.

GIPS does not apply to consultants. Although no standard currently exists, it is generally best practice for consultants to calculate performance using daily cash flows and the modified Dietz method of time-weighted returns.

### ***Custodian***

The Pension Board needs to ensure there is adequate safekeeping of the plan's assets. Most counties utilize a bank as their plan custodian. The custodian is responsible for keeping the assets and for the collection of income generated by the assets. The custodian should provide regular, usually monthly, reports to be used by the Pension Board secretary for recordkeeping. Custodians may also be responsible for generation of pension

benefit checks and tax reporting, although, some counties prefer to retain these functions.

Most county pension plans segregate the investment management and custodian functions for better protection of the plan's assets. By doing so, the plan has two independent sources for asset value verification, and the investment manager does not have direct access to the plan's funds. The incremental fees, expertise, depth of resources, timing and quality of forward looking advice should be considered before deciding to separate management, custodian and consulting services.

### ***Selecting Service Firms and Reviewing Their Performance***

The best way to select a service provider is to conduct a Request For Proposals (RFP) process. Since services provided to the Pension Board are professional services, the selection process is exempt from the sealed bid provisions of the County Code.<sup>37</sup>

The most important part of the RFP process is creating the RFP. It is essential the RFP clearly explain the services the county requires, whether they are for an investment manager, investment consultant, custodian, actuary or legal counsel. It is usually easiest to start with sample RFPs used by other counties or obtained from other service providers, and then adapt the RFP to reflect the needs of the county. Information about the county's pension plan, such as number of retirees, employees, asset size, and other service providers employed by the county should be included with the RFP. This allows the firms responding to the RFP to provide the county with an accurate response.

Factors the county should consider when selecting a professional to provide service to the pension plan include experience with Pennsylvania county pension plans, performance track record (five to ten years for investment managers), client list, length of service of the firm's staff, sample contract, any potential conflicts of interest, and fees to be charged.

Once a firm has been selected it is important to enter into a contract or letter of agreement which sets forth the services to be provided to the county and the cost to the county. The contract should have a short cancellation clause explaining the notice either side must provide to end the contract. There is an SEC requirement that a contract cannot contain a penalty if it is terminated by the client. The contract or letter of agreement should also include how often performance will be measured, what performance measures will be used and how often a firm representative meets with the Pension Board.

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<sup>37</sup> 16 P.S. § 1802; 16 P.S. § 5001

### ***Non-compatible Services***

In the interest of avoiding conflicts of interest, it is suggested that:

- The firm conducting performance review of the plan's investment manager not be in the business of providing investment management services to pension plans.
- The firm providing investment management of the plan's assets should not be the custodian of the assets.
- The consultant should not be the custodian of the plan.

In making these decisions the Pension Board should balance the risk of conflict of interest with the risk of higher fees and lower returns that can occur with separation of these core services.

### ***Performance Review***

The Pension Board needs to review the performance of the pension plan on a regular basis, preferably quarterly. The types of questions which need to be asked of the county staff who work with the pension plan, and of the professional service providers, are:

- Is our pension plan being funded properly?
- Is our investment manager meeting the objectives set forth in our investment plan?
- Are the assets of the plan being adequately safeguarded?
- Are there any problems being experienced with any of the service providers?
- Is the plan's benefit level adequate?
- Are the investments consistent with the Investment Policy and within the guidelines?
- Are the employees and retirees receiving quality, regular communications from their pension plan?
- Are the required reports being filed with the appropriate agencies?
- Is there any pending legislation which could affect the pension plan?
- Are the service providers working together to provide service to the plan?

Reports to the Pension Board should contain the following information:

- Listing of investments
- Dates of purchases and sales of investments
- Cost of investments (and the cost basis used)
- Earnings/Income/Accrued Income
- Gain/loss or disposal

- Market value of investments
- Market value history (optional)
- Commissions paid to broker
- Level of investment risk
- Investment management fees
- Allocations (and whether they are within guidelines)

### ***Recordkeeping***

Who is responsible for recordkeeping of the county pension plan? Historically this has fallen to the controller's office, but as more counties create personnel or human resources departments the responsibilities may shift. In smaller counties, the county treasurer may handle this function, or the chief clerk. Ultimately, it is the responsibility of the Pension Board to decide who should be responsible for the plan's recordkeeping. Whether done in house by county staff members, or by a service firm, proper recordkeeping is essential.

Complete payroll history for all employees must be maintained. A key figure in computing an employee's pension payment is the three highest earnings years. For most employees this is the last three years of employment, but some employees may have higher wages in earlier years due to overtime, or a recent wage reduction, or unpaid leave. To compute the three highest payroll years, the county will need to retain all back payroll data by pay period.

An individual pension file should be kept for each employee, including decisions the employee has made about beneficiaries, options chosen at retirement, records of alternate payees based on domestic relation orders, etc. The county should keep a record of anything that affects the employee's pay or retirement.

The following information needs to be maintained on each active employee (currently employed by the county):

1. Member's employee number or other means of identification
2. Date of Birth
3. Member's sex
4. Date of Hire
5. Period of credited service split, if required by the benefit formula of the system, between prior service and current service
6. Member's current gross wages by pay period
7. Member's total contributions, including accumulated interest if credited, with a breakdown by:
  - Mandatory (pretax)
  - Optional (taxed)

- Mandatory (taxed before a specific date)
- 8. Data on Purchased Service Time (Military, Public School, Prior County, etc.)

The following data needs to be maintained for inactive members (no longer employed by the county but vested in the pension plan):

- 1 - 6. The same items 1 through 6 for active members
- 7. Member's final average salary or equivalent
- 8. Date at which deferred benefits are to begin

The following data needs to be maintained for retired members and beneficiaries:

- 1 - 3. The same items 1 through 3 for active members
- 4. Beginning date of retirement benefit
- 5. Type of retirement, for instance, age and service retirement, service connected disability or non-service connected disability retirement, service connected or nonservice connected death benefit
- 6. Type of monthly benefit, for instance, straight life benefit or one of the options selected by the retiree, or survivor benefit payable to a beneficiary of a deceased member or retiree
- 7. Amount of monthly benefit
- 8. Name, address, date of birth and sex of the person who will be entitled to receive survivor benefits

Earning years should be calculated to the date of retirement, not on a calendar year, month or quarter. Counties need to decide how to handle years with 53 or 27 pays.

It is important that if recordkeeping is being done by a service firm, it be coordinated with the county's payroll system.

In addition, all records necessary to prepare federal form 1099R (the form used to report pension income to the IRS) must be maintained, including Gross Pension Payments, Taxable Payments and Taxes Withheld.

### ***Retirement Counseling***

The county should make available retirement counseling sessions for employees prior to their date of retirement. Options need to be reviewed and explained. This can be done by county personnel or by one of the service providers hired by the Pension Board.

Some counties provide pre-retirement seminars for their employees, and arrange presentations by, for example, a tax attorney, a representative from Social Security, a financial advisor and the pension plan's actuary.

The local office of the Department of Aging can also offer assistance with this type of information. The purpose of the seminar should be to advise the employees about their options and to highlight areas for their consideration. If the county has a deferred compensation program, retirement counseling should also include the impact and interaction of the deferred compensation benefits. This should be coordinated with the counselors provided by the deferred compensation program.

### ***Entrance Interviews***

The county should have a formal process established so all new county employees, regardless of their location or the department doing the hiring, are given consistent and accurate information about the county pension plan. At the time of employment new employees should be completing beneficiary forms, deciding on voluntary contributions, and exploring options for buying back prior county service or military service. Entrance interviews should be done by the county personnel office or other county staff as designated by the Pension Board.

### ***Answering Employee Questions***

Day to day employee questions about the county pension plan are usually directed to and answered by the secretary of the Pension Board and/or the County Human Resource Department, as this person is responsible for the administration of the plan. However, another qualified individual can be designated as the employee contact. Employees need to be notified who they should direct their questions to. This contact should also be required to obtain answers to non-routine questions from the service providers being employed by the county.

### ***Communications With Employees***

Typically, providing information about the pension plan is something most plans, public and private, do not perform well. Act 96 requires very little information to be provided to county employees. However, it is prudent to provide each employee with a summary plan description, regular benefit statements, and counseling sessions or seminars.

Individual benefit statements should be provided to each member of the plan at least annually. This is also a good way to keep the county's records up to date. At a minimum the county should annually provide the balance of the accumulated deductions for each member and years of credited service.

### ***Keeping Current***

Pension Board members need to stay abreast of proposed retirement legislation. This can be accomplished by reading updates from the county's service providers and the County Commissioners Association of Pennsylvania. Many proposed bills may not necessarily correspond to the county pension plan's best interest, and may have a financial impact on the plan. By keeping current, Pension Board members can affect proposed legislation before it becomes law, and be prepared to implement or respond to changes that are enacted.

### ***Administrative Expenses***

The administrative expenses of the pension plan, excluding actual pension benefits, shall be paid by the county based on estimates submitted by the Pension Board. These expenses may be paid from the actual pension fund from year to year, unless it is determined by the actuary that such payment will affect the actuarial soundness of the fund.<sup>38</sup>

The county will need to keep a detailed listing and accounting of what administrative expenses are being charged to the fund. At the beginning of the fund year the Pension Board should decide what expenses will be charged to the fund so the effect of the expenses can be considered by the actuary.

