



SPONSOR: Sen. McDowell & Rep. Q. Johnson

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 76

AN ACT TO AMEND TITLE 11 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE BOARD OF PENSION TRUSTEES AND THE ADMINISTRATION OF PENSION PLANS.

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

Section 1. Amend §8351, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8351 Definitions.

As used in this subchapter:

(11) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to § 8363(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 250 years, shall be used in determining normal retirement date.

Section 2. Amend § 8354, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8354 Powers and duties of the Board.

The Board shall have the power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits under this chapter.

Section 3. Amend § 8365(c), Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8365 Eligibility for disability pension.

(c) The determination of disability and its cause shall be made by the Board ~~after receiving the recommendation of its medical committee~~, or, if so delegated by the Board, by the Executive Secretary, after review of medical documentation submitted by the applicant in the form required by the Board.

Section 4. Amend §8801, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8801 Definitions.

As used in this chapter:

(12) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to § 8813(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 250 years, shall be used in determining normal retirement date.

Section 5. Amend § 8806, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8806 Powers and duties of the Board.

The Board shall have the power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits under this chapter.

Section 6. Amend § 8815(c), Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8815 Eligibility for disability pension.

(c) The determination of disability and its cause shall be made by the Board ~~after receiving the recommendation of its medical committee, or, if so delegated by the Board, by the Executive Secretary, after~~ review of medical documentation submitted by the applicant, in the form required by the Board.

Section 7. Amend § 5605(a)(1), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5605 Acceptance of provisions; result.

(a) Each new member of the state judiciary, whether by appointment and confirmation or as a result of any provision of this chapter, may accept the provisions of this chapter by:

(1) Written declaration to that effect within 30 days following the member's becoming a member of the state judiciary. A member first appointed on or after July 1, 1980, shall not be required to file a written declaration as such member is covered under the revised plan; or

Section 8. Amend § 8308, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8308 Board of Pension Trustees.

(b) The Board shall have:

(1) The Board shall establish the Delaware Public Employees' Retirement System, a body corporate and politic, which has control and management of the state pension funds provided for in:

h. The closed Diamond State Port Corporation Pension Plan pursuant to Chapter 87 of this title;

l. The OPEB Fund created pursuant to Chapter 52B of this title.

(5) ~~The control and management of the OPEB Fund created pursuant to Chapter 52B of this title. The authority to comingle assets of the System for investment purpose, provided said assets shall be maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of each separate Plan and/or Fund as applicable.~~

(c) In addition to the foregoing, the Board shall have the following powers, duties and functions:

(5) To make and enter into any and all contracts with any agency of the State, ~~or any outside agency, or person~~ for the purpose of performing its duties, including, but not limited, assisting in the ~~general~~ administration of this section and the investing or advising as to the investment of the pension plans, funds, or benefits under its control and management. The Board shall enter into a memorandum of understanding with any such agency of the State or outside agency, including the following:

a. The Office of Management and Budget for the administration of the Pension Office

b. The Department of Technology and Information for technology assistance

c. The Department of Justice for legal counsel

d. The Department of Human Resources for consultation regarding insurance and risk management.

(15) To establish committees for the purposes of: overseeing, approving, and terminating investments; consultation on internal and external audit; governance; or any purposes necessary to perform its duties. Committees may include persons who are not members of the Board. Any member of the Board may make nominations of prospective committee members and the Board shall consider the nominations and make appointments by majority vote of the Board. The Board may adopt policies consistent with any such delegation of its authorities.

(17) ~~To arrange~~ Notwithstanding provisions of 29 Del. C. §2906 (c) to the contrary, the sole authority to contract with a certified public accounting firm for an annual financial audit of each of the plans listed under subsection (b) of this section, which shall be provided annually to the General Assembly. ~~The Board shall enter into a memorandum of understanding with the Auditor of Accounts regarding each audit to be performed. The Board shall seek the input of the Audit Committee and the Auditor of Accounts in the selection of the certified accounting firm to perform the annual audit.~~ Payment for each audit must be approved by the Board.

(18) To exercise all other powers necessary and proper for the discharge of its duties.

(e) The Board of Pension Trustees shall be composed of 7 members as follows:

(1) The Secretary of Finance and the Director of the Office of Management and Budget shall serve ex officio as voting members;

83 (2) ~~Five~~Four other members who shall be appointed by the Governor with the consent of a majority of  
84 the members elected to the Senate;

85 (3) At least 2 of the appointed members shall be affiliated with 1 of the major political parties, and at  
86 least 2 of the appointed members shall be affiliated with the other major political party. Any person who declines  
87 to announce such person's political affiliation shall also be eligible for appointment as a member of the Board.

88 (4) The seventh member shall be appointed by and serve at the pleasure of the Governor with the consent  
89 of a majority of the members elected to the Senate and shall be Chairperson of the Board.

90 (p) All records maintained by the Board or the Office of Pensions and Investments relating to the Board's  
91 Internal Audit Department shall be confidential. Any record, material or data received, prepared, used or retained by  
92 the Board's Internal Audit Department shall not constitute a public record subject to Chapter 100 of this title.

#### SYNOPSIS

The Board of Pension Trustees has established policies and practices for the administration of the Delaware Public Employees Retirement System. House Bill 199 of the 149th General Assembly provided the initial changes to Delaware Code based on the recommendations of the Board's Best Practices review. This Act provides additional changes to the Delaware Code based on the review. The changes are summarized as follows:

Sections 1, 2, & 3 – Changes to the New State Police Plan to include determining normal retirement date for the review of a disability continuance case, deleting references to the medical committee which has been dissolved by the Board, and giving the authority by the Board to the Executive Secretary for benefit determinations.

Sections 4, 5, & 6 – Changes to the County/Municipal Police/Firefighter Pension Plans to include determining normal retirement date for the review of a disability continuance case, deleting references to the medical committee which has been dissolved by the Board, and giving the authority by the Board to the Executive Secretary for benefit determinations.

Section 7 – Technical change for the Judicial Pension Plan.

Section 8 – Technical changes regarding the closed Diamond State Port pension plan; allows for comingling for accounting purposes only of the OPEB trust with the DPERS Fund; clarifies Memoranda of Understanding with other state agencies; gives sole authority to the Board of Pension Trustees to hire an external audit firm; clarifies that the Board chair must be appointed by the Governor with the consent of the Senate; clarifies that all records of the Board's Audit Department are not public records under the State's FOIA laws.

Author: Senator McDowell