



Act 44 of 2009

PRIMARY ACT 44 PROVISIONS:

- Financial relief for any local governmental pension plan.
- New Recovery Plan for distressed pension plans.
- Authorization and standardization of DROP provisions.
- New pay-to-play rules and regulations.
- Specific relief for the City of Philadelphia.
- Specific relief for the City of Pittsburgh.

FINANCIAL RELIEF AVAILABLE TO ALL:

- Special Asset Smoothing method, greater of:
 - ✓ Market Value of Assets, or
 - ✓ Actuarial Value of Assets at prior valuation plus contributions minus distributions plus interest at one percent less than the assumed rate.
- Increased limit on Actuarial Value of Assets:
 - ✓ Currently under any asset-smoothing method, the ultimate actuarial value of assets (AVA) is limited to 120 percent of Market Value of Assets.
 - ✓ The Act would permit an AVA of up to 130 percent for the 2009 valuation.
- Change in amortization period for actuarial gains or losses from 15 to 20 years starting with 2009 valuations.
- However, all amortization periods are limited to the average future service of the active participant group, except those municipalities still under the old Distress Level 2 or 3 (*for 2011 and later valuations, new distress level will determine ability to use max. periods*).

NEW RECOVERY PLAN FOR DISTRESSED MUNICIPALITIES:

- Level of “Distress” is determined by a municipality’s aggregate funding ratio.
- Funding ratio is the sum of the actuarial value of assets for all pension plans divided by the sum of the actuarial accrued liability for all pension plans.

DISTRESS LEVELS:

Aggregate Funding Ratio	Distress Level
90% or more	0
70% - 89%	1
50% - 69%	2
Less than 50%	3

LEVEL 1 REMEDIES (ALL VOLUNTARY):

- Aggregation of pension funds for administration and investment purposes.
- Increase member contribution rates above statutory rates (*subject to collective bargaining and other limitations*).
- Deviation from municipal contribution limitations.
- May pay 75 percent of amortization payment from 2009 valuation.
- Make use of 30 percent corridor on AVA for an additional valuation cycle (*2009 and 2011*).

LEVEL 2 REMEDIES:

- Mandatory:
 - ✓ Aggregation of pension funds.
 - ✓ Submit plan for administrative improvement.
- Voluntary:
 - ✓ Increase member contribution rates above statutory rates.
 - ✓ Deviation from municipal contribution limitations.
 - ✓ May pay 75 percent of amortization payment from 2009 and 2011 valuations.
 - ✓ Make use of 30 percent corridor on AVA for two additional valuations cycle (*2009, 2011 and 2013*).
 - ✓ Establish a revised plan for new hires.
 - ✓ Special taxing authority.

LEVEL 3 REMEDIES:

- Mandatory:
 - ✓ Aggregation of pension funds.
 - ✓ Establish a revised plan for new hires.
 - ✓ Submit plan for administrative improvement.
- Voluntary:
 - ✓ Increase member contribution rates above statutory rates.
 - ✓ Deviation from municipal contribution limitations.
 - ✓ Special taxing authority.
 - ✓ May pay 75 percent of amortization payment from 2009, 2011 and 2013 valuations.
 - ✓ Make use of 30 percent corridor on AVA for two additional valuations cycle (*2009, 2011 and 2013*).

DROPS AUTHORIZED:

A Deferred Retirement Option Plan (*DROP*) is a provision in a defined benefit pension plan that allows a participant to accumulate his/her monthly retirement benefit payments while continuing to work for a specified term.

- Act 44 allows the option of a DROP for a “Local Government” and is defined as a municipality or any county.
- Standard provisions will apply to all new DROPs.
- Elected Officials must be excluded from any new DROP provision created after Sept. 18, 2009.

If you already have a DROP, you may continue it with the only required change being the removal of elected officials within 180 days or when the next CBA is negotiated.

ACT 44 DROP FEATURES:

- Participation starting any day elected by a participant after the NRD, for up to five years.
- Application must be submitted at least 30 days before participation in the DROP and include a binding letter of resignation with a termination date.
- Pension benefit is fixed at the beginning of DROP participation.
- Participant must agree to forgo any changes to benefit after entering the DROP, whether for salary increases, service accruals or plan changes.
- Participant may terminate earlier than anticipated (but no later).
- DROP participants still covered by statutory and other benefits applicable to active employees that aren't specifically forgone under DROP agreement.
- Cannot report DROP participants for state aid.

Participants subsidiary DROP account:

- DROP account need not be separate from pension fund.
- Actual Interest earned credited to DROP account with a minimum of 0 percent and maximum of 4.5 percent (may be a problem with IRS section 415(c)).
- Participants must be notified annually of account balance.
- Must be paid out within 45 days of termination.
- If system not notified with 60 days of termination, automatic distribution (*may be a problem with IRS auto. rollover rules*).

NEW CONDUCT AND DISCLOSURE STANDARDS FOR PROFESSIONAL SERVICES CONTRACTS:

- Develop procedures for selecting most qualified candidate for professional services contract.
- Requests for Proposals must be advertised in a timely and efficient manner.
- Application and disclosure forms must be developed if entering into a new professional services contract.
- Qualifications, experience and fees must be considered.

CONTRACTOR DISCLOSURE REQUIREMENTS FOR NEW PROPOSALS:

- Names and titles of individuals to provide services under the contract, including subcontractors and advisors;
- Whether the individual is a current or former official or EE of the municipality;
- Whether the individual has been a registered Federal or State lobbyist; and
- Description of responsibilities of each individual.

CONFLICTS OF INTEREST:

- Pension system must adopt policies regarding to potential conflicts of interest in review or negotiation of a contract.
- One-year restriction on participation by a former employee of a contractor in the review of a proposal or negotiation of a contract.
- One-year restriction on participation by a former employee of the municipality in submitting a proposal or performance of a contract.

TRANSPARENCY:

- After awarding a professional services contract, all applications and disclosure forms shall be public (*except proprietary information*).
- Changes to contracts of more than the greater of 10 percent or \$10,000 must be made public and posted in municipality's website in advance along with the justification for the increase.
- Factors taken into consideration in awarding the contract must be put in writing; and unsuccessful candidates must be notified within 10 days and provided with all relevant public documents.

PAY TO PLAY:

- No professional services provider or prospective service provider may make any contributions to a candidate of the municipality or a political action committee.
- Proposing firms may not cause or agree to allow a third party to communicate with officials or employees of the municipality except for the purpose of technical clarification, in which case a municipal employee may be designated for this purpose.
- A firm or person cannot submit a proposal if they made a campaign contribution in the last two years (*prospective*).
- Cannot enter into a professional service contract with municipality if you have a direct financial, commercial or business relationship with any official of the plan or municipality unless agreed to after full disclosure.
- A person involved in a professional services contract may not offer or confer a gift of more than nominal value to any official, employee or fiduciary of the plan.
- Disclosure of campaign contributions.
- Penalties for non-compliance.

OTHER PROVISIONS OF ACT 44:

Revised amortization periods starting with 2011 valuations (*in addition to actuarial gain/loss change starting 2009 mentioned above*):

- Changes in actuarial assumptions from 20 to 15 years
- State mandated benefit changes, 20 years
- Locally adopted benefit changes for Actives, 10 years
- Locally adopted benefit changes for Retirees, 1 year
- All amortization periods limited to average future service of employees, except for municipalities electing to participate in Level 2 or 3

QUESTIONS?

**Contact a Mockenhaupt Benefits Group consultant at
(800) 405-3620.**