

No. 1998-82

AN ACT

SB 284

Amending the act of December 18, 1984 (P.L.1005, No.205), entitled "An act mandating actuarial funding standards for all municipal pension systems; establishing a recovery program for municipal pension systems determined to be financially distressed; providing for the distribution of the tax on the premiums of foreign fire insurance companies; and making repeals," further providing for additions to the actuarial valuation report, for supplemental State assistance and for a home rule municipality formerly classified as a city of the second class; authorizing the reestablishment of initial unfunded actuarial accrued liability; specifying a new 40-year amortization period; prescribing the calculation of the amortization contribution for the pension funds; and providing for alternative funding mechanism.

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

Section 1. Section 102 of the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, is amended by adding definitions to read:

Section 102. Definitions.

Except as provided in Chapter 7, the following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Alternative funding mechanism." A method adopted by a city of the first class to fund all or a portion of an unfunded actuarial accrued liability calculated as of the date of an actuarial valuation report prepared under Chapter 3, which method shall include either the entering into a service agreement between the city and an authority established under the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law, in which the authority agrees to provide financial services to the city, including the funding in whole or in part of an unfunded actuarial accrued liability of the city's pension system, or the sale to such an authority by the board of pensions and retirement established pursuant to the city's Home Rule Charter of the board's right, title and interest in and to any payments due to the board of pensions and retirement from the city pursuant to this or any other statute, including general municipal pension system State aid or supplemental State assistance that the city is entitled to receive under this act.

* * *

"Proceeds of bonds, notes or an alternative funding mechanism." The amount of funding obtained by a municipality for the purpose of reducing

or eliminating the unfunded actuarial accrued liability of its pension system through the issuance of debt instruments under the applicable laws of this Commonwealth or through the use of an alternative funding mechanism authorized under Chapter 10.

* * *

Section 2. Section 404 of the act, amended or added December 28, 1994 (P.L.1433, No.158) and December 10, 1996 (P.L.934, No.150), is amended to read:

Section 404. Municipalities issuing bonds or notes for pension plan funding.

(a) Application.—This section applies to *the following*:

(1) a municipality that has issued bonds or notes to fund an unfunded actuarial accrued liability under the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, or under other laws applicable to the municipality[.]; *or*

(2) *a municipality that has entered into an alternative funding mechanism.*

(b) Additions to actuarial valuation report.—[The] *For the duration of the aggregated amortization period established under paragraph (1), the* actuarial valuation report prepared under sections 201 and 202 shall [include], in addition to the exhibits required by section 202, *include*:

(1) an exhibit stating the amount and date of each contribution to the pension plan comprised of the proceeds of bonds and notes *or an alternative funding mechanism* and disclosing the initial and remaining aggregated amortization periods for each contribution calculated as of the date of the initial actuarial valuation report filed after the contribution using the total unfunded actuarial accrued liability of the pension plan and the aggregated additional funding requirements, as determined under paragraph (2);

(2) an exhibit prepared in conformance with section 202(b)(3) and (4), except that the actuarial value of assets [subtracted from the actuarial accrued liability shall not take into account contributions comprised of] *shall be computed as the actuarial value of assets that would have existed had the* proceeds of bonds and notes [and earnings on such contributions for the duration of the aggregated amortization period established under paragraph (1)] *or an alternative funding mechanism not been contributed to the pension fund*; and

(3) for each series of bonds or notes issued to fund an unfunded actuarial accrued liability and for each series of bonds or notes issued to refund such bonds or notes, an exhibit of the debt and debt service requirements that shall disclose the original principal amount of the bonds or notes issued, the date and amount of each required principal and interest payment, the amortization of premium or discount, if applicable, and the remaining amount of bond or note principal upon application of each payment, *and for each use of an alternative funding mechanism an exhibit of payment requirements of the alternative funding mechanism*

that shall disclose the original principal amount, the date and amount of each required payment and the remaining amount of the principal upon application of each payment.