### ***Creation of County Pension Fund***

Upon establishment of a county pension plan, each county must also establish a County Employees' Retirement Fund (pension fund). It is funded by all appropriations made by the county, contributions made by the members of the pension plan, pickup contributions, and from all interest earned by the investment of moneys of the pension fund.<sup>39</sup> The fund is managed by the members of the Pension Board who are the trustees of the fund.<sup>40</sup> The Board has the power to invest the fund moneys, subject to the terms, conditions, limitations, and restrictions imposed by law on fiduciaries.<sup>41</sup> The Board has the power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments and of the moneys belonging to the pension fund.<sup>42</sup>

### ***Structure***

The county's plan must provide for the following:

- age of superannuation retirement eligibility

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<sup>38</sup> 16 P.S. § 11165

<sup>39</sup> 16 P.S. § 11657

<sup>40</sup> 16 P.S. § 11659

<sup>41</sup> 16 P.S. § 11659

<sup>42</sup> 16 P.S. § 11659

- length of service needed for superannuation retirement eligibility along with the method of computing reduction factors
- refunding of accumulated deductions and crediting of interest to employees who separate from service
- eligibility criteria for disability retirement
- vesting or deferred benefit privileges
- eligibility criteria for death benefit privileges
- formula used to compute normal retirement benefits
- optional methods of paying retirement allowances
- provisions for cost-of-living increases
- method of determining rates of employee contributions
- method of determining rates of county contributions
- method of computing costs for prior service to be shared by the county and the member
- method of purchasing allowable military service, and other information which might have a bearing on the costs or benefits of the retirement plan, which might be required by the Pension Board in the administration of the plan

### ***Benefit Levels***

The Pension Board must establish a benefit level (Class 1/120, 1/100, 1/180, 1/70, 1/60, 1/50, or 1/40). "Class" here refers to the benefit level the county has authorized; for example, Class 1/120 means that the defined benefit is 1/120 of the average final three years' salary times the length of service. Note that the 1/50 and 1/40 options were available for county selection only for the period of December 16, 2003 to December 16, 2004.

## **V. INVESTMENTS, FIDUCIARY RESPONSIBILITY, FUNDING THE PLAN**

Pension Board members must comprehend that they and they alone have the fiduciary responsibility for the county pension plan, even if they hire firms to provide any or all plan services. The ultimate responsibility rests with the Pension Board.

### ***Investment Philosophy and Investment Plan***

The Pension Board should adopt a written investment policy statement that includes the investment philosophy of the county's pension plan as well as the risk and return objectives.

The investment philosophy should be written in consultation with the pension plan's investment manager and/or consultant. The Pension Board will need to make decisions about the types of investment vehicles the pension plan will utilize, and which types it will not, as well as the amount of risk the Pension Board is willing to accept, and balancing the potential for higher return against the assumption of higher risk. The investment philosophy should be reviewed periodically, particularly when a new member joins the Pension Board. The plan return objectives should be in alignment with the assumed rate of return being used by the plan actuary.

The investment policy statement should contain information regarding the purpose of the fund, investment objectives, investment manager authority and limitations, time horizons for performance review, asset mix parameters, information on desired portfolio diversification, quality of investment holdings and frequency of monitoring and reviewing meetings.

### ***Directed Brokerage***

The Pension Board can direct their investment manager to utilize specific brokers when conducting buy and sell transactions on behalf of the pension fund. However, this practice may not always be in the best interests of the pension fund. Placing directed trades will reduce the investment manager's ability to "block trade." Block trading allows the investment manager to combine orders on behalf of multiple clients to secure better execution and commission prices. Directed brokerage can result in higher costs and can reduce the total return of the fund. It is important to remember that all actions and decisions should be made in the best interest of plan participants.

If a county decides it wants to direct what broker or brokers must be used by the investment manager, the pension board needs to carefully examine

the potentially higher fees (commissions) to be paid to the directed brokers and compare them with the fees which can be obtained by the investment manager through block trading. The services that the directed broker provides to the county pension plan should also be evaluated. A difference of just one cent per share in commissions can mean a substantial difference in cost depending on the size of the pension plan and the number of shares traded annually.

### ***Employer Contributions***

The funding of the Annual Required Contribution (ARC) of the pension plan is a proper fiscal responsibility of the county commissioners or council.<sup>43</sup> The amount to be contributed annually is calculated by the plan's actuary.

The traditional interpretation of ARC funding held that the County Pension Law required the actuary to furnish to the county a number representing the county's Annual Required Contribution (ARC), which becomes a county liability, but did not include a statutory obligation to make the payment. This changed with a 2005 Commonwealth Court decision which does in fact make it a current funding obligation.<sup>44</sup>

The Pension Board should thoughtfully consider the impact of changing benefit levels as this can have a significant actuarial impact on the pension plan. The plan's actuary should be consulted and cost implications should be completely examined.

### ***Employee Contributions***

Each member of the pension plan is required to contribute to the pension fund by payroll deduction a percentage of salary. Act 96 contains a listing of the contribution percentages:<sup>45</sup>

Class 1/120	5%
Class 1/100	6%
Class 1/80	7%
Class 1/70	8%
Class 1/60	9%
Class 1/50	9%
Class 1/40	9%

Employees may contribute additional moneys to the pension plan by payroll deduction. These amounts may be up to ten percent more than their applicable contribution percentage and must be approved by the Pension Board. These amounts are contributed on an after tax basis.

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<sup>43</sup> 16 P.S. § 11661

<sup>44</sup> County of Luzerne v. Luzerne County Retirement Board, 882 A. 2<sup>nd</sup> 531 (2005)

<sup>45</sup> 16 P.S. § 11657 (b)

### ***Reduction of Contribution Percentages***

The Pension Board may authorize members of the pension plan to individually elect to reduce their contribution percentage to any of the percentages required for any class lower than member's designated class.<sup>46</sup>

### ***Member Interest Earnings***

By January 31 of each year, the Pension Board must determine the rate of regular interest to be credited to member contribution accounts for the current calendar year. The rate of interest must be at least four percent and not more than five and one-half percent.<sup>47</sup>

### ***Transferring Classes***

The Pension Board may at any time authorize members of the pension plan to transfer classes.<sup>48</sup>

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<sup>46</sup> 16 P.S. § 11657 (e)

<sup>47</sup> 16 P.S. § 11656

<sup>48</sup> 16 P.S. § 11657 (g)

## **VI. ACTUARIAL VALUATION AND ACCOUNTING**

### ***How Do You Tell if Your Plan is Funded Correctly?***

There are two criteria the Pension Board needs to evaluate in order to determine if the county's plan is being funded correctly:

1. Is the plan being actuarially valued on an annual basis?
2. Is the county funding the plan actually contributing moneys as called for by the actuarial valuation?

### ***Actuarial (Annual) Valuation***

Since the level of benefits the county may provide is determined by law, one of the key roles of the actuary is to determine how much the county needs to contribute to the pension plan to fund these benefits. The law also fixes the rate of employee contributions and, the actuary's calculations reveal the required level of county contributions.

An actuarial valuation is the mathematical process by which the actuary makes these determinations. It is often called an annual valuation since it is usually done each year. Most valuations include a calculation of the "initial unfunded liability," the benefit amounts to be paid by the plan which are not yet funded.

In addition to calculating the initial unfunded liability of the pension plan, most actuarial valuations also determine a "normal cost." In the case of the counties, this is represented by the Annual Required Contribution (ARC). This is the cost of the employees' service being rendered this year. Putting these together, an actuary using the level contribution objective will generally call for a county contribution that equals the total of the normal cost (the cost of benefits currently being accrued) and an amortization payment on the initial unfunded liability. The amortization payment is normally calculated to liquidate the initial unfunded liability over 15 to 30 years.

The manner in which the total liabilities of the pension plan are allocated between normal costs and amortization payments is governed by the "actuarial cost method." Some of the more commonly used methods are "entry age," "attained age," "projected unit credit," and "aggregate."

The methods have variations and sometimes a combination of methods is used. The method(s) used will affect the outcome to varying degrees, and should be identified in the actuary's report.

In order to complete an actuarial valuation, the actuary needs statistical data on all active, inactive and retired members of the pension plan. (See "Recordkeeping" in Section V on page 9). The actuary will also need information regarding the assets of the retirement system as of the valuation date. Since the valuation date usually coincides with the accounting date of the pension plan, the financial data is usually available in the accounting balance sheet, assuming the plan's fiscal affairs are subject to audit by professional accountants.

The normal flow of information and activity which constitutes the actuarial valuation process may be summarized as follows:

**A. Covered Person Data**

*(furnished by the pension plan administrator)*

\*Retired employees now receiving benefits

\*Former employees with vested benefits not yet payable

\*Active employees

**B. Asset Data - Cash and Investments**

*(furnished by the pension plan administrator or custodian)*

**C. Assumptions concerning future financial experience**

**D. Determination of system financial position and/or new contribution rate**

"D" is determined by adding together the information and data from A, B and C.

***Assumptions***

One step in an actuarial valuation is to compute the liability for benefits to be received by persons now retired, and by former employees with vested benefits not yet payable. For this purpose, "active actuarial assumptions" must be made.

Assumptions are often made regarding future experience, all of which can affect the size of the county's annual contribution to the pension plan, would include the following:

Investment Return - Money paid at any time other than the present has a lower present value.

Pay Increases - When employees render service now, they receive a promise of retirement benefits which are usually based on their average pay in the years just before retiring. Pay increase assumptions link today's pay to future average pay.

Change in Size or Characteristics of Active Employee Group - If it is known that group size will change in the future, assumptions as to the rate of change and duration of the change period must be made.

Age and Service at Retirement - Many employees will defer their retirement instead of collecting benefits when they first become eligible.

Death After Retirement - The probability of employees' dying at each possible age must be taken into account.

Death in Service - The probability of some employees dying while still in service to the county must be taken into account.

