

**Synopsis of Act 44 of 2009 (House Bill Number 1828)**

Act 44 of 2009 was signed into law by the Governor on September 18, 2009, and makes numerous, significant changes to the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984). Acknowledging the current economic climate, Act 44 makes available a number of actuarial tools intended to provide short-term fiscal relief to local governments operating public pension plans. The Act also regulates the establishment and operation of Deferred Retirement Option Plans (DROPs), establishes new conduct and disclosure standards for professional service contracts applicable to municipal pension systems, and provides special remedies applicable to the cities of Philadelphia and Pittsburgh.

More specifically, Act 44 amends Act 205 as follows.

**Amendments Applicable to All Plans**

- Mandates revised amortization schedules applicable to all future unfunded actuarial accrued liabilities incurred by municipal pension plans.

*Effective immediately and included in the 2009 Actuarial Valuation Report (AVR):*

Actuarial Gains/Losses - Increases from 15 to 20 years

*Effective for changes made on or after September 18, 2009, and included in the 2011 AVR:*

Change in Assumptions - Decreases from 20 to 15 years

State Mandated Benefit Changes - 20 years

Local Benefit Changes for Active Employees - 10 years

Local Benefit Changes for Retired Employees - 1 year

- Effective immediately, provides for optional, alternative, expanded asset smoothing methods for determination of the actuarial value of assets. For the two-year valuation period beginning in 2009, allows an expansion of the asset smoothing corridor for recognition of gains and losses from 20% to 30% for all municipalities.
- Adoption of new smoothing techniques or change of current smoothing methods is to be amortized as changes of actuarial assumptions. The use of the smoothing corridor will be amortized as an actuarial gain or loss.

**New Act 205 Municipal Pension “Recovery Program”**

- Establishes a new municipal distress determination method using the pension plan ratio of assets to liabilities, based upon the most recent actuarial valuation report. The first AVR filed for a newly established plan will not be used in determining the level of distress. Each municipality, as defined by Act 205, will receive a separate distress score based on the aggregate funded ratio of its pension plans.

*(Remedies available under the recovery program cannot be utilized until a distress determination score is calculated by the Commission in 2010 based upon the 2009 AVR.)\**

<u>Funding Ratio</u>	<u>Score</u>	<u>Distress Level</u>
90% and above	0	None
70% to 89%	1	(I) Minimal
50% to 69%	2	(II) Moderate
Less than 50%	3	(III) Severe

- Distress Level Transition -
  - If a municipality’s distress level becomes worse as of a future filing period, the reduced amortization and minimum municipal obligation (MMO) remedy will be extended by the difference between:
    - The period allowed for the previous distress level
    - The period applicable to the new level of distress
  - If a municipality’s distress level improves, the reduced amortization and MMO remedy will continue for the duration of the period applicable to the previous distress level determination.
- Each municipality will be required to report the status of its distress remedy elections in its biennial or annual valuation reports.

*\* An MMO must be calculated pursuant to § 302(c), but a municipality may utilize its best information concerning funding status and expected distress score in the budget process.*

**Level I (Minimal Distress)**

Voluntary remedies -

- Aggregation of pension funds for administration and investment
- Establishment of total member contribution
- Deviation from municipal contribution limitations
- May pay 75% of the amortization contribution requirement for 2 years
- Increase in the asset smoothing corridor from 20% to 30% for an additional 2 years (total of 4 years)

**Level II (Moderate Distress)**

Voluntary remedies -

- Establishment of total member contribution
- Deviation from municipal contribution limitations
- Utilization of the special taxing authority under Act 205
- Establishment of a revised benefit plan for newly hired employees
- May pay 75% of the amortization contribution requirements for 4 years
- Increase in the asset smoothing corridor from 20% to 30% for an additional 4 years (total of 6 years)

Mandatory remedies -

- Aggregation of pension funds for administration and investment
- Submission of a plan for administrative improvement

**Level III (Severe Distress)**

Voluntary remedies -

- Establishment of total member contribution
- Deviation from municipal contribution limitations
- Utilization of the special taxing authority under Act 205
- May pay 75% of the amortization contribution requirements for 6 years
- Increase in the asset smoothing corridor from 20% to 30% for an additional 4 years (total of 6 years)