(c) Determination of general municipal pension system State aid and supplemental State assistance.—Solely for the purposes of determining the amount of general municipal pension system State aid allocable to such a municipality under section 402 and the amount of supplemental State assistance allocable to such municipality under sections 607(j) and 608, the actual financial requirements certified for the pension plan for each plan year shall be determined based upon the exhibits prepared under subsection (b) so that the amount of general municipal pension system State aid and supplemental State assistance to the municipality shall not be reduced or increased as a result of any contributions to the pension plan comprised of the proceeds of bonds and notes for which the remaining aggregated amortization period, as disclosed in the exhibit required in subsection [(a)] (b), is one or more years. In making these determinations, the commission may adjust the data used to calculate the actuarial indicators or municipal finance indicators, or both, defined in Chapter 5 to insure that the amount of supplemental State assistance to the municipality shall not be reduced or increased as a result of any debt issued ***or alternative funding mechanism used*** to fund an unfunded actuarial accrued liability and the debt service on that debt ***or the payment requirements of an alternative funding mechanism.***

(d) Application of general municipal pension system State aid and supplemental State assistance.—In addition to the expenditures authorized in section 402(g), general municipal pension system State aid or supplemental State assistance, or both, may be used by a municipality to pay debt service on bonds or notes, or both, issued to fund an unfunded actuarial accrued liability ***or to meet its payment requirements under an alternative funding mechanism.***

(e) Pledge of general municipal pension system State aid and supplemental State assistance authorized.—A municipality may pledge to the holders of its bonds or notes issued to fund an unfunded actuarial accrued liability or to a trustee or paying agent acting on behalf of the holders, as security for the payment of the bonds or notes, all of the municipality's right, title and interest in and to any general municipal pension system State aid or supplemental State assistance that the municipality is entitled to receive under this act. ***A municipality using an alternative funding mechanism may pledge to the authority or a board of pensions and retirement, to the holders of bonds or notes issued by the authority or to a trustee or paying agent acting on behalf of the holders, as security for the payment of the payment requirements of the municipality under an alternative funding mechanism, all of the municipality's right, title and interest in and to any general municipal pension system State aid or supplemental State assistance that the municipality is entitled to receive under this act.*** The pledge shall be valid and binding from the time the pledge is made, and the lien of the

pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the municipality, whether or not the persons have notice. Except as provided in the Local Government Unit Debt Act, neither the proceedings of the municipality relating to the bonds or notes nor any other instrument by which a pledge is made nor any financing statement in respect thereof need be recorded or filed.

(f) Withholding remedy provided.—If, in accordance with subsection (e), a municipality has pledged, as security for its bonds or notes issued to fund an unfunded actuarial accrued liability, *or as security for the performance of its obligations under an alternative funding mechanism*, its right, title and interest in and to any general municipal pension system State aid or supplemental State assistance that the municipality is entitled to receive under this act and it fails to pay or provide for payment of debt service on the bonds or notes in accordance with the terms thereof, *or fails to perform its payment obligations under an alternative funding mechanism*, the trustee or paying agent for the bonds or notes, *or, in the case of an alternative funding mechanism, the authority, the board of pensions and retirement, or any person either entity authorizes to act on its behalf*, may certify in writing to the State Treasurer that a pledge has been made and that a failure to pay has occurred, and, upon receipt of the certification, the State Treasurer shall:

(1) notify the municipality of the withholding provisions of this section;

(2) withhold, out of any general municipal pension system State aid or supplemental State assistance payable to the municipality, an amount equal to the unpaid debt service *or an amount equal to the unpaid payment requirements under an alternative funding mechanism*; and

(3) notify the Auditor General of these actions and request the Auditor General to issue a warrant for payment *of the amount withheld* to the trustee or paying agent [of the amount so withheld] *in the case of bonds or notes, or to the authority, the board of pensions and retirement, or any person either entity authorizes to act on its behalf, in the case of an alternative funding mechanism.*

