

No. 1989-75

AN ACT

SB 122

Amending the act of July 28, 1953 (P.L.723, No.230), entitled, as amended, "An act relating to counties of the second class and second class A; amending, revising, consolidating and changing the laws relating thereto," further providing for certain annual assessments; providing for the standard of care and liability of retirement board members; further providing for payments into the fund, for the amount of retirement allowances, for eligibility for retirement allowances, for interest on contributions and for requirements for credit for previous service; and further providing for publication of the controller's report.

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

Section 1. Section 437 of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, amended December 9, 1982 (P.L.1022, No.237) and February 14, 1986 (P.L.16, No.6), is amended to read:

Section 437. Annual Assessments for County Commissioners, Etc.—
(a) In addition to the expenses hereinbefore authorized, the necessary expenses of the association of county commissioners, county solicitors and chief clerks shall be apportioned among the counties holding membership in the association in amounts provided for by the rules and regulations of the association, **but shall not total more than two thousand dollars (\$2,000) for counties of the second and second A class**.

(a.1) In addition to the expenses hereinbefore authorized, the necessary expenses of the association of district attorneys shall be apportioned among the counties holding membership in the association in amounts provided for by the rules and regulations of the association **[but shall not total per annum more than one thousand two hundred dollars (\$1,200) for counties of the second class or second class A]**.

(b) Such annual apportionments of expenses shall be as approved at each annual convention of the said association by a majority vote of the members present, and when so approved shall be paid from general county funds.

Section 2. Section 1706 of the act is amended to read:

Section 1706. Investment or Deposit of Fund; *Standard of Care and Liability of Board Members*.—(a) The board shall be the trustees of the retirement fund, and shall have exclusive control and management of the said fund with full power to invest the money or any part thereof, subject to the terms, conditions, limitations and restrictions that are provided by law for investments of trust funds by fiduciaries or the retention or sale of certain investments in the hands of fiduciaries. Subject to like terms, conditions, limitations and restrictions, the board shall have power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in the retirement fund, as well as the proceeds of said investments and of the money

belonging to said fund, or it may deposit such moneys or any part thereof in one or more banks or banking institutions selected by the board. The board shall decide upon the number of banks and banking institutions of the county as depositories of retirement funds and the rate of interest to be paid by them to the board. A contract with a depository shall be for a period covering the term of the county treasurer. No moneys shall be deposited in a depository until it shall furnish to the board collateral to secure payments of deposits and interest to the board, by depositing in escrow securities to be approved by the board. Such securities to be of the kind and in the amount to be fixed by the board.

(b) A board member shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the retirement system and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his duties, a board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements, investment data and such other financial or investment data made available to him by the board's investment counselors or managers and the board's monitor, in each case prepared or presented by any of the following:

(1) One or more officers or employes of the board whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, actuaries, investment managers or consultants, the investment monitor, the board's agent or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such persons.

(3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(c) A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

(d) In discharging the duties of their respective positions, the board, committees of the board and individual members of the board may, in determining the effects of any action upon the employes of the board, the active employes of the county retirement system and of the retirees of the county retirement system who are receiving benefits, consider all other pertinent factors, which shall include, but not be limited to, the actions or activities of the duly appointed monitor, investment counselors or managers, the actuary and the custodial agent. Consideration of factors contained in this subsection shall not constitute a violation of subsection (b).

(e) Absent breach of a fiduciary duty, lack of good faith or self-dealing, actions taken as a member of the board by any member of the board, or any failure to take any action, shall be presumed to be in the best interest of the retirement system.

(f) Whenever the provisions of this act require the members of the board to undertake any action by a vote of the board, a member of the board shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless:

(1) the board member has breached or failed to perform the duties of his position under subsections (b), (c), (d) and (e); and

(2) the breach or failure to perform constitutes self-dealing, wilful misconduct or recklessness.

(g) The provisions of subsections (b), (c), (d), (e) and (f) shall not apply in any case involving responsibility or liability of a board member under any criminal statute.