Family Composition - If benefits are payable to the family of a deceased employee, assumptions must be made as to the likelihood of marriage or remarriage and the number of children.

Withdrawal from Employment - Not all employees will remain in county service until eligible for vesting or for full retirement.

Pension Boards should discuss these assumptions, as well as any others made by the actuary, with their actuary to be certain the assumptions are reasonable for their county work force.

### ***Government Accounting Standards Board (GASB)***

GASB is responsible for establishing generally accepted accounting principles for governments. The independent auditors working on the county pension plan will be using these standards. (FASB, the Financial Accounting Standards Board, sets standards for the private sector.)

GASB issued new accounting rules, GASB 67 and 68, aimed at improving the accuracy of financial reporting, which took effect in January 2014 and January 2015. The new accounting standards include significant changes that will adversely affect valuations for governmental pension plans. One major change is to use a market-based valuation of assets for reporting purposes. Previously, changes in assets due to market volatility have been

“smoothed” over a three to five year period. The new standards eliminate smoothing for reporting purposes. Additionally, the new standards require a different rate of return in evaluating liabilities. Although the share of liabilities expected to be covered by plan assets will still be discounted by an assumed rate of return, the remaining unfunded liabilities will be discounted by a more modest municipal bond rate that reflects the county’s responsibility for its liabilities. This will effectively increase liabilities (and decrease funding ratios) for most plans.

The GASB 43 rules require counties to value the future cost of retirement benefits and list it on the county’s financial statement as a liability.

***Valuation of Post-Retirement Medical Benefits***

If the county provides post-retirement medical benefits, an actuarial valuation will reflect the cost to the county. One major consideration which the county needs to address when providing is the effect on the county’s financial reports. As a result of GASB issuing statements 43 and 45, the financial liability for these benefits must be included as a liability in an independent financial audit. Due to the tremendous increases in health care costs, the impact of post-retirement healthcare has never been greater. Consequently, these costs can be much greater than the pension benefits provided by the county. As a result, many counties have discontinued the provision of employer paid retirement medical benefits.

## VII. Early Retirement Considerations

The County Pension Law was amended in 1994, to enable each county to provide an early retirement incentive.<sup>49</sup> The Pension Board may not authorize more than one early retirement provision within a five year period.

An early retirement incentive is a special compensation package that is supposed to achieve specific personnel and/or financial goals, such as a reduction in staff and cost savings. It is intended to induce employees to voluntarily retire sooner than they otherwise would have.

Counties that want to consider offering an early retirement incentive should first conduct a comprehensive study including an actuarial valuation to evaluate the short and long term costs and effects of such an offer. If it is then determined that an early retirement incentive is appropriate, the following steps will need to be taken:

**1. The commissioners (or council in Home Rule Counties) must adopt a resolution authorizing a special early retirement program.** This resolution should include the terms and conditions of the program, such as:

**A. The beginning and ending dates of the election period.** This period cannot be less than 60 days nor more than 120 days. It is during this time that members who are going to be eligible for the special early retirement will evaluate their options and will be required to notify the Pension Board, in writing, if they intend to retire during the early retirement period (window) that will immediately follow. Each member can revoke their election to retire within a seven day period after the initial election.

**B. The beginning and ending dates of the special early retirement period.** This period must immediately follow the election period and cannot exceed 12 months.

**C. The eligibility requirements.** To be eligible, the member must be an active participant of the county pension plan. Persons who are terminated/vested or retired are not eligible. The member must have attained age 55 and have a minimum of ten years of credited service when they actually retire during the special retirement period, or have 30 years of credited service with no age requirement. Actuarial reduction factors will be used where applicable. The minimum years of service for eligibility does not include the additional service that would be credited under the special early retirement program.

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<sup>49</sup> 16 P.S. § 11664.1

**D. The Incentive.** The retirement incentive given to all who qualify and elect to accept the early retirement incentive is in the form of additional years of service. No less than ten percent and no more than 30 percent of a member's credited service, before the incentive is applied, may be granted. The result is then rounded up to the next full year. The additional years will be credited at the current designated county class basis. For example: A member is currently 56 years old and has 21 years of credited service. If the county grants a ten percent incentive the member will receive an additional three years of service ( $21 \text{ years} \times 10\% = 2.1 \text{ years}$ , rounded to next full year = 3 years). The Pension Board is required to actuarially determine the value of the incentive and the cost must be amortized and funded over no more than five years.

**2. The county's resolution must be approved by the Pension Board.** Before any resolution is passed, the Pension Board will want to determine the appropriate time to provide such an incentive, since no more than one special early retirement provision can be authorized within a five year period. Furthermore, the Board will need to recognize that the increase in the actuarial accrued liability attributable to the early retirement incentive is required to be valued and amortized by level dollar payments over the five years after the early retirement period. The Pension Board will also want to consider the cost, time and the administrative work involved in implementing and communicating any early retirement incentive being offered.

**3. Each member who is eligible for the special early retirement incentive must be notified and given information regarding the benefits available under the program.** Sufficient lead time must be provided to handle the additional administrative work involved in preparing data required to calculate the estimated enhanced benefits. Many counties have procedures in place for handling routine retirements, but most are not prepared for the additional calculations that a special early retirement program could produce.

## **Evaluating the Merits of an Early Retirement Incentive Program<sup>50</sup>**

When considering whether to offer an early retirement incentive program (ERIP), the county should first address the following questions:

### **GOALS**

- What are the personnel goals to be achieved?

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<sup>50</sup> Early Retirement Incentive Programs, Prepared for NEA Research by Actuarial Sciences Associates, Somerset, New Jersey.

- What are the financial goals to be achieved?
- Are these goals complimentary or mutually exclusive?
- Is an ERIP the best mechanism to achieve these goals?
- What amount of cost savings is worth jeopardizing personnel goals?
- When should short term savings justify long term goals?
- Can a voluntary severance program accomplish the same personnel and budgetary goals?

### **IDENTIFYING PROGRAM COSTS**

- What incentive is sufficient to provide a realistically adequate standard of living after retirement to those who accept the ERIP?
- What incentive is sufficient to induce the desired number of retirements?
- Are financial incentives flexible enough to attract long and short term employees?
- What are the short term and long term financial costs of the ERIP?

### **WHO WILL PAY? WHO WILL SAVE?**

- Is it possible to structure an ERIP program that represents a win for both employer and employees?
- Who will pay these costs? Employers? Employees? The pension system?
- Who will receive the benefit of any short term or long term savings?
- Have savings been accurately calculated against program costs?
- Is the pension system funded well enough to absorb the expected costs?
- Are other postretirement benefit systems (for example, medical benefits) well funded?
- How will costs added to a pension system affect future benefit changes?

### **ADMINISTRATIVE ISSUES**

- What rights to terminate employment early does the employer have?
- What are the rights of represented union employees?
- What is the political climate for the exercise of these rights?
- Are administrative and communication systems in place to handle an ERIP?
- Will an ERIP offered today raise expectations about future ERIPs?
- Will an ERIP cause conflict between active and retired employee groups?
- Are applicable IRS and ADEA (Age Discrimination in Employment Act) requirements met?

There are, of course, a host of other detailed questions that may be asked prior to an ERIP offer. In listing the key questions above, it should be clear that a great deal of thought should precede an ERIP offer, and this thought process should be based on establishing goals and the best means to accomplish them.

## VIII. CURRENT COUNTY PENSION ISSUES

### ***Who is a Member of the Plan?***

The county pension law states that each elected officer may, and all other county employees shall be required to become members of the retirement system.<sup>51</sup> Judges, Magisterial District Justices, and some court administrators, because they are compensated by the Commonwealth and are therefore state employees, are not eligible to participate in the county pension plan.<sup>52</sup>

As soon as an individual first meets the definition of a county employee, they are required to become a member of the retirement system. Each member of the pension plan is required to contribute to the fund and must remain in the plan until their service is terminated. Act 96 provides the following definition:

“County employee” means any person, whether elected or appointed, who is employed by the county, the county institution district, in the county prison or in any other institution maintained by the county from county moneys, or who is employed by any county or State official and paid by such official from moneys appropriated by the county for such purpose, whose salary or compensation is paid in regular periodic installments or from fees collected by his office, but shall not, except as hereafter provided, include any person after the effective date of this act on a part-time basis.<sup>53</sup>

Only newly elected county officials who elect not to participate in the system and county employees who are initially hired on a part-time basis may be excluded from participation in the county pension plan.

“Part-time” means employment with the expectation of completing less than 1,000 hours of service during the 12 month period beginning on the first day of employment and each succeeding 12 month period thereafter.<sup>54</sup>

Emphasis must be placed on the expectation of the employer over an extended period. Persons excluded from participation in the pension plan should be limited to temporary or short-duration employees expected to work less than 1,000 hours each year from the start of their employment. If this expectation changes and the individual is no longer classified as

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<sup>51</sup> 16 P.S. § 11660

<sup>52</sup> Judges are members of the State Employees’ Retirement Plan. See 42 Pa. C.S.A., §§ 301, 3526, 3352 and 71 Pa. C.S.A., §§ 5101 et Seq.

<sup>53</sup> 16 P. S. § 11652(2)

<sup>54</sup> 16 P. S. § 11652(2.1)

employed on a part-time basis, they must become a member of the pension plan. Once an employee qualifies for inclusion in the plan they will accrue annual benefits and be required to contribute into the plan even if their hours worked are less than 1,000 hours annually.