Upon receipt of a notice from the State Treasurer, the Auditor General shall issue a warrant to the State Treasurer for payment to the trustee or paying agent *in the case of bonds or notes, or to the authority, the board of pensions and retirement or any person either entity authorizes to act on its behalf in the case of an alternative funding mechanism*, and the State Treasurer immediately shall pay over the amount so withheld to the trustee or paying agent[. The] *in the case of bonds or notes, or to the authority, the board of pensions and retirement or any person either entity authorizes to act on its behalf, in the case of an alternative funding mechanism. In the case of bonds or notes, the trustee or paying agent shall apply the amount to the debt service due from the municipality. In the case of an alternative funding mechanism, the authority, the board of pensions and retirement or*

any person either entity authorizes to act on its behalf shall apply the amount to unpaid obligations of the municipality under the alternative funding mechanism.

(g) State Treasurer authorized to enter into certain agreements.—The State Treasurer is authorized to enter into an agreement with a municipality that has issued its bonds or notes to fund an unfunded actuarial accrued liability providing for the payment directly to the trustee or paying agent for the bonds or notes of any general municipal pension system State aid or supplemental State assistance that the municipality is entitled to receive under this act, regardless of whether the municipality has failed to pay or provide for payment of debt service on the bonds or notes in accordance with the terms thereof. *The State Treasurer is authorized to enter into an agreement with a municipality that has used an alternative funding mechanism providing for the payment directly to the authority, to the board of pensions and retirement, or to any person either entity authorizes to act on its behalf of the general municipal pension system State aid or supplemental State assistance that the municipality is entitled to receive under this act, regardless of whether the municipality has failed to pay or provide for payment of its obligations under an alternative funding mechanism.*

(h) Modification of the determination of minimum municipal obligations.—Any unpaid portion of the amortization contribution requirement component of the minimum municipal obligation determined under section 302 for any municipality that issues bonds or notes to fund an unfunded actuarial accrued liability, *or that uses an alternative funding mechanism*, shall be canceled until deposit of the [bond or note] proceeds *of bonds, notes or an alternative funding mechanism* can be reflected in the minimum municipal obligation adopted by the governing body of the municipality. Cancellation of the amortization contribution requirement component of a minimum municipal obligation under this subsection shall be in proportion to the reduction in the unfunded actuarial accrued liability of the pension fund, as determined in the last actuarial valuation report submitted to the commission under Chapter 2, that results from the deposit of the proceeds [from the bonds or notes] *of bonds, notes or an alternative funding mechanism*.

(1) In the case of municipalities submitting annual actuarial valuation reports pursuant to section 201, the cancellation of the amortization contribution requirement component of the minimum municipal obligation shall be effective for the year following the valuation date of the first actuarial valuation report prepared under Chapter 2 reflecting the deposit of the [bond or note] proceeds *of bonds, notes or an alternative funding mechanism*. The cancellation of the amortization contribution requirement component of the minimum municipal obligation shall also be effective for the year preceding the valuation date of the first actuarial valuation report prepared under Chapter 2 reflecting the deposit of the [bond or note] proceeds *of bonds, notes or an alternative funding mechanism* if the

effective date of the deposit of the **[bond or note]** proceeds *of bonds, notes or an alternative funding mechanism* is not January 1.

(2) In the case of municipalities submitting biennial actuarial valuation reports pursuant to section 201, the cancellation of the amortization contribution requirement component of the minimum municipal obligation shall be effective as follows:

(i) if the effective date of the deposit of the bond or note proceeds is January 1 of an odd-numbered year, the cancellation shall be effective for the year following the valuation date of the first actuarial valuation report prepared under Chapter 2 reflecting the deposit of the bond or note proceeds;

(ii) if the effective date of the deposit of the bond or note proceeds is in an odd-numbered year but not on January 1, the cancellation shall be effective for the two years preceding and the year following the valuation date of the first actuarial valuation report prepared under Chapter 2 reflecting the deposit of the bond or note proceeds;

(iii) if the effective date of the deposit of the bond or note proceeds is in an even-numbered year, the cancellation shall be effective for the year preceding and the year following the valuation date of the first actuarial valuation report prepared under Chapter 2 reflecting the deposit of the bond or note proceeds.