Section 3. Section 1708(a) of the act, amended December 10, 1980 (P.L.1165, No.213), is amended to read:

Section 1708. Compulsory Membership; Payments Into Fund; Exceptions; Vested Interest.—(a) Each county employe shall be required to become a member of the county employes' retirement system within six months from the date of his or her employment. The said county employe may elect to become a member of the retirement system at any time during the aforesaid six months period of time by notifying the head of the department, office or agency in which department, office or agency he or she is employed of the said election. A copy thereof shall be filed immediately with the board. He or she shall, each month, pay into the retirement fund a monthly contribution, being a certain percentage of the amount received by him or her as compensation during the preceding calendar month, which shall be computed on a monthly compensation of **[two thousand six hundred sixty-six dollars and sixty-six cents (\$2,666.66)]** *four thousand three hundred thirty-three dollars and thirty-three cents (\$4,333.33)* or less. Except as provided in subsection (d), the monthly contribution shall be the percentage of his or her compensation as heretofore stated, on a graduated scale as follows:

For the year **[1973] 1988** and thereafter, **[five] six and one-quarter** per centum up to seven hundred fifty dollars (\$750) per month.

[Seven and one-half] Nine and three-eighths per centum from seven hundred fifty dollars (\$750) to fifteen hundred dollars (\$1500) per month.

[Ten] Twelve and one-half per centum from fifteen hundred dollars (\$1500) to **[two thousand six hundred sixty-six dollars and sixty-six cents (\$2,666.66)]** *four thousand three hundred thirty-three dollars and thirty-three cents (\$4,333.33)* per month.

Except as hereinafter provided, the aforesaid increase rate of monthly contributions to be paid into the retirement fund to enhance the actuarial soundness of said fund, shall be applicable to all county employes who are members of the retirement system. Such monthly contributions shall be collected by the county treasurer and by him paid into the retirement fund. The payment of the increased rate of the aforesaid monthly contributions shall not apply to such former county employes whose monthly contributions are now paid into said fund in accordance with the provisions of subsection (d) of section 1713. Any county employe receiving compensation for accidental

injuries in accordance with the provisions of The Pennsylvania Workmen's Compensation Act shall during the period of time in which such county employe is receiving disability benefits, as provided in the aforesaid act, pay each month for retirement benefits a sum equal to the last monthly contribution as paid into the retirement fund when said county employe was in employment. The monthly contribution shall not be paid by any person who was receiving a retirement allowance and is subsequent to the thirty-first day of May, one thousand nine hundred fifty-three, reemployed as a county employe or any other person who is ineligible to become a member of the retirement system.

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Section 4. Section 1710(b) of the act, amended February 9, 1984 (P.L.12, No.6) and May 9, 1984 (P.L.261, No.61), is amended and the section is amended by adding a subsection to read:

Section 1710. **Employes Eligible for Retirement Allowances.**—* * *

(b) Every county employe, other than a member of the police force or the fire department or a fire inspector *or a sheriff or deputy sheriff*, who was initially hired on or prior to the effective date of this amendatory act, who has reached the age of sixty years or upwards and who has to his or her credit a period of service of eight years, but less than twenty years, or every county employe, other than a member of the police or the fire department or a fire inspector, who was hired after the effective date of this amendatory act, who has reached the age of sixty-five years or upwards, and who has to his or her credit a period of service of ten years, but less than twenty years, and every county employe who is a member of the police force or the fire department or a fire inspector, and who shall have been a county employe during a period of twenty or more years and has reached the age of fifty years or upwards shall, upon application to the board, be eligible for retirement from service, and shall thereafter receive, during life, except as hereinafter provided, a retirement allowance plus a service increment if any, in accordance with the provisions of section 1712. *Every county officer or employe who is a sheriff or deputy sheriff who shall have been a county officer or employe during a period of twenty or more years and has reached the age of fifty-five years or upward, shall, upon application to the board, be eligible for retirement from service and shall thereafter receive, during life, except as hereafter provided, a retirement allowance in accordance with section 1712.* The time spent in the employ of the county or county institution district need not necessarily have been continuous: Provided, That when any county employe has twenty or more years service, not necessarily continuous, and has reached the age of fifty years or upwards, and shall be separated from the service of the county or county institution district by reason of no cause or act of his or her own, upon application to the board he or she shall thereafter receive, during life, except as hereinafter provided, a retirement allowance plus a service increment if any, in accordance with the provisions of section 1712. The aforesaid retirement allowance plus a service increment if any, shall be subject to a suspension thereof in accordance with the provisions of subsection (h) of this section 1710 and subsection (c) of section 1712.