### ***Cost of Living Allowances***

Pensioners who are living on a fixed income have limited opportunity to counteract the effects of inflation and the erosion of their purchasing power. The Pension Board is required to review the cost of living situation at least once every three years to determine if a cost of living increase can or should be granted. The most commonly accepted measure of inflation is the Consumer Price Index (CPI). The decision to grant a cost of living increase should be made after consultation with the pension plan's actuary, and should consider the overall benefit levels of the plan, the actuarial cost of providing the increased benefit, and the source of funding. These considerations should guide the Pension Board in determining whether to adjust the percentage and the effective date of any increase.<sup>55</sup>

### ***Benefits***

County pension plans are a unique combination of defined contribution and defined benefit plans. Members are required to contribute a percentage of their salary to the plan, and their benefits are defined by what is in their account at retirement. The county side is a defined benefit plan where the benefit level is determined by a formula which includes length of service, benefit level, and a final "average" salary period. The county's contribution is actuarially determined. (See the discussion of benefit levels on page 19.)

Retirees (or their beneficiaries) are guaranteed to receive the amount paid into the fund via their contribution or payroll deduction, plus interest credited by the county.

The guaranteed distribution, less payments already made to the retiree and applicable to the guaranteed amount, must be determinable in case of death. Cost of living adjustments are not considered in this determination.

### ***Buying Back Time***

Former employees of the county who return to county employment, and who withdrew their prior contributions from the pension fund, may buy back their prior county, military or public school service by paying into the pension fund the amount of their prior minimum required payroll deductions plus interest. If this is done, the amount repaid should be classified as an already taxed employee contribution.

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<sup>55</sup> 16 P.S. § 11680(b)

It is essential the county keep a clear record of what is done when an employee buys back time. It is probable the county will need to contribute to match the defined benefit side of the employee's buy back. Additionally, there is no requirement for employees to notify the county that they will be buying back military time, public school time or prior county time so it is hard to factor this into the actuarial assessment of the plan as the county does not know if or when it will occur.

### ***Military Service Credit***

An employee may purchase credit for military service performed prior to County employment ("nonintervening military service"). The amount due for the purchase is calculated by applying a five percent contribution rate for both the employee and the county to the average compensation of the employee during the first three years of credited service with regular interest. These contributions must be paid by the employee.<sup>56</sup>

Intervening military service must be treated differently. This is performed by an employee who takes military leave for military service in a time of war, national emergency or armed conflict so proclaimed by the President or Congress of the United States.<sup>57</sup> Under the County Pension Law, the employee "shall have credited to his employment record, for retirement benefits, all of the time spent by him in such military service." This obligation also exists under federal law, which requires the pension plan to credit for retirement purposes military leave to county employees who return to county employment pursuant to USERRA's reemployment requirement.<sup>58</sup> The County Pension Law, however, imposes an additional financial requirement on counties by statute further requiring that the employee's contributions plus interest "be paid by the county."

### ***Early Retirement Incentive***

Act 71 of 1994 allows counties to periodically offer an early retirement incentive to county employees. The intent is to allow counties to achieve budget savings by reducing the work force without having to resort to layoffs. The Act allows commissioners, with the assent of the Pension Board, to offer an early retirement option no more than once in every five year period. The incentive applies, at the county's option, to employees with 30 year's service or employees attaining age 55 with 10 years of service. The incentive is in the form of a service credit, set by the county, of no less than 10 percent and no more than 30 percent of service. The county is required

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<sup>56</sup> 16 P.S. § 11663(b)

<sup>57</sup> 16 P.S. § 11663(a)

<sup>58</sup> 38 U.S.C. § 4318(a)(1)(A)

to actuarially determine the value of the incentive and amortize its cost over no more than five years.

See Chapter VII on “Early Retirement Considerations” on page 27 for additional information on this subject.

### ***Pickup Contributions***

Pickup contributions are made by the employee but are treated as mandatory contributions made by the employer. This allows pickup contributions to be treated as deferred contributions and therefore there is no federal income tax on the pickup contribution until withdrawn as a retirement benefit. Allowing employees to make pickup contributions involves no change in the salary or deduction process, simply a legal change to benefit the employee by designating the contribution a pickup contribution. Many counties have selected this option. Pickup contributions are taxed when retirement benefits are paid, not when the contribution is made. If the employee opts to make voluntary contributions, the voluntary contributions are not tax deferred.

### ***Post Retirement Benefits***

The law does not allow any other post retirement benefits to be funded by the county pension plan. The Pension Law does include language about insurance after retirement<sup>59</sup> but this is intended to allow those plans that have selected an insurance company as an investment vehicle to continue the insurance which may be included with that vehicle. Counties may offer post retirement benefits to their retirees but they may not be funded by the county pension plan.

### ***Option 4***

This option allows employees upon retirement to withdraw in a single sum all of their accumulated deductions (after tax contributions and before tax contributions plus interest, and including pickup contributions). This option was originally offered to retirees when interest rates were very high, so many were willing to pay taxes on the lump sum withdrawal and reinvest at much higher rates than the pension plan offered. Since this option is often just too tempting for many retirees, financial counseling is recommended so that the employee has full information about the tax consequences, and the effect on the employee’s pension benefits and long term retirement needs.

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<sup>59</sup> 16 P.S. § 11669

### ***Tax Implications***

When an employee decides to retire, they will be presented with several options regarding the form of their pension benefits. Prior to making this important decision, the employee needs to receive information about the tax implications of each option. The known tax information, including how the benefits will be reported to the IRS, should be provided by the county, its personnel office or by one of the pension service firms or consultants hired by the county.

### ***Social Security Interrelationship***

There is no integration of county pensions with social security, and no social security offset. An employee's county retirement benefits are not affected by any form of social security received by the employee. The retiree's benefits from the county will not normally affect their social security allowance.

### ***Portability, County to County, County to State***

There is no provision for portability of the Act 96 pension plans; even from county to county and even if two counties have identical plans.

In addition, if a county elected official or employee moves to state employment or state elective office (e.g. the legislature), there is no mechanism for them to convert their county assets and buy their county service into the state system. If they are vested at the county level, they can leave their assets with the county and qualify for county benefits at age 60.

### ***Payment for Administrative Costs***

The county may pay reasonable administrative costs from the pension fund. Prior to 1991, all administrative costs had to be paid directly by the county. This included actuarial, investment management, custodial, accounting, auditing, legal fees, and checkbook fees. There were no "soft dollar" fees allowed. "Soft dollar" fees allowed are costs to reimburse the county for its in-house work on the pension plan. Amendments to Act 96 in 1991 allow reasonable expenses to be paid and allow "soft dollar" fees. If a county does work in-house for the pension plan, such as accounting and issuing benefit reports, pension allowance checks, etc., the county can document the time and expense of providing this service and seek reimbursement from the pension plan.

### ***Involuntary Retirement***

Historically, anyone who is involuntarily terminated from county employment is entitled to vested pension benefits. The difficult question has become what is "involuntary?" Usually this is when action is taken by the employer to terminate the individual's employment, but also applies to elected officials

who have served at least two terms and have chosen not to run for office or who lose their election.<sup>60</sup>

### ***Elected Officials as New County Employees***

Newly elected officials may choose whether they wish to join the plan. This election should be made as soon as possible after taking office, prior to the first payroll check. However, if a county employee in the county pension plan is elected to county office, that person is not a new employee and must stay in the pension plan. This is considered continuous employment. By the same token, a reelected commissioner does not have the option to withdraw because successive terms are considered continuous service.

### ***Changing Voluntary Contribution Amounts***

It is recommended the county have a "change period" at least once a year to offer employees the opportunity to examine their options regarding voluntary contribution levels, and make changes as they desire.

### ***Labor Negotiations and Arbitration Awards***

The most common problem relating to county pension plans and the collective bargaining process occurs when the employee group requests pension related benefits that are not allowed under the County Pension Law. In general, case law is consistent that negotiations or arbitration awards cannot grant benefits that are not allowed by law.

### ***Health Benefits***

Health benefits cannot be funded by the moneys from the county pension plan.

### ***Joinders***

Employees of joinders are not normally employees of any of the sponsoring counties. They typically belong to a separate pension plan, non-Act 96 and the plan is usually not portable. For example, if the counties disband the joinder and the county hires some or all of the joinder's employees, the employees will not be able to roll their joinder pension plan into the county's Act 96 plan.

### ***Voluntary Separation from Employment***

When a non-vested employee voluntarily leaves county employment, he/she is entitled to a return of their contributions plus interest. A vested employee who voluntarily leaves county employment may, at their option, leave their accumulated deductions in the plan until superannuation age at which point they may receive a superannuation retirement allowance. Refunds may be rolled over to an individual retirement account or another qualified tax plan.

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<sup>60</sup> 16 P.S. § 11166(a)

Employees should be encouraged to obtain professional advice about rollover to avoid tax problems.<sup>61</sup>

### ***Pensions and Collective Bargaining***

Collective bargaining should not directly impact county pension plans in the same manner as it does for municipalities. This is because the definitions and benefit structure contained in the County Pension Law are set and leave no meaningful room for negotiation. For this reason, collective bargaining has not typically created problems when it comes to the proper administration of a county pension plan. (Note: post-retirement health care and DROPs are an exception.)

Of course, counties must remain diligent by ensuring that the bargaining process is not used to negotiate pension benefits that are different from or contrary to those contained in the County Pension Law.

Although the standards and benefit structure established by the County Pension Law are not negotiable, counties are wise to highlight the economic benefits provided to members of a bargaining unit. County contributions and pension benefits provided the county have great economic value to those employees. As such, this information should be used to present an accurate financial picture in the interest arbitration process.

