

HOUSE BILL 2037

By McManus

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 37, Part 3 and Title 9, Chapter 3, relative to financial security for public defined benefit pension plans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 37, Part 3, is amended by adding a new, appropriately designated section as follows:

8-37-310.

(a) The state treasurer shall develop and recommend to the board of trustees a funding policy with respect to the obligations of the Tennessee consolidated retirement system. The board of trustees shall adopt a funding policy which complies with the provisions of this section. Such adopted funding policy shall be in effect until amended.

(b) For the purposes of this section, "Actuarially determined contribution (ADC), formerly known as the actuarially required contribution" means the actuarially determined annual required contribution that incorporates both the normal cost of benefits and the amortization of the pension plan's unfunded accrued liability.

(c) The funding policy established by the board of trustees shall include, but not be limited to the following:

(1) The ADC for the retirement system shall include the normal costs and the amortization of the unfunded accrued liability, to the extent that the retirement system has any unfunded accrued liability for a particular fiscal year;

(2) The maximum amortization period for which any unfunded accrued liabilities will be paid; and

(3) A statement that the retirement system's budget shall include funding of at least one hundred percent (100%) of the ADC.

(d) The actuarial methodology is expected to provide that projected revenues (employer contributions, employee contributions, and investment earnings), and current assets will finance all of the projected benefits (death, disability, and retirement) provided by the retirement system. In the event the retirement system has an unfunded accrued liability, then the level dollar amortization method shall be utilized for financing the unfunded accrued liability.

(e) The ADC calculated by the retirement system's actuary shall be calculated utilizing the following methodology, and in accordance with the Actuarial Standards of Practice established by the Actuarial Standards Board:

(1) Actuarial cost method allocating normal costs over a period beginning no earlier than the date of employment which should not exceed the last assumed retirement age. This method is designed to fully fund the long-term costs of promised benefits, consistent with the objective of keeping contributions relatively stable and equitably allocating the costs over the employees' period of active service. Entry age normal cost method shall be used to achieve this purpose;

(2) Actuarial value of assets calculated using a maximum ten (10) year asset smoothing period. Any smoothing period greater than five (5) years will have a maximum twenty percent (20%) market corridor. For the purposes of this subsection, the term "market corridor" means a range beyond which deviations are not smoothed;

(3) Level dollar amortization method of unfunded accrued liabilities;

(4) Mortality assumptions, which should consider the effect of expected mortality improvements, and shall be used no later than 2024;

(5) Investment earnings assumption based on the rate adopted by the board of trustees; and

(6) A closed amortization period not to exceed thirty (30) years for all unfunded accrued liabilities.

(f) In the event that an entity participating in the retirement system is funded below sixty percent (60%), such entity shall not establish benefit enhancements.

SECTION 2. Tennessee Code Annotated, Title 8, Chapter 37, Part 3, is amended by deleting sections 8-37-302, 8-37-303, 8-37-304, and 8-37-305 in their entirety.

SECTION 3. Tennessee Code Annotated, Title 9, Chapter 3, is amended by adding a new part thereto as follows:

9-3-501. This part shall be known and may be cited as “The Public Employee Defined Benefit Financial Security Act of 2014.”

9-3-502. This act shall apply to political subdivisions that provide defined benefit plans not administered by the Tennessee consolidated retirement system.

9-3-503.

(a) As used in this part, unless the context otherwise requires:

(1) “Actuarially determined contribution (ADC), formerly known as the actuarially required contribution” means the actuarially determined annual required contribution that incorporates both the normal cost of benefits and the amortization of the pension plan’s unfunded accrued liability.

(2) “Political subdivision” means any instrumentality of the state, or one (1) or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation of such juristic entity, employees of the state or subdivision.

(3) "Political subdivision employee" means any person in the employ of a political subdivision who participates in the political subdivision's pension plan.

(4) "Pension plan" means the defined benefit pension plan established and maintained by a political subdivision for its employees, excluding a political subdivision's participation in the Tennessee consolidated retirement system pursuant to title 8, chapters 34 through 37. The term "pension plan" shall include all pension plans that are open or closed to membership, and shall also include the plural, referring to any and all pension plans provided by a political subdivision.

(5) "Unfunded accrued liability" means the actuarially determined accrued liabilities of the pension plan that are greater than the actuarially determined value of the pension plan assets.

9-3-504.

(a) Notwithstanding any provision of law, rule, ordinance, resolution, charter, pension plan, agreement or pension plan contract to the contrary, the applicable provisions of this part shall apply to any political subdivision in the state that has established and maintains, directly or indirectly, a defined benefit pension plan for the benefits of its employees, irrespective of the manner in which the pension plan is administered.