(i) Deposit and use of **[bond or note]** proceeds *of bonds, notes or an alternative funding mechanism*.—The total net proceeds **[from the issuance of bonds or notes]** *of bonds, notes or an alternative funding mechanism* shall be deposited into the pension fund of the municipality within 30 days of receipt by the municipality or the effective date of this act, shall be treated as an amortization contribution for the purposes of reporting under Chapter 2 and shall not be used to pay any portion of the municipality's minimum municipal obligation determined under section 302.

Section 3. Section 607(j) of the act, amended December 10, 1996 (P.L.934, No.150), is amended to read:

Section 607. Remedies applicable to various recovery program levels.

* * *

(j) Supplemental State assistance.—If every pension plan of the municipality which is a defined benefit plan and which is self-insured in whole or in part has filed an actuarial valuation report utilizing the standardized actuarial cost method and economic actuarial assumptions within the range of actuarial assumptions specified in section 202(b) and if the municipality has implemented the aggregation of trust funds pursuant to subsection (b), the municipality may receive supplemental State assistance from the Supplemental State Assistance Fund established pursuant to section 608. The amount of the supplemental State assistance to which the municipality is entitled shall be determined annually based on the determination scoring which the municipality received from the commission pursuant to section 503, as follows:

(1) The determination score of the municipality shall be reduced by an amount equal to 25% of the maximum possible determination score.

(2) The result calculated pursuant to paragraph (1) shall be expressed as a percentage of the maximum possible determination score.

(2.1) For the supplemental State assistance distributed in December of 1997, the percentage calculated pursuant to paragraph (2) shall be applied to the dollar amount of difference between the greater of the amount of the municipal contribution or the amount of the actual municipal deposit to all municipal pension plans in aggregate and the full minimum municipal obligation with respect to the pension plans pursuant to section 302 or 303, whichever is applicable, to determine the amount of supplemental State assistance for the municipality.

(3) [The] *For the supplemental State assistance distributed in December of 1998 and thereafter, the percentage calculated pursuant to paragraph (2) shall be applied to the dollar amount of difference between the amount of the municipal contribution to all municipal pension plans in aggregate and the full minimum municipal obligation with respect to the pension plan pursuant to section 302 or 303, whichever is applicable, to determine the amount of supplemental State assistance for the municipality. For the purposes of this paragraph, the municipal contribution of a municipality that has issued bonds or notes to fund an unfunded actuarial accrued liability under the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, or under other laws applicable to the municipality, shall include debt service on the bonds or notes, or both, issued to fund an unfunded actuarial accrued liability.*

In the event that the total amount of supplemental State assistance determined as payable to all municipalities entitled to receive supplemental State assistance exceeds the maximum appropriation provided for in section 608(b), the amount of supplemental State assistance which shall be payable to each municipality shall be proportionately reduced. The supplemental State assistance shall be distributed annually on the first business day occurring in December. *For the purposes of this subsection, the term "municipal contribution" shall mean the sum of the current year's minimum municipal obligation, the annual interest payable on any current or prior period funding deficiencies and the total amount of any discretionary deposits to the pension fund in the current year.*

* * *

Section 4. The act is amended by adding chapters to read:

CHAPTER 9 MODIFICATION OF ACTUARIAL FUNDING STANDARD

Section 901. Modification of actuarial funding standard.

(a) Modification of actuarial funding standard.—The actuarial reporting and funding requirements established under Chapters 2, 3 and 6 are

modified by this section for a municipality. The amortization contribution established for each pension fund under this section shall be an integral component of the aggregate amortization contribution requirements determined under section 302(b)(3). A municipality determining amortization contributions under this section shall continue to determine the total financial requirements of its pension funds under section 302. If a municipality is delinquent in satisfying the total financial requirements of its pension funds, it shall be subject to the penalty and enforcement provisions specified in sections 302(e), 306 and 307.