### ***Act 44 of 2009***

Although this Act has several provisions that apply to municipal pension plans, it also includes a chapter<sup>62</sup> applicable to all "local governments" which includes counties. This chapter, Deferred Retirement Option Plans (DROP), regulates all newly created DROP programs. Because a DROP was not authorized under the County Pension Law, one impact was to authorize a new benefit. At least a few counties have since enacted DROPs. Although those who propose adding a DROP to the pension plan will invariably argue that it is a cost neutral program, this is not the case. Therefore, counties should be armed with accurate information reflecting the actuarial impact of adding a DROP if it is under consideration or sought through collective bargaining.

### ***Tiered Plans***

The County Pension Law establishes benefit levels based on the "class" authorized by the Retirement Board. Some counties have raised the question of whether it is possible to have a two-tiered pension system. Act 96 does

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<sup>61</sup> Vesting "means the right of a contributor who separates from service after having completed five or more years of credited service to leave" the deductions credited to the member's account and receive a pension allowance upon reaching retirement age. 16 P.S. § 11652(16)

<sup>62</sup> 53 P.S. §§ 895.1101-895.1131

not specifically answer this question. Generally, applicable law does not permit the county to reduce pension benefits in place for existing members of a pension plan. However, a Retirement Board likely has the discretion to establish a different benefit level (or “class”) for new employees provided that the change does not conflict with the collective bargaining rights of any effected employees. If the county is considering a different benefit level for prospective employees, it should first determine the financial need to reduce the benefit level and should consult with its solicitor before taking action.

### **Cost of Living Adjustments (COLAs)**

A COLA is an ad hoc benefit which should be reviewed at least once every three years by the Pension Board. If approved it is calculated as the retirement allowance determined at time of retirement and prior to any optional modification, times a percentage of the change in a cost-of-living index from year of retirement to year of review.

As this update of Pension Best Practices was completed, CCAP was working to obtain clarity regarding COLAs. Senate Bill 129 (and companion House Bill 239) of 2015 clarify language in the County Pension Law to allow counties to grant a limited cost-of-living adjustment (COLA), keyed to just the most recent year. The vague language of current law, which obligates counties at least once every three years to examine whether to grant a COLA, has led to interpretation that if a COLA is applied it is to be retroactive to the last time a COLA was granted. For most counties, the COLA is infrequently granted, and so going back to the last COLA and compounding forward can yield an unsupportable increase in the benefit. The limited COLA under SB 129 would instead allow a county that has fund capacity to grant much-needed adjustments to monthly benefits without the adjustments being excessive and without the adjustments imperiling the solvency of the fund.

CCAP will update this publication as SB 129 and HB 239 progress.

# **IX. APPENDIX**

## **The County Pension Law, Act 96 of 1971**

COUNTY PENSION LAW  
Act of Aug. 31, 1971, P.L. 398, No. 96 Cl. 16

### **AN ACT**

Providing for the creation, maintenance and operation of a county employees' retirement system, and imposing certain charges on counties and providing penalties.

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

Section 1. Short Title.--This act shall be known and may be cited as the "County Pension Law."

Section 2. Definitions.--As used in this act:

(1) "Board" means the County Retirement Board created by this act.

(2) "County employe" means any person, whether elected or appointed, who is employed by the county, the county institution district, in the county prison or in any other institution maintained by the county from county moneys, or who is employed by any county or State official and paid by such official from moneys appropriated by the county for such purpose, whose salary or compensation is paid in regular periodic installments or from fees collected by his office, but shall not, except as hereafter provided, include any person employed after the effective date of this act on a part-time basis. ((2) amended Nov. 21, 1990, P.L.551, No.136)

(2.1) "Part-time" means employment with the expectation of completing less than 1000 hours of service during the 12-month period beginning on the first day of employment and each succeeding 12-month period thereafter. ((2.1) added Nov. 21, 1990, P.L.551, No.136)

(3) "Fund" means the County Employes' Retirement Fund created by this act.

(4) "Accumulated deductions" means the total of pickup contributions and the amounts deducted from the salary of a contributor and paid into the fund and standing to the credit of the members' annuity reserve account, together with the regular interest thereon.

(4.1) "Compensation" means pickup contributions plus remuneration received as a county employe excluding refunds for expenses, contingency and accountable expense allowances and excluding severance payments or payments for unused vacation or sick leave.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to the credit of the members' annuity reserve account.

(6) "Retiree" means any person in receipt of a retirement allowance under this act.

(7) "Prior service" means all service as a county employe served not later than December thirty-first, preceding the year the retirement system shall be established in any county.

(8) "Original member" means a member who was a county employe on the date of establishment of the retirement system in the county.

(9) "New member" means a member who shall have become a member of the retirement system after the establishment of the retirement system in said county.

(10) "Superannuation retirement age" means sixty years of age or upwards, except as applied to a contributor who has completed twenty years of total service, in which case superannuation retirement age means fifty-five years of age or upwards.

(11) "Final salary" means the average annual compensation received by the contributor for the three highest years of service in the employment of the county, or in the event a member has not served five years, the total compensation received divided by the number of years served.

(12) "Regular interest" means interest at the rate of four per cent compounded annually, except as established by the board for member contributions.

(13) "County annuity" means payments for life or during disability derived from contributions made by the county.

(14) "Member's annuity" means payments for life or during disability derived from contributions made by the contributor and from pickup contributions.

(14.1) "Pickup contributions" means regular member contributions which are made by the county on behalf of county employes for current service in accordance with section 7(c).

(15) "Retirement allowance" means the county annuity plus the member's annuity.

(16) "Vesting" means the right of a contributor who separates from service after having completed five or more years of credited service to leave accumulated deductions credited to his account in the fund and upon reaching superannuation retirement age receive a superannuation retirement allowance. ((16) amended Dec. 16, 2003, P.L.236, No.43)

(2 amended Dec. 20, 1983, P.L.282, No.75)

Section 3. Applicability.--The provisions of this act shall apply to each county of the second class A, third class, fourth class, fifth class, sixth class, seventh class and eighth class which has or hereafter may establish a county employes' retirement system.

Section 4. County Retirement System; County Retirement Board.--(a) A retirement system may be established for county employes by resolution of the county commissioners in any county of the second class A, third class, fourth class, fifth class, sixth class, seventh class and eighth class. The retirement system shall be established on the first Monday of January of the year succeeding the one in which the resolution of the county commissioners was adopted.

(b) The system, when established, shall be administered by a county retirement board, consisting of five members, three of whom shall be the county commissioners, the county controller and the county treasurer. In counties having no elected county controller, the chief clerk of the county shall be a member of the board. The chairman of the board of county commissioners shall be chairman of the board. Each member of the board shall take an oath of office that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or permit to be violated any of the provisions of this act. Such oath shall be subscribed by the member taking it, and shall be filed among the records of the board. The members of the board shall not receive any compensation for their services, but shall be reimbursed for all expenses necessarily incurred in the performance of their duty. Three members of the board shall constitute a quorum.

Section 5. Personnel; Administrative Expenses.--The board may appoint and fix the compensation of an actuary. The county controller or the chief clerk of the county, as the case may be, shall be the secretary of the board. In counties having an optional form of government, the board shall appoint a secretary. The compensation of the secretary shall be fixed by the salary board or council, as the case may be. The secretary shall keep a record of all of the proceedings of the board, which record shall be open to inspection by the public.

The expense of the administration of this act, exclusive of the payment of retirement allowances, shall be paid by the county by appropriations made on the basis of estimates submitted by the board. However, such administrative expenses may from year to year be paid from the fund unless it is determined by the actuary that such payment will impair the actuarial soundness of the fund.

(5 amended Nov. 21, 1990, P.L.551, No.136)

Section 6. Rules and Regulations; Actuarial Data.--The board shall, from time to time, establish such rules and regulations for meetings of the board and for the administration of the fund, and the various accounts thereof, as may be deemed necessary. The board may, by January 31 of each year, determine the rate of regular interest to be allowed member contribution accounts for the current calendar year, such rate of regular interest not to be less than four per cent nor more than five and one-half per cent per year. It shall keep such data as shall be necessary for actuarial valuation purposes. The actuary of the board shall (i) periodically make an actuarial investigation into the mortality and service experience of the contributors to and beneficiaries of the fund, (ii) adopt for the retirement system one or more mortality tables, and (iii) certify to the board annually the amount of appropriation to be made by the county to the fund to build up and maintain adequate reserves for the payment of the county's share of the retirement allowances.

(6 amended June 22, 1978, P.L.495, No.74)

Section 7. County Employees' Retirement Fund; Transfers Between Classes.--(a) There is hereby created in each county of the second class A, third class, fourth class, fifth class, sixth class, seventh class, and eighth class, in which a retirement system has been established, a County Employees' Retirement Fund which shall consist of all moneys arising from appropriations made by the county, from contributions made by the members of the County Employees' Retirement System and from pickup contributions and all interest earned by the investments of moneys of the fund. The moneys contributed by the county shall be credited to a county annuity reserve account; and those contributed by the members and pickup contributions shall be credited to a member's annuity reserve account. Upon the granting of a retirement allowance to any contributor, whether as a superannuation retirement allowance, an involuntary retirement allowance or a total disability retirement allowance, the amount of the contributor's accumulated deductions in the members' annuity reserve account shall lose their status as accumulated contributions and shall be transferred to a retired members' reserve account. Regular interest shall be credited up to the date of retirement, death or withdrawal, to the members' annuity and county annuity and retired members' reserve accounts. Where a contributor separates from county service with vesting, regular interest shall be credited to all accumulated deductions credited to his account in the fund to the date on which he attains his superannuation retirement age. The actuary shall determine the present value of the liability on account of all county annuities payable to original members and the percentage of such liability which shall be contributed by the county each year over a period of fifteen years from the time the system is established until the accumulated reserve equals the present value of said liability. All such contributions shall be credited to the county annuity reserve account. The actuary shall also determine the amount which shall be contributed by the county into the fund periodically for credit to the county annuity reserve account on account of service of all new and original members subsequent to the time the retirement system is established.