Mandatory remedies -

- Aggregation of pension funds for administration and investment
- Establishment of a revised benefit plan for newly hired employees
- Submission of a plan for administrative improvement

**Cities of the First Class (City of Philadelphia)**

- Exempts the City of Philadelphia from the mandatory provisions of the new Act 205 recovery program until January 1, 2016.
- Permits, but does not require, the City of Philadelphia to reamortize all of the unfunded actuarial accrued liabilities in the City's pension plans over a 30-year period using level-dollar amortization payments.
- Over a multi-year period, permits the City of Philadelphia to defer payment of a portion of the City's Minimum Municipal Obligation (MMO) and mandates a repayment schedule applicable to any amounts deferred.
  - For the fiscal year ending June 30, 2010, allows the deferral of an amount not to exceed \$155,000,000
  - For the fiscal year ending June 30, 2011, allows the deferral of an amount not to exceed \$80,000,000
- Permits the City of Philadelphia to temporarily impose a local sales and use tax of 1%, with any moneys received from the sales and use tax required to be applied toward payment of the City's MMO and repayment of amounts deferred with interest.
- Requires the City of Philadelphia to comply with a fixed repayment schedule, with failure to comply resulting in the withholding of certain state grants, loans and entitlements in an amount equal to the deferral amount not repaid.

**Cities of the Second Class (City of Pittsburgh)**

- Mandates the transfer of administration of the City of Pittsburgh's pension plans to the Pennsylvania Municipal Retirement System (PMRS) if the city is determined to be Level III distress as of January 1, 2011.
- Permits the City of Pittsburgh to impose a parking tax of 37.5%, with 6.75% of any moneys received from the parking tax to be applied toward payment of the city's MMO.
- Permits the City of Pittsburgh to impose an additional 2.5% parking tax if the city sells or leases all of its parking garages with net proceeds to be deposited with PMRS on behalf of the City.

**Deferred Retirement Option Plans (DROPs)**

- Effective September 18, 2009, regulates all newly established DROP plans provided by local governments.
- Permits a member of such a pension plan who is or will be eligible for normal retirement to elect to participate in the DROP.
- Prohibits DROP participation by elected officials.
- Requires that DROP participation begin the day following the effective date of the member's regular retirement and continue for the period specified in the DROP ordinance, up to a maximum of 5 years.
- Provides for early termination of DROP participation by a member without a penalty.
- Requires that the interest credited to a DROP participant account be equal to actual interest, but not less than 0% or more than 4.5% annually.
- Requires that the DROP participant account, together with interest, be held in trust.
- Requires payment of the balance in the account to either the member or a beneficiary within 45 days after termination of DROP participation as either a lump sum or a tax-sheltered rollover distribution.
- Provides protection of DROP benefits to DROP participants including protection from State and municipal taxation but permitting claims under the Public Employee Pension Forfeiture Act and qualified domestic relations orders.
- Requires that a DROP participant be eligible for all post-retirement benefits and for most pre-retirement benefits normally restricted to active employees.
- Provides for the crediting and payment of benefits if a DROP participant dies during the period of DROP participation.
- Provides for the establishment of DROPs by the Pennsylvania Municipal Retirement System for its participating local governments.
- Prohibits DROP participants and their compensation from being reported as active members and active member payroll for purposes of actuarial valuation reporting or state pension aid under Act 205.

**Other Provisions**

- Permits, but does not require, county pension plans to use any reasonable actuarial assumptions or methodologies provided for in Act 205.
- Effective January 1, 2010, clarifies the limitations on the uses of the special municipal taxing authority currently provided under the Act, and in the case of a municipality utilizing the proceeds from the special tax to fund other post-employment benefits (OPEBs), requires the inclusion of OPEB liabilities in the actuarial valuation report filed with the Commission and in the calculation of the municipality's Minimum Municipal Obligation (MMO).
- Establishes conduct and disclosure standards for professional service contracts, requiring municipal pension systems to adopt procedures to advertise and review proposals for contracts for professional services.
- Requires municipal pension systems subject to the Act to permit an active member of the system to designate the member's spouse as a beneficiary regardless of the date or duration of marriage.

This version and any updates can be found on the Commission's website at [www.perc.state.pa.us](http://www.perc.state.pa.us).