(b) Each political subdivision shall develop a funding policy for financing the obligations under the pension plan. Such funding plan shall be legally adopted and approved through a resolution by the political subdivision's chief legislative body. The funding policy shall be in effect until amended. Each political subdivision shall develop a funding policy for fiscal years beginning after June 15, 2015. The funding policy and any

amendment thereto shall be submitted to the comptroller of the treasury within thirty (30) days after adoption.

(c) The political subdivision's funding policy shall include, but not be limited to the following:

(1) The ADC for each pension plan shall include the normal costs and the amortization of the unfunded accrued liability, to the extent that any of the plans have any unfunded accrued liability for a particular fiscal year;

(2) The maximum amortization period for which any unfunded accrued liabilities will be paid; and

(3) A statement that the political subdivision's budget shall include funding of at least one hundred percent (100%) of the ADC, except as provided in §9-3-505(b).

(d) The actuarial methodology is expected to provide that projected revenues (employer contributions, employee contributions, and investment earnings), and current assets will finance all of the projected benefits (death, disability, and retirement) provided by the plan. In the event the pension plan has an unfunded accrued liability, then no later than the plan fiscal year commencing after June 15, 2020, the level dollar amortization method shall be utilized for financing the unfunded accrued liability.

(e) The ADC calculated by the political subdivision's actuary shall be calculated utilizing the following methodology, and in accordance with the Actuarial Standards of Practice established by the Actuarial Standards Board:

(1) Actuarial cost method allocating normal costs over a period beginning no earlier than the date of employment which should not exceed the last assumed retirement age. This method is designed to fully fund the long-term costs of promised benefits, consistent with the objective of keeping contributions

relatively stable and equitably allocating the costs over the employees' period of active service. Commencing with the plan fiscal year beginning after June 15, 2019, a generally accepted actuarial method that achieves the above objectives shall be used, except the projected unit credit method is not permitted;

(2) Actuarial value of assets calculated using a maximum ten (10) year asset smoothing period. Any smoothing period greater than five (5) years will have a maximum twenty percent (20%) market corridor. For the purposes of this subsection, the term "market corridor" means a range beyond which deviations are not smoothed;

(3) No later than the plan fiscal year beginning after June 15, 2020, the level dollar amortization method of unfunded accrued liabilities;

(4) Mortality assumptions, which should consider the effect of expected mortality improvements, and shall be used no later than the plan fiscal year beginning after June 15, 2024;

(5) Investment earnings assumption that shall not be greater than fifty (50) basis points above the rate adopted by the Tennessee consolidated retirement system; and

(6) A closed amortization period not to exceed thirty (30) years for all unfunded accrued liabilities.

(f) The ADC for the political subdivision's pension plan shall be determined by an independent, qualified actuary.

(g) The actuary used by the political subdivision shall be a member of the American Academy of Actuaries.

(h) The actuary used by a political subdivision for the calculation of the ADC for its pension plan shall not be an employee of that political subdivision, and shall not be otherwise eligible to participate in any of the political subdivision's pension plans.

9-3-505.

(a) A political subdivision shall annually pay a payment to the pension plan of no less than one hundred percent (100%) of the ADC; however, it may make a payment of more than one hundred percent (100%) of the ADC.

(b) A political subdivision that is not paying at least one hundred percent (100%) of the ADC to its pension plan for the fiscal year that includes June 30, 2015 shall maintain effort in the percentage of the ADC paid and, in addition thereto, in each subsequent year, pay the cumulative annual funding progress percentage to increase the funding percentage of the ADC to the pension plan until payment of one hundred percent (100%) of the ADC occurs within a maximum of five (5) consecutive years after June 30, 2015. The annual funding progress percentage is, as a minimum, the percentage determined by dividing by five (5) the difference between the percentage of the ADC paid in the plan fiscal year preceding July 1, 2015 subtracted from one hundred percent (100%). When payment of one hundred percent (100%) of the ADC occurs, the political subdivision shall continue to pay one hundred percent (100%) of the ADC annually. The ADC shall be recalculated each year and the percentage of funding shall be based on the most recent recalculation of the ADC.

9-3-506.

(a) The following provisions shall apply to all political subdivisions subject to this act:

(1) For political subdivision employees hired on or after the later of effective date of this act or the date that the following provision is authorized by

the political subdivision's chief legislative body by resolution, the political subdivision may freeze, suspend or modify benefits, employee contributions, plan terms and design on a prospective basis; and

(2) For any pension plan that is funded below sixty percent (60%), the political subdivision shall not establish benefit enhancements.

(b) For all political subdivision employees hired on or after the effective date of this act, the accrued benefits earned prior to any adjustment pursuant to subsection (a)(1) above shall remain an enforceable right and may not be reduced without the written consent of the employee.

9-3-507.

(a) In the event the political subdivision shall fail to fund the ADC according to the percentages established in § 9-3-505, the commissioner of finance and administration, at the direction of the comptroller of the treasury, is authorized to withhold such amount or part of such amount from any state-shared taxes that are otherwise apportioned to such political subdivision. The money withheld from state-shared taxes shall be paid to the political subdivision's pension plan.