(b) Each member of the retirement system shall be required to contribute to the fund such per cent of his salary determined as follows:

- |                 |    |
|-----------------|----|
| (1) Class 1-120 | 5% |
| (2) Class 1-100 | 6% |
| (3) Class 1-80  | 7% |
| (4) Class 1-70  | 8% |
| (5) Class 1-60  | 9% |

(c) The county may elect to contribute on behalf of each active member for current service the amount required by subsection (b) beginning the first Monday of January of the year in which the resolution to do so was adopted by the commissioners or, in counties operating under a home rule charter or optional plan, by the governing authority. Contributions made in accordance with this subsection shall be deemed "pickup contributions" and shall be treated as the county's contribution in determining tax treatment under the act of August 16, 1954, 68A Stat. 5, known as the Internal Revenue Code of 1954, for Federal tax purposes. For all other purposes pickup contributions shall be treated as contributions made by a

member in the same manner and to the same extent as contributions made prior to the implementation of this subsection. The county on or before January 31 of each year shall, at the time when the income and withholding information required by law is furnished to each county employe, also furnish the amount of the pickup contribution made on the employe's behalf. Upon the effective date of the implementation of this subsection, the county shall pick up the required contributions by an equal reduction in the compensation of the member.

(d) Each member may elect to contribute an additional amount not exceeding ten per cent more than the percentage herein required. The contributions shall be paid into the fund through payroll deductions in such manner as the board may require.

((d) amended Nov. 21, 1990, P.L.551, No.136)

(e) The board may at any time, by rule, authorize members of the retirement system, whether original or new members, to individually elect to reduce the contribution to any of the percentages required herein for any class lower than the class otherwise designated by the board as applicable to the retirement system to which the member belongs. Any such election shall in no way affect the calculation of the county annuity portion of the member's retirement allowance as provided in section 14, which county annuity portion shall be calculated as though the member had not made that election. ((e) added Nov. 21, 1990, P.L.551, No.136)

(f) All contributions including optional additional payments by members shall be credited to the members' annuity reserve account.

((f) added Nov. 21, 1990, P.L.551, No.136)

(g) The board may at any time, by rule, authorize members of the retirement system, whether original or new members, to transfer from the one-one hundred twentieth class, or from the one-one hundredth class, to the one-eightieth class, to the one-seventieth class, or to the one-sixtieth class. Whenever such transfers are authorized, salary deductions or pickup contributions applicable to the transferred members shall be based upon the per cent of salary deduction applicable while in each class, notwithstanding the provisions of subsection (e).

((g) added Nov. 21, 1990, P.L.551, No.136)

(h) (1) This subsection applies to members of the retirement system who were employed by the county for any time period after December 31, 1971, and before January 1, 1997, and who transferred from a one-eightieth class to a one-sixtieth class on January 1, 1997.

(2) The board may, by rule, authorize the one-sixtieth class to be applied retroactively to the employe's credit service or any portion thereof.

(3) Whenever the board has, by rule, authorized the members of the retirement system to make a transfer described in this subsection, the county annuity shall be

calculated in accordance with section 14(c) with the one-sixtieth class. Notwithstanding the provisions of section 14(c), if the board adopts the retroactivity provision in paragraph (2), the county annuity for all periods of service shall be calculated at the one-sixtieth class rate.

(4) The board may adopt rules pursuant to this subsection until June 30, 2007.

((h) added Nov. 29, 2006, P.L.1560, No.174)

(7 amended Dec. 20, 1983, P.L.282, No.75)

Section 7.1. Additional Class Options; Transfers to Additional Classes.--(a) The board may, by rule, establish a one-fiftieth class or a one-fortieth class with a required member contribution rate of nine per cent for each class unless the board establishes a different contribution rate in accordance with section 7(e).

(b) The board may, by rule, authorize the class adopted pursuant to this section to be applied retroactively to the employe's credit service or any portion thereof.

(c) Whenever the board has, by rule, authorized the members of the retirement system to make a transfer to the one-fiftieth class or the one-fortieth class, the county annuity shall be calculated in accordance with section 14(c) with the new classes added. Notwithstanding the provisions of section 14(c), if the board adopts the retroactivity provision in subsection (b), the county annuity for all periods of service shall be calculated at the one-fiftieth class rate or one-fortieth class rate, as the case may be.

(d) The board may adopt rules pursuant to this section until June 30, 2007.

(7.1 amended Nov. 29, 2006, P.L.1560, No.174)

Section 8. Custody of Fund; Payments.--All moneys and securities in the fund shall be placed in the custody of the county treasurer for safekeeping; and, all payments from the fund shall be made only on requisition signed by the chairman and secretary of the board.

Section 9. Management and Investment of Fund.--The members of the board shall be trustees of the fund, and shall have exclusive management of the fund with full power to invest the moneys therein subject to the terms, conditions, limitations and restrictions imposed by law upon fiduciaries. Subject to like terms, conditions, limitations and restrictions, the trustees shall have power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in the funds, as well as the proceeds of investments and of the moneys belonging to the fund.

The board shall annually allow regular interest on the mean amount for the preceding year to the credit of each of the accounts. The amount so allowed shall be credited to each contributor's account.

Section 10. Compulsory Membership.--Each county officer may and all other county employes shall be required to become a member of the retirement system established by this act at the date specified in the resolution establishing the retirement system, and thereafter when first becoming a county employe. Those becoming members who have been at any time county employes prior to the first Monday of January of the year the retirement system is established shall be known as original members; and, those becoming members after that date as new members. Any person who becomes a county employe subsequent to the time the system was established, and who has been an employe of the county at any time theretofore, shall receive credit for the service prior to the time the system was established, and shall be known as an original member if he shall contribute to the fund the amount which would have been contributed if the retirement system had been in effect during such previous employment; in which event, the county shall contribute for each employe the amount which it would have contributed if the retirement system had been in effect during such previous employment.

(10 amended Dec. 20, 1983, P.L.282, No.75)

Section 11. County Guarantee; Annual Budgets.--The regular interest charges payable, the creation and maintenance of the necessary reserves for the payment of the county and members' annuities in accordance with this act, and the additional retirement benefits, are hereby made obligations of the county. The board shall prepare and submit to the county commissioners, on or before the first day of November of each year, an itemized estimate of the amounts necessary to be appropriated by the county to complete the payment of the obligations of the county during the next fiscal year.

Section 12. Service Allowance.--In computing the length of service of a contributor for retirement purposes, full credit shall be given to each original member for each year of service rendered to the county prior to January first of the year the retirement system was established. This shall include the services of a county official whose compensation was in the form of fees collected by his office, and shall also include the services of employes paid directly by such county official out of such fees. Full credit shall also be given for each year of service of a contributor who was a per diem employe of the county for a period of at least five years prior to the time the system became effective and who averaged at least two hundred days of employment in each of such years. As soon as practicable, the board shall issue to each original member a certificate certifying the aggregate length of his service prior to January first of the year the retirement system was established. Such certificate shall be final and conclusive as to his prior service, unless thereafter modified by the board upon application of the member. Any member who had been employed on a part-time basis and had been excluded from membership in the plan and who completed more than 1000 hours of services during the 12-month period beginning on the first day of employment or in any succeeding 12-month period thereafter shall receive service credit for a fractional portion of a year determined by the ratio of the number of hours of service credited in that 12-month period to 1400 hours for the purpose of the computation of his retirement credit upon payment by the employe of the amount which the board determines should

have been the applicable member contribution during such period. Such payment may be made in installments over a period fixed by the board. The time during which a member is absent from service without pay may be counted in computing the service of a contributor, if allowed by the county commissioners and approved by the board and if the employe pays the member contribution, including the pickup contribution, and the county's contribution into the fund based upon the contributions made the year immediately preceding the leave of absence.

(12 amended Nov. 21, 1990, P.L.551, No.136)

Section 13. Credit for Military Service; Payments into Fund; Reimbursement.--(a) Any county employe who, on or after September 16, 1940 has been employed by the county for a period of six months and who, on or subsequent to such date, shall have enlisted or been inducted into the military service of the United States in time of war, armed conflict or national emergency, so proclaimed by the President or the Congress of the United States, shall have credited to his employment record, for retirement benefits, all of the time spent by him in such military service during the continuance of such war, armed conflict or national emergency. Contributions on account of credit for intervening military service shall be determined by the employe's contribution rate and compensation at the time of entry of the member into active military service, together with interest during all periods of subsequent county service to date of purchase. Said contributions shall be paid into the fund by the county. Any employes who have made payments into the fund for which payments the county is liable shall be reimbursed by the county to the full extent of such payments, or be given credit towards future employe payments.

(b) With the approval of the county retirement board, all members of the fund who are contributors and who served actively in the armed forces of the United States shall be entitled to have full service credit for each year or fraction thereof, not to exceed five years of such service. The amount due for the purchase of credit for military service other than intervening military service shall be determined by applying an employe's contribution rate of five per cent plus a county contribution rate of five per cent to his average annual rate of compensation over the first three years of credited membership service and multiplying the result by the number of years and fractional part of a year of creditable nonintervening military service being purchased together with regular interest from the commencement of such credited membership service to date of purchase. Said contributions shall be paid into the fund by the employe: Provided, That the member has three years of county service subsequent to such military service: Provided further, That he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency. ((b) amended Nov. 21, 1990, P.L. , No.136)

(13 amended July 20, 1979, P.L.164, No.53)

Section 13.1. Credit for Public School Service.--Any county employe who, on or after July 1, 1982 is employed by the county for a period of one month and who, on

or immediately prior to July 1, 1982 was an employe of a public school district, shall have credited to the employe's employment record, for retirement benefits, all the time spent by such employe in the school district: Provided, however, That (i) the employe contribute to the fund the total amount of employe accumulated deductions withdrawn from the Public School Employees' Retirement Fund, (ii) that the board of the Public School Employees' Retirement Fund transfer over within thirty days of receipt of a written request from the county the total amount of employer contributions and the accumulated interest on such contribution and (iii) that the employe start work with the county within thirty days after leaving employment with the public school district. This section shall apply only where the transfer of employment from the public school district to the county was not voluntary on the part of the employe.