* * *

(j) Any person who was employed by an authority created by the county on or after June 10, 1968, pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945," for the purpose of assisting and encouraging local municipalities to undertake vital and necessary capital improvement projects that could not be financed or constructed with county assistance and who subsequently became an employe of the county may have the period of his employment with such authority credited as a county employe. The person shall make application to the board within three years of the effective date of this subsection and, upon approval of the application, shall pay into the retirement fund the amount which he would have been required to pay into the fund if he had been a county employe from the date of his original employment with the authority. The county shall pay into the retirement fund an amount equal to the amount paid in by the employe in accordance with the provisions of this article.

Section 5. Sections 1712(a) and 1714(a) of the act, amended December 10, 1980 (P.L.1165, No.213), are amended to read:

Section 1712. Amount of Retirement Allowances.—(a) The retirement allowance paid under the provisions of this article shall equal fifty per centum of the amount which would constitute the average monthly compensation as received by the county employe during the highest twenty-four months of the last four (4) years of his employment or two years on a bi-weekly pay basis in which period of time the said county employe made monthly or bi-weekly contributions into the retirement fund prior to his or her retirement. Such average monthly compensation shall include the compensation which any county employe would have been entitled to and would have received except for deduction from compensation due to time spent in serving as an elected State official: Provided, That the county and the employe shall make monthly contributions based on the last compensation equal to the amount the county and he or she would have paid into the retirement fund had such compensation been paid by the county. No retirement allowance shall be computed on a monthly compensation in excess of [two thousand six hundred sixty-six dollars and sixty-six cents (\$2,666.66) nor shall a retirement allowance be paid for a fraction of a service year.] *four thousand three hundred thirty-three dollars and thirty-three cents (\$4,333.33). In the event an employe, on the effective date of employment termination, shall have less than a full year of service for the purpose of computing the employe's service time, then the amount of the retirement allowance, which would have been computed had the employe completed a full twelve-month period for the year of the termination of employment, shall be prorated upon a full completed month basis for said last year of service.*

After the effective date of this amendment, certain former county employes who are now receiving a retirement allowance shall receive an increase of a certain per centum of such retirement allowance, which sum shall be computed on the average monthly retirement allowance as heretofore authorized by the board.

The per centum of increase in said monthly retirement allowance shall be a flat 10 per centum increase with the maximum amount not to exceed forty-five dollars (\$45.00) per month.

Any employe who earns in excess of ten thousand eight hundred dollars (\$10,800) per annum and shall retire during the period from January 1, 1973 to December 31, 1981 shall pay, as a condition to the payment of any benefits hereunder a lump sum contribution into the retirement fund, which contribution shall be computed as follows:

The difference between ten thousand eight hundred dollars (\$10,800) and the annual salary of the employe multiplied by the number of years during which he was not an employe of the county for the period aforesaid and upon that amount the sum of two per centum which shall be the lump sum contribution as required herein.

No person who is reemployed as a county employe shall be eligible to receive the benefit of a retirement allowance plus a service increment, if any, until he or she shall have made at least twenty-four monthly or fifty-two bi-weekly contributions into the retirement fund subsequent to his or her reemployment. The foregoing provisions shall not have a retroactive application and shall apply only to present and future county employes. The rate required to be paid in accordance with this provision shall apply to present county employes notwithstanding the rate of contribution that the present county employe has made into the retirement fund.

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Section 1714. Separation from Service; Refund of Contribution.—

(a) Any person contributing monthly or bi-weekly into the retirement fund who shall, for any cause, cease to be a county employe before he or she shall be eligible to receive the benefits of the retirement allowances, the total amount of the contributions paid into the retirement fund by such county employe shall be refunded to him or her by the board, or, in the event of the death of any such county employe, the amount of said contributions shall be paid to such person or persons as he or she shall have designated in writing, as filed with the board, as his or her beneficiary, or to his or her estate. If no person or persons have been designated as his or her beneficiary, or no notice has been filed with the board to pay the amount of such contributions to his or her estate, as herein provided, then the board is herewith authorized to pay such contributions to the executor, administrator, surviving spouse, or next of kin of the deceased county employe. In the event the surviving spouse or next of kin of the decedent cannot be found for the purpose of making distribution of such contributions for a period of seven years from the death of the said county employe, then the aforesaid contributions shall be escheated to the Commonwealth for the benefit of the retirement system. In addition thereto, **[interest shall be paid and compounded annually on the accumulated contributions of the member for the preceding calendar year at the rate of five per centum per annum on contributions made under subsection (a) of section 1708 upon the effective date of this amendment, provided that said] simple interest shall be paid at a monthly rate of interest that is equivalent to one-twelfth of the annual rate of interest specified herein on**