(b) *Calculation of unfunded actuarial accrued liability.*—A municipality shall determine the unfunded actuarial accrued liability for each of its pension funds as of January 1, 1998. The calculation of the unfunded actuarial accrued liability shall be made and certified by an approved actuary under section 202(b)(3) using the actuarial assumptions employed in preparation of the January 1, 1997, actuarial valuation report required under section 201 except that the actuarial value of assets calculated under section 202(e)(1) shall reflect as assets the value of all deposits to the pension fund made within the plan year commencing January 1, 1998, that were comprised of the proceeds from pension bonds.

(c) *Required amortization contributions.*—Commencing in the plan year beginning January 1, 1998, a municipality shall make annual level dollar amortization contributions to each of its pension funds that are sufficient to fully amortize the unfunded actuarial accrued liabilities over the following 40 years. The annual level dollar amortization contribution for each pension fund shall be calculated by an approved actuary assuming 10% investment earnings on the amortization contributions throughout the 40-year period. The level dollar amortization contribution for a pension fund is subject to the limit on the additional funding costs in section 202(b)(4).

(d) *Determination and amortization of actuarial gain or loss.*—

(1) For each pension fund subject to the provisions of this section, the municipality shall establish and maintain a comparative interest rate amortization tabulation for the duration of the 40-year amortization period. The tabulation shall reflect the calculation of a balance as of the end of each plan year that shall be calculated as the sum of the previous year's balance and the amortization contribution determined under this section plus interest on that sum to the end of the plan year assuming a 10% rate of return. The tabulation shall also reflect an annual interest adjustment for each year calculated as the amount of the interest credited in the determination of the balance less the amount of the interest that would have been credited if the balance had been calculated using the actual rate of return for the applicable plan year rather than the assumed 10% rate of return. The actual rate of return used to calculate the annual interest adjustment shall be the rate of return

realized on the market value of the pension fund's assets during the applicable plan year.

(2) In each actuarial valuation report prepared under Chapter 2 that reflects an amortization contribution determined under this section, the annual interest adjustment calculated under this subsection shall be treated as an actuarial gain or loss and amortized under section 202(b)(4).

(e) Effect of future pension bonds.—If an unfunded actuarial accrued liability being funded with amortization contributions determined under this section is reduced through the deposit of pension bonds proceeds, the remaining balance of the unfunded actuarial accrued liability calculated under this section shall be reduced proportionately as specified in section 202(b)(4) and an approved actuary shall recalculate the annual level dollar amortization contribution required to fully amortize the remaining balance of the unfunded actuarial accrued liability over the remaining years of the amortization period assuming a 10% rate of return on the amortization contributions. The recalculated unfunded actuarial accrued liability and the recalculated amortization contribution shall be reflected in the actuarial valuation report and the comparative interest rate amortization tabulation prepared as of the beginning of the plan year following the deposit of the pension bond proceeds.

(f) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Amortization contribution.” That portion of the pension plan contribution which is designed to pay interest on and to amortize the unfunded actuarial accrued liability.

“Municipality.” A home rule municipality formerly classified as a city of the second class that issues pension bonds and deposits the proceeds in a pension fund within the plan year commencing January 1, 1998, and increases the ratio of the actuarial value of assets to the actuarial accrued liability of its pension funds by more than 0.25.

“Pension bonds.” Bonds or notes issued by a municipality under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) to finance reduction of the unfunded actuarial accrued liability of one or more pension funds.

CHAPTER 10

ALTERNATIVE FUNDING MECHANISM

Section 1001. Alternative funding mechanism.

(a) Authorization for alternative funding mechanism.—A city of the first class shall be authorized to use an alternative funding mechanism for the purpose of reducing or eliminating the unfunded actuarial accrued liability of its pension system.

(b) Period of payment requirements.—The period of the city's payment requirements under an alternative funding mechanism implemented prior to December 31, 2002, shall be the greater of:

(1) the remaining period not exceeding 30 years during which the city would have amortized the unfunded actuarial accrued liability reported in its last actuarial valuation report filed under Chapter 2 using the total amortization payment and interest assumption, reported in that actuarial valuation report; or

(2) 30 years.