(13.1 added Nov. 3, 1983, P.L.198, No.54)

Section 14. Superannuation Retirement Allowance.--(a) Any contributor who has reached superannuation retirement age may retire for superannuation by filing with the board a written statement duly signed by the contributor setting forth at what time he desires to be retired. The application shall retire the contributor at the time so specified.

(b) On retirement for superannuation, a retiree shall receive a retirement allowance which shall consist of: (i) a member's annuity which shall be the actuarial equivalent of his accumulated deductions standing to his credits in the members' annuity reserve account, and (ii) a county annuity equal to one-one hundred twentieth of his final salary multiplied by each year of total service, and, in addition thereto in the case of an original member, one-one hundred twentieth of his final salary multiplied by each year of prior service. At any time the board by rule may, by increasing the county annuity, authorize the payment of a minimum retirement allowance of one hundred dollars (\$100) per month to every beneficiary who shall thereby retire for superannuation after twenty years service.

(c) Whenever the board has by rule authorized the members of the retirement system to transfer from the one-one hundred twentieth class to the one-one hundredth class, or whenever the board shall hereafter by rule authorize the transfer to the one-eightieth class, to the one-seventieth class or the one-sixtieth class, the county annuity shall be calculated as follows:

(1) For service prior to the time of transfer, at the one-one hundred twentieth rate, the one-one hundredth rate, the one-eightieth rate, the one-seventieth rate or the one-sixtieth rate as the case may be.

(2) For service subsequent to the time of transfer to the time of retirement, or to the time of a subsequent transfer, at the rate applicable during such period.

(3) For all service prior to the time of commencing contribution, as the time member contributions were made at the one-one hundred twentieth rate bears to

the total time of contribution and as the time member contributions were made at any other rate herein provided for bears to the total time of contribution.

(14 amended Dec. 20, 1983, P.L.282, No.75)

Section 14.1. Special Early Retirement.--(a) If authorized by resolution of the commissioners or by council in counties having an optional form of government or by commissioners or council in counties having a home rule charter and approved by the retirement board, a special early retirement provision may be adopted for active members of the county employees' retirement system. The resolution shall state the terms and conditions of the early retirement and shall provide an election period which explicitly states the effective beginning and ending dates not be less than sixty days nor more than one hundred twenty days, with a seven-day revocation period after the active member's initial election. The election period must be followed immediately by the special early retirement period which is not to exceed twelve months.

(b) To be eligible for special early retirement, a member must meet the specified requirements established in the provision at the time of retirement during the special early retirement period. Minimum eligibility for special early retirement cannot be less than attainment of fifty-five years of age and ten years of credited service or thirty years of credited service with no age requirement. A member who is eligible for the special early retirement shall be credited with additional full years of service as stated in the resolution equal to no less than ten per cent nor more than thirty per cent of credited service, the result then rounded to the next full year, at the current designated county class base.

(c) The increase in actuarial accrued liability attributable to the special early retirement provision shall be determined by the actuary of the board and shall be amortized by level dollar amortization payments over the five-year period the end of which is the end of the fifth retirement system year occurring after the end of the early retirement period.

(d) No more than one special early retirement provision can be authorized within a five-year period.

(14.1 added July 7, 1994, P.L.437, No.71)

Section 15. Options on Superannuation Retirement.--At the time of his superannuation retirement, any retiree may elect to receive either his retirement allowance payable throughout life, or to receive the full amount of the accumulated deductions standing to his individual credit in the members' annuity reserve account at the time of his voluntary or involuntary retirement, or he may in any event elect to receive the actuarial equivalent of his member's and county annuity in a lesser retirement allowance payable throughout life with provisions that:

(1) Option One. If he dies before receiving in payments the present value of his member's annuity and county annuity as it was at the time of his retirement, the

balance shall be paid to his legal representative or to a person or persons having an insurable interest in his life, as he shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement or at any time thereafter.

(2) Option Two. Upon his death his member's annuity and county annuity shall be continued through the life of and paid to such person having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement.

(3) Option Three. Upon his death one-half of his member's and county annuity shall be continued through the life of and paid to such person having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement.

Should a retiree, who has not elected to receive in one payment the full amount of the accumulated deductions standing to his individual credit in the members' annuity reserve account at the time of his retirement pursuant to section 15.1, select a retirement allowance payable throughout his life and fail to receive payments at least equal to his accumulated deductions as of the date of retirement, an amount equal to the balance of his accumulated deductions shall be paid to his legal representative or to a person having an insurable interest in his life, as he shall nominate by written designation filed with the board.

(15 amended July 3, 1985, P.L.132, No.35)

Section 15.1. Option to Withdraw Accumulated Deductions and Accumulated Interest.--If authorized by action of the board as an option for its members, any member of the county retirement system who is eligible to retire and receive a superannuation retirement allowance, an involuntary retirement allowance or a voluntary retirement allowance after twenty years of service may elect to receive, in one payment, the full amount of the accumulated deductions and accumulated interest thereon standing to his credit in the members' annuity reserve account at the time of his retirement. Any member who makes such an election shall forfeit the member's annuity portion of his retirement allowance but shall continue to be entitled to the county annuity portion upon retirement if he is otherwise so entitled. Any member who exercises the option provided for in this section may elect to receive his county annuity payable throughout life or to receive the actuarial equivalent of his county annuity in a lesser retirement allowance payable throughout life with provisions that:

(1) Option One. If the member dies before receiving in payments the present value of his county annuity as it was at the time of his retirement, the balance shall be paid to the member's legal representative or to a person or persons having an insurable interest in his life, as the member shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement or at any time thereafter.

(2) Option Two. Upon the member's death, his county annuity shall be continued through the life of and paid to such person having an insurable interest in his life, as the member shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement.

(3) Option Three. Upon the member's death, one-half of his county annuity shall be continued through the life of and paid to such person having an insurable interest in his life, as the member shall nominate by written designation, duly acknowledged and filed with the board at the time of his retirement.

(15.1 added July 3, 1985, P.L.132, No.35)

Section 16. Involuntary Retirement Allowance; Voluntary Retirement Allowance after Twenty Years of Service.--(a) Should a contributor be discontinued from service not voluntarily, or an elected county officer complete his term of office and discontinue service after having completed eight years of total service, or voluntarily after having completed twenty years of total service but before reaching superannuation retirement age, except as herein provided for certain contributors who have completed twenty years of total service, he shall be paid as he may elect, as follows:

(1) The full amount of the accumulated deduction standing to his credit in the members' annuity reserve account; or

(2) A member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit in the members' annuity reserve account, and, in addition, a county annuity which is the actuarial equivalent of a county annuity beginning at superannuation retirement age but based on the period of service up to the date of discontinuance from service and not on the period of service required to reach superannuation retirement age. The same options shall be available to retirees in case of involuntary retirement as provided herein in the case of superannuation retirement. In the event a contributor, after having completed eight or more years of total service, heretofore has or hereafter shall be discontinued from service because of appointment or election to the General Assembly of the Commonwealth or to a position incompatible with his service as a county employe or officer and such employe or officer has not reached the superannuation retirement age, such withdrawal shall be considered involuntary; the accumulated deductions and the contributions of the county, at the option of the employe or officer, shall remain in the fund until superannuation age has been reached. In the event a refund of accumulated contributions has been made and the county's accumulated contributions have been withdrawn under the above circumstances, the employe or officer shall be permitted to repay into and the county shall be required to reimburse the fund the amounts paid out, with interest to the date of repayment, thereby reestablishing the rights of the contributor in said fund even though superannuation retirement age has been reached and benefits shall be paid as if the original severance had been involuntary.

(b) Any contributor who has completed twenty years of total service and who has reached the superannuation retirement age shall be entitled to the superannuation retirement allowance provided in section 14.

(16 amended Nov. 21, 1990, P.L.551, No.136)

Section 17. Retirement as of Time of Death.--Any contributor who would be entitled to a retirement allowance because of being involuntarily retired after having completed ten years of total service, or by reason of having reached superannuation retirement age may file with the board a written application for retirement in the form required for such application, but requesting that such retirement shall become effective as of the time of his death, electing Option One or Option Two provided in section 15 and nominating a beneficiary under the option.

In all such cases, the application shall be held by the board until the contributor shall file a later application in the usual manner for retirement, or until the death of the contributor occurring while in county service at which time his retirement shall become effective with the same benefits to the designated beneficiary as if the contributor had retired on the day of death.

Section 18. Retirement While in County Service.--Any contributor who is or was entitled to a retirement allowance because of being involuntarily retired after having completed ten years of total service or by reason of having reached superannuation retirement age and who shall die while in county service before filing with the board a written application for retirement, or has died and whose payments into the fund have not been withdrawn, shall be considered as having elected Option One as of the date of his death. In such event, payment under Option One shall be made to the beneficiary designated in the nomination of beneficiary form on file with the board. If the beneficiary has predeceased the contributor, payment under Option One shall be made to the legal representative of the contributor.