contributions of the member made under subsection (a) of section 1708 calculated from the beginning of the month of the deposit, or withholding, or payment into the fund of those contributions through the end of the month of refund; and such interest credited to the contributions of the member made under subsection (a) of section 1708 in a prior calendar year shall receive simple interest at the monthly rate of interest that is equivalent to one-twelfth of the annual rate of interest specified herein through the end of the month of refund. The annual rate of interest shall be three per centum prior to March 1, 1981, and five per centum thereafter. Such contributions and interest shall be paid to a county employe provided he was employed for a period of two consecutive years or more and has made twenty-four monthly contributions to the fund and is not eligible to receive the benefits of a retirement allowance. Notwithstanding the provisions of this subsection, a member who has ceased to make contributions to the fund by payroll deduction shall thereafter be credited with interest only for a period of years equal to his years of current service under this amendment. Any person who has heretofore or who shall hereafter cease to be a county employe, shall thereafter cease to be a member of the retirement system, except such former county employe who may be eligible to receive the benefits of a retirement allowance plus a service increment if any in accordance with the provisions of sections 1710 and 1713.

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Section 6. Section 1715 of the act, amended February 9, 1984 (P.L.12, No.6), is amended to read:

Section 1715. Reinstatement and Requirements for Credit for Previous Service.—(a) No county employe shall be permitted to withdraw his or her contributions as paid into the retirement fund upon transfer from one office, department or agency to another. Any person who has ceased to be a county employe and whose contributions as paid into the retirement fund, have been refunded by the board, if such person has been reemployed by the county or county institution district and desires to be given credit for previous service as a county employe, he or she shall, within two years of the effective date of **[January 1, 1984] this amendatory act, or for those who are reemployed after the effective date of this amendatory act, within two years of the date of reemployment**, make payment in full of the amount refunded, with interest at the legal rate, the said interest to be computed from the date of the refund to the date of repayment. Upon application of the employe desiring to be given credit for previous service as a county employe at least sixty days prior to the expiration of the period of two years from the **[effective date above] effective date of this amendatory act or the date of reemployment**, such employe shall be permitted to make payment in full of the amount refunded, with interest at the legal rate, within an additional period of one year. Both principal and interest shall be paid into the retirement fund at one time and in one amount, or, upon approval of the board, both principal and interest shall be consolidated into one amount and paid in twenty-four or less equal monthly installments, plus interest payment on monthly balances. Whenever the time for payment in full has been extended for an additional period of

one year, the principal and interest may be paid in a total of not more than thirty-six equal monthly installments. Full payment thereof shall be a condition precedent to the county employe being eligible to receive the benefits of the retirement allowance plus a service increment, if any. Such county employe shall make monthly payments into the retirement fund in accordance with the provisions of section 1708.

If any person who hereafter becomes a county employe and thereafter ceases to be a county employe and his or her contributions as paid into the retirement fund are refunded by the board, is reemployed by the county or county institution district and he or she desires to be given credit for previous service as a county employe, he or she shall within two years of the date of reemployment, make payment in full of the amount refunded, with interest at the legal rate, the said interest to be computed from the date of refund to the date of repayment. Upon application of any person who hereafter becomes a county employe and desires to be given credit for previous service as a county employe, at least sixty days prior to completion of a period of two years from the date of reemployment, such employe shall be permitted to make payment in full of the amount refunded, with interest at the legal rate, within an additional period of one year. Both principal and interest shall be paid into the retirement fund at one time and in one amount, or, upon approval of the board both principal and interest shall be consolidated into one amount and paid in twenty-four or less equal monthly installments, plus interest payments on monthly balances. Whenever the time for payment in full has been extended for an additional period of one year the principal and interest may be paid in a total of not more than thirty-six equal monthly installments. Full payment thereof shall be a condition precedent to the county employe being eligible to receive the benefits of the retirement allowance plus a service increment, if any. Such county employe shall make monthly payments into the retirement fund in accordance with the provisions of section 1708. Any person who is a county employe on the effective date of this act may make payments into the retirement fund which shall cover a period of time within which such person was a county employe but was not a member of the retirement system because such membership was not compulsory.