If an alternative funding mechanism is implemented after December 31, 2002, the period described in paragraph (1) shall be the period of the city's payment requirements.

(c) Condition precedent.—No alternative funding mechanism shall become effective until a certified copy of the ordinance or ordinances authorizing the alternative funding mechanism and a certified copy of the final instrument setting forth the payment requirements of the alternative funding mechanism have been filed with the commission. The commission may request and the city shall provide any additional information necessary for the administration of Chapter 4. No approval of the commission shall be required.

(d) Treatment of payment requirements under alternative funding mechanism.—The obligations of the city to make payments pursuant to the provisions of an alternative funding mechanism shall not be considered to be a part of the indebtedness of the city.

(e) Enforcement of payment requirement.—The payment requirements of an alternative funding mechanism shall be paid when due. In the event that the city fails to comply with its duty to provide for in its budget or to pay the full amount of the payment requirements of an alternative funding mechanism when due, the failure may be remedied by the institution of legal proceedings for mandamus. The city is by this act on notice as to its duty to fund its payment requirements under an alternative funding mechanism. The provisions of this act shall be deemed to be sufficient demand to the city for it to comply with its duty, and the failure by the city for the year or years in question to include in its budget or to pay when due the full amount of the payment requirements of an alternative funding mechanism shall be deemed to be sufficient refusal by the city to comply with its duty antecedent to the commencement of the action. No other remedy at law shall be deemed to be sufficiently adequate and appropriate to bar the commencement of this action. Any person or entity authorized pursuant to subsection (f) or (g) to institute the action shall be deemed to have been injured by the failure of the city to comply with its legal duty to fund the payment requirements of an alternative funding mechanism, and that injury shall be deemed to be immediate. No issuance of mandamus in connection with the legal duty of the city to fund the payment requirements of an alternative funding mechanism shall be deemed to threaten the

creation of confusion, disorder or excessive burden on the city or to threaten a result which is detrimental to the public interest.

(f) Persons beneficially interested.—Any person who is beneficially interested in the alternative funding mechanism shall have standing to institute a legal proceeding for mandamus as provided for in this section.

A beneficially interested person is any person who:

(1) has the relationship with the city's pension plan of:

(i) an active member, whether or not any minimum service requirement for acquiring a vested right to a retirement benefit has been met;

(ii) an inactive member with a vested right to deferred receipt of a retirement benefit;

(iii) a retired member;

(iv) a recipient of retirement benefit other than a retired member;

(v) a former member with member contributions to the credit of the member with the city's pension plan; or

(vi) a spouse, child or other potential beneficiary pursuant to the terms of the plan document of the city's pension plan of any person described in subparagraphs (i) and (v);

(2) serves in the position of fiduciary with respect to the city's pension plan;

(3) represents active members of the city's pension plan as collective bargaining agent;

(4) serves as an elected or appointed official of the city; or

(5) is an authority or the board of pensions and retirement with which the city has implemented an alternative funding mechanism or is any person either entity authorizes to act on its behalf.

(g) Others with standing to bring action.—The Attorney General or the district attorney of the county in which the city is located, in addition to any other powers and duties conferred on that office by law, shall have standing to institute a legal proceeding for mandamus as provided for in this section.

(h) Scope of remedy.—Any mandamus pursuant to this section may compel the addition by the city to the current city budget of any omitted amount of the payment requirements under an alternative funding mechanism and the subsequent payment of any budgeted amount or the immediate or scheduled periodic payment of any omitted amount of the payment requirements under an alternative funding mechanism, whichever is applicable.

Section 5. The amendment of section 404(b) of the act shall apply to actuarial exhibits of additional funding costs associated with the amortization of any unfunded actuarial accrued liability prepared for plan years beginning after the effective date of this act.

Section 6. The addition of section 901 of the act shall apply to plan years commencing January 1, 1998, and thereafter.

Section 7. This act shall take effect immediately.

APPROVED—The 18th day of June, A.D. 1998.

THOMAS J. RIDGE