(b) The deduction shall be made as a first charge against any moneys payable to such political subdivision regardless of the source of such payment and regardless of the purpose or contemplated use of such funds.

(c) Regardless of a political subdivision's funding level of its ADC, a political subdivision may, with the recommendation of the state treasurer and the approval of the board of trustees of the Tennessee consolidated retirement system:

(1) Continue the administration of its pension plan, but have the pension plan funds co-invested with the pension plan assets for the Tennessee consolidated retirement system, but established in a separate fund from the

Tennessee consolidated retirement system assets, and accounted for separately with accurate and detailed accounting records. The separate fund shall be operated in accordance with IRS Revenue Ruling 2011-1 or subsequent guidance regarding a group trust fund under Internal Revenue Code Section 401(a)(24). Before a political subdivision's pension plan assets are co-invested with Tennessee consolidated retirement system assets, the political subdivision shall provide the Department of Treasury with its plan document and a determination letter from the Internal Revenue Service that its plan assets are qualified assets or written advice from competent counsel of the Tennessee consolidated retirement system that the plan is a qualified plan. The political subdivision shall enter into an agreement with the retirement system for the co-investment of the political subdivision's pension plan assets, which shall include a charge assessed by the retirement system against the political subdivision for services related to the co-investment of assets; or

(2) Continue the pension plan, but have the plan administered by the Tennessee consolidated retirement system and have the assets co-invested with the Tennessee consolidated retirement system pension plan assets.

(A) The political subdivision shall enter into an agreement with the Tennessee consolidated retirement system to provide billing services, participant enrollment services, participant accounts, data processing, recordkeeping, investment and other related services that are necessary or appropriate to the administration of the political subdivision's pension plan. The agreement may provide that the services be provided directly by staff of the retirement system or through contracts with other providers.

(B) Any agreement entered into under this section shall require that the political subdivision remain the responsible administrator for the political subdivision's pension plan, and that neither the state of Tennessee nor the retirement system, or any of its officers, agents, employees, or boards shall act as a trustee or be considered the trustee for the political subdivision's pension plan.

(C) The chair of the retirement system shall assess a charge to the political subdivision for the administration of the political subdivision's pension plan and co-investment of its assets, in an amount to be determined by the chair, to meet the administrative expenses of the retirement system in providing the administration and co-investment services under this section. It is the legislative intent that the state shall realize no increased cost as a result of the administration of the political subdivision's pension plan and co-investment of its assets, and that all costs associated with the administration of the pension plan, including administrative and co-investment costs, shall be the responsibility of the respective political subdivision. In the event that the political subdivision refuses or otherwise fails to satisfy this liability, such amounts shall become a lien on the property of the political subdivision and may be withheld from state-shared taxes which are otherwise apportioned to the political subdivision.

(D) As a condition of providing the services described in this section for the administration of a political subdivision's pension plan, and at any time thereafter, the chair of the retirement system may require that the political subdivision provide proof that the political subdivision's

pension plan is a qualified plan and otherwise complies with the applicable provisions of the Internal Revenue Code, as amended. The chair of the retirement system may require an opinion of counsel or other assurance satisfactory to the chair that the provision of the services described in this section does not cause the retirement system, the state, or any of their agencies or employees to violate any federal or state laws or regulations.

(E) Political subdivisions shall take all actions that the retirement system, in its discretion, deems necessary for compliance by the retirement system with all applicable federal and state laws or for qualification of the retirement system for any exemptions from regulation available under those laws, including, but not limited to, the federal Securities Act of 1933, as amended, and the Investment Company Act of 1940, as amended.

(F) The political subdivision's plan shall be administered separately from the Tennessee consolidated retirement system, and shall be administered according to the political subdivision's pension plan documents.

(G) The political subdivision's plan assets shall be established in a separate fund from the Tennessee consolidated retirement system assets, and accounted for separately with accurate and detailed accounting records. The separate fund shall be operated in accordance with IRS Revenue Ruling 2011-1 or subsequent guidance regarding a group trust fund under Internal Revenue Code Section 401(a)(24). Before a political subdivision's pension plan assets are co-invested with

Tennessee consolidated retirement system assets, the political subdivision shall provide the Department of Treasury with its plan document and a determination letter from the Internal Revenue Service that its plan assets are qualified assets.

(3) Notwithstanding any provision of the law to the contrary, through its administration of a political subdivision's pension plan, or the co-investment of the political subdivision's pension plan assets, as set forth in subdivisions (1) and (2) of this subsection, the Tennessee consolidated retirement system shall not be liable for the payment of any retirement allowances or other benefits on account for the political subdivision employees or their respective beneficiaries, for which reserves have not been previously created from funds contributed by the political subdivision or the political subdivision employees for such benefits.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect immediately upon becoming a law, the public welfare requiring it.