(b) Any person who has heretofore or who hereafter ceases to be a county employe and whose contributions as paid into the retirement fund, have heretofore or shall hereafter be refunded by the board, if such person is reemployed by the county or county institution district and desires to be given credit for previous service as a county employe, except as hereinafter provided, he or she shall within two years from the date of such reemployment make payment in full of the amount refunded, with interest at the legal rate, the said interest to be computed from the date of the refund to the date of repayment. Both principal and interest shall be paid into the retirement fund at one time and in one amount, or, upon approval of the board, both principal and interest shall be consolidated into one amount and paid in twenty-four or less equal monthly installments, plus interest payment on monthly balances. Full payment thereof shall be a condition precedent to the

county employe being eligible to receive the benefits of the retirement allowance plus a service increment, if any. Such county employe shall make monthly payments into the retirement fund in accordance with the provisions of section 1708. No person reemployed as a county employe in accordance with the provisions of this subsection shall be eligible to receive a retirement allowance by reason of total and permanent physical disability, in accordance with the provisions of section 1711, unless he or she shall be in employ for a period of not less than twenty years, which said period of employment shall include credit given for previous service, as herein provided. No person who is ineligible to become a member of the retirement system shall be eligible to receive credit for previous service as a county employe, as hereinbefore provided.

(c) Any county employe who desires to be given credit for previous service in the employ of the county as an elected or appointed employe or official, where such service subsequent to the first day of January, one thousand nine hundred forty, was rendered to the county at a time when such employe or official was not a member of the county employes' retirement system, shall, **on or prior to January 1, 1986,** make application to the board, and upon approval thereof shall pay into the retirement fund a sum equal to twice the payment which such employe would have made had such person been a member thereof and had the payments been made in accordance with the provision of this article. In addition thereto, interest at the legal rate shall be paid from the date when the said monthly payment would have been made. Both principal and interest shall be paid into the retirement fund at one time and in one amount, or, upon approval of the board, both principal and interest shall be consolidated into one amount and paid in twenty-four or less equal monthly installments, plus interest payment on monthly balances. Full payment thereof shall be a condition precedent to the county employe being eligible to receive the benefits of the retirement allowances. Such county employe shall make monthly payments into the retirement fund in accordance with the provisions of section 1708.

(d) Any person employed by any county correctional institution at the date such person became eligible for membership in the county employes' retirement system, who desires to be given credit for previous service in the employ of such institution when such employe was not eligible for membership, shall, **on or prior to January 1, 1986,** make application to the board, and upon approval thereof shall pay into the retirement fund a sum equal to twice the payment which such employe would have made had such person been a member thereof and had the payments been made in accordance with the provisions of this article. In addition thereto, interest at the legal rate shall be paid from the date when the said monthly payment would have been made. Both principal and interest shall be paid into the retirement fund at one time and in one amount, or upon approval of the board, both principal and interest shall be consolidated into one amount and paid in twenty-four or less equal monthly installments, plus interest payment on monthly balances. Full payment thereof shall be a condition precedent to the county employe being eligible to receive the benefits of the retirement allowances.

Such county employe shall make monthly payment into the retirement fund in accordance with the provisions of section 1708.

Section 7. Section 1920 of the act, amended May 1, 1984 (P.L.221, No.45), is amended to read:

Section 1920. *Controller's Settlement of Accounts; Report to Common Pleas; Publications; Financial Report to Department of Community Affairs.*—The controller shall, at the end of each fiscal year, complete the audit, settlement and adjustment of the accounts of all county officers. He shall, in the month of May in every year, make a report, verified by oath or affirmation, to the court of common pleas of said county, of all receipts and expenditures of the county for the preceding year, in detail, and classified by reference to the object thereof, together with a full statement of the financial conditions of the county. A concise summary of this report shall thereupon be published one time in such newspapers published in the county as the controller may direct, but the aggregate cost thereof shall not exceed **[two thousand dollars (\$2000)] four thousand dollars (\$4,000)** in ~~any one year~~, to be paid for out of the county treasury. Such report may also be published in printed pamphlets, at the cost of the county, the number and cost of such pamphlets to be determined by the controller and the county commissioners. The controller shall also, by the first Monday of the month of May of the year after the close of the fiscal year, make an annual report to the Department of Community Affairs of the financial condition of the county, on forms furnished by the Secretary of Community Affairs, and subject to the penalties provided in section 1921 of this act for the controller refusing or neglecting to make similar reports.

Section 8. This act shall be retroactive to December 1, 1988.

Section 9. This act shall take effect immediately.

APPROVED—The 14th day of December, A. D. 1989.

ROBERT P. CASEY