Section 19. Additional Retirement Benefits.--In addition to the retirement allowance, the board may grant to retired employees insurance or other similar benefits that the county has granted to other county employees.

Section 20. Total Disability Retirement Allowance.--If a contributor after five years of service as a county employe and before reaching superannuation retirement age is disabled while in service and is unable to continue as a county employe, as shown by medical examination, he shall be paid a retirement allowance consisting of a county annuity of twenty-five per cent of his final salary which shall include the member's annuity calculated in accordance with section 14.

Section 21. Payment of Balances Where Disability Annuitant Dies.--Should a person receiving a disability retirement allowance die before receiving total payments equal to the amount standing to his credit in the members' annuity reserve account at the time of retirement, there shall be paid to his estate or beneficiary the difference between such credit and the total payments received.

Section 22. Monthly Payments of Retirement Allowances.--The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed, except as otherwise provided in this act. This section shall not be construed to prohibit the board from granting to retired employees insurance or other similar benefits granted to other county employees.

Section 23. Refunds.--(a) Where a contributor terminates service before qualifying for a retirement allowance or where a contributor has died before completing ten years of total service, the amount standing to the credit of the contributor in the members' annuity reserve account shall be paid to him or his estate or to the person or persons named in any beneficiary certificate filed by the contributor with the board. When a contributor or a beneficiary has died and there shall be due to the estate of such contributor or beneficiary a sum less than one hundred dollars (\$100), and letters testamentary or of administration have not been taken out on the estate of such contributor or beneficiary within six months of death, the board may pay the amount due on the claim of the undertaker or to any person or persons or political subdivision who or which shall have paid the claim of the undertaker.

(b) Where a contributor terminates service after completing eight years of service, he may elect to have the board pay to him the amount standing to his credit in the members' annuity reserve account or, elect vesting and keep his accumulated deductions in the members' annuity reserve account and apply for retirement benefits upon reaching superannuation retirement age.

Section 24. Simultaneous Payments of Salary and Retirement Allowance.--Should a retiree be reemployed as a county employe, the retirement allowance of such person shall immediately cease. Such person shall thereupon be reinstated as a contributor; and, there shall be restored to his credit as accumulated deductions the actuarial value of his member's annuity computed as of the date of his reemployment. Should he refuse to surrender his right to retirement allowance as of the date of his reemployment, it shall be unlawful for the county to reemploy him. For the purposes of this section if a person serves as a juror, master, or arbitrator or is prohibited from being a member of the system by home rule charter, he shall not be deemed reemployed. If a retiree is reemployed on a part-time basis, the retirement allowance shall not cease, but shall be reduced by an amount equal to the amount of compensation received by the employe for service in excess of 1000 hours per year. Such reduction shall, however, not exceed the amount of the retirement allowance. A retiree reemployed on a part-time basis shall not be reinstated as a contributor and shall not receive additional service credit for retirement purposes.

(24 amended July 2, 1992, P.L.382, No.80)

Section 25. Subsequent Admissions to Retirement System.--Any county officer whose term of office began after the establishment of the retirement system and who did not become a member of the retirement system when his term of office

began, shall be permitted to become a member of the retirement system at any time and shall receive a retirement allowance based upon service as a county employe rendered after such date of membership; however, if membership is consummated within one year from the beginning of such term of office and such sums as would have been deducted from his salary had he become a member at the time of the commencement of such term of office shall have been paid into the retirement system, he shall thereupon become entitled to all the rights and privileges in the retirement system as would have been vested in him had he become a member and contributor at the time his term of office began.

Any county officer who has not become a member of the retirement system but who was employed as an elected officer prior to January first of the year that the retirement system was established and who held such office at the time that the retirement system was established and has continuously held such office, shall be permitted to become a member of the retirement system, shall be known as an original member, and shall receive full credit for each year of service rendered by him prior to January first of the year the retirement system was established and for each year of service rendered by him thereafter, if such county officer shall contribute to the fund the amount which he would have contributed if he had become a member of the retirement system when it was established; in which event, the county shall contribute to his credit in the fund the amount it would have contributed if he had become a member of the retirement system when it was established; and, he shall thereupon become entitled to all the rights and privileges in the retirement system as would have vested in him had he become a member and contributor at the time the retirement system was established.

Section 26. Reinstatement on Return to County Employment.--Any contributor separated from county employment by dismissal, resignation, or any other reason, except retirement, or any county officer having legally withdrawn from the retirement system, who returns to county employment and restores to the fund to the credit of the members' annuity reserve account his accumulated deductions as they were at the time of separation, shall have the annuity rights forfeited by him restored. Payments may be made either in a lump sum or by installments; but, in no event shall the installments be less than sufficient to pay such amount by the time the member attains superannuation retirement age.

Section 27. Exemption from Taxation and Execution, Etc.--The right to a member's annuity, or a county annuity, or to the return of contributions, shall be exempt from any State or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable, except for any indebtedness due the county or the institution district arising out of embezzlement or fraudulent conversion by a member of the fund against the respective county or the institution district of which the same member is employed.

Section 28. Fraud; Correction of Errors.--Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the retirement system herein established in any attempt to defraud such system, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced

to pay a fine not exceeding one thousand dollars (\$1,000), or undergo imprisonment not exceeding one year, or both.

Should any such change in records fraudulently made, or any mistake in records inadvertently made, result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, on the discovery of the error, the board shall correct the error, and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Section 29. Designation of Deposit Administrator.--The board shall be permitted to contract with any insurance company which has qualified and is authorized by the Insurance Department of the Commonwealth of Pennsylvania to transact business in the Commonwealth of Pennsylvania, or with any bank, savings and loan association or trust company approved by the Department of Banking of the Commonwealth of Pennsylvania, or with any investment adviser registered pursuant to the Federal Investment Advisers Act of 1940 (54 Stat. 789) which is registered as an investment adviser by the Pennsylvania Securities Commission and which agrees to conduct itself in accordance with 20 Pa.C.S. Ch. 73 (relating to fiduciaries investments) to be designated as a deposit administrator. The deposit administrator may be given the power to administer the funds in its entirety, including the power to receive and invest all moneys deposited in the fund and such other powers as are vested in the board. In addition to the options provided in the act upon retirement, disability withdrawal or death of a contributor, the deposit administrator, if an insurance company, may provide additional options to the contributors or beneficiaries.

(29 amended Nov. 23, 1982, P.L.691, No.198)

Section 30. Supplemental Benefits.--(a) Every member who is in receipt of a county annuity shall receive annually a cost-of-living increase which shall be the product of the retirement allowance determined at the time of retirement less any withdrawal of a member's annuity under section 15.1 of this act and prior to optional modification or minimum allowance and the following percentages as determined by the calendar year in which retirement became effective:

<b>Year of Retirement</b>	<b>Percentage Factor</b>	<b>Year of Retirement</b>	<b>Percentage Factor</b>
1938	136%	1953	23%
1939	135%	1954	23%
1940	134%	1955	22%
1941	122%	1956	20%
1942	100%	1957	16%
1943	89%	1958	14%
1944	86%	1959	12%
1945	82%	1960	10%
1946	68%	1961	9%
1947	47%	1962	8%

<b>Year of Retirement</b>	<b>Percentage Factor</b>	<b>Year of Retirement</b>	<b>Percentage Factor</b>
1948	37%	1963	7%
1949	37%	1964	6%
1950	36%	1965	4%
1951	26%	1966	1%
1952	24%		

(b) The cost-of-living increase shall be reviewed at least once in every three years by the board which may adjust the percentages in accordance with cost-of-living index at the time of review.

(30 amended July 18, 1986, P.L.1410, No.126)

Section 31. Saving Clause.--(a) This act shall not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or liability, duty, obligation, penalty, judgment or punishment incurred under the provisions of any prior act providing for the creation, maintenance and operation of a county employes' retirement system.

(b) The provisions of all acts which are repealed by this act shall be considered as remaining continuously in force so far as concerns all rights vested and accrued, and liabilities, duties and obligations incurred under such provisions before the effective date of this act.

Section 32. Repeals.--The following acts and parts of acts are repealed absolutely:

(1) The act of June 4, 1937 (P.L.1625), entitled "An act providing for the creation, maintenance and operation of a county employes retirement system in counties of the third class; and imposing certain charges on counties."

(2) The act of July 8, 1941 (P.L.298), known as the "Fourth Class County Retirement Law."

(3) The act of August 5, 1941 (P.L.803), entitled, as amended, "An act providing for the creation, maintenance and operation of a county employes' retirement system in counties of the fifth, sixth, seventh and eighth class; imposing certain charges on counties, and prescribing penalties."

(4) Section 1717, act of July 28, 1953 (P.L.723), known as the "Second Class County Code."

Section 33. Effective Date.--This act shall take effect immediately.

## **Other Pension References**

These entities can provide counties with additional information about county pension issues.

### **Public Employee Retirement Commission**

James L. McAneny, Executive Director

613 North Street

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Harrisburg, PA 17120-0400

or

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fax (717) 787-9531

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### **Pennsylvania Municipal Retirement System**

James B. Allen, Secretary

Eastgate Building

1010 North Seventh Street

Suite 301

Harrisburg, PA 17102-1400

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P.O. Box 1165

Harrisburg, PA 17108-1165

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[www.pMrs.state.pa.us](http://www.pMrs.state.pa.us)

email: [ra-staff@pa.gov](mailto:ra-staff@pa.gov)

### **Governor's Center for Local Government Services**

Department of Community and Economic Development

Rick Vilello, Executive Director

Commonwealth Keystone Building

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