

CHAPTER 68  
FORMERLY  
HOUSE BILL NO. 199

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE BOARD OF PENSION TRUSTEES.

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

Section 1. Amend § 8308, Title 29 of the Delaware Code as follows:

§ 8308. Board of Pension Trustees.

(a) There is established a Board of Pension Trustees. The Board is subject to a standard of care in which the Board, its committees, and each of the committees' members shall discharge their duties with respect to each plan listed under subsection (b) of this section solely in the interest of the participants and beneficiaries of such plans and for the exclusive purpose of providing plan benefits to participants and their beneficiaries, including defraying reasonable expenses of administering each plan, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of such plan.

(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:

- a. The State Employees' Pension Plan pursuant to Chapter 55 of this title;
- b. The closed State Police Retirement Fund pursuant to subchapter II of Chapter 83 of Title 11;
- c. The new State Police Retirement Fund pursuant to subchapter III of Chapter 83 of Title 11;
- d. The State Judiciary Retirement Fund pursuant to Chapter 56 of this title;
- e. The County and Municipal Employees' Retirement Fund pursuant to Chapter 55A of this title;
- f. The County and Municipal Police/Firefighter Retirement Fund pursuant to Chapter 88 of Title 11;
- g. The Volunteer Fireman's Pension Fund pursuant to Chapter 66A of Title 16;
- h. The Diamond State Port Corporation Pension Plan pursuant to Chapter 87 of this title;
- i. The County and Municipal Police/Firefighter Special Fund pursuant to Chapter 7 of Title 18;
- j. The Special Pension Fund pursuant to Chapter 191, Volume 61, Laws of Delaware; and
- k. The Local Government Retirement Investment Pool pursuant to Chapter 83 of this title.

(2) The power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits for all state administered pension plans including the determination of eligibility for paraplegic veterans' benefits as provided for in § 1001 of Title 20.

(3) The power and duty to hear appeals from the decision of the Executive Secretary regarding pension benefits provided for all state administered pension plans.

(4) The power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

- a. The Arbitration Committee and the Disability Commission pursuant to Chapter 55 of this title;
- b. The State Board of Education and the Director of the Delaware Psychiatric Center pursuant to Chapter 39 of Title 14;
- c. The Board of State Judiciary Pension Trustees pursuant to Chapter 56 of this title;
- d. The State Police Pension Board pursuant to subchapter II of Chapter 83 of Title 11.

(5) The control and management of the OPEB Fund created pursuant to Chapter 52B of this title.

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

(1) To adopt rules and regulations for the general administration of the state pension plans and benefits set forth in subsection (b) of this section;

(2) To appoint an actuary to perform the actuarial services necessary to effectuate the purposes of this section;

(3) To prepare and publish an annual report to the Governor and General Assembly on its activities, including administration expenses;

(4) To maintain and invest the pension funds qualified under Internal Revenue Code § 401(a) [26 U.S.C. § 401(a)] of the Delaware Public Employees Retirement System. The assets of such funds may be commingled for investment purposes but will be maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of each separate fund as applicable. The Board shall also have the power and duty to maintain and invest the Volunteer Fireman's Pension Fund under § 457(e)(11) of the Internal Revenue Code [26 U.S.C. § 457(e)(11)]. The assets of such fund will be invested separately and maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of such fund.

(5) To make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this section and the investing or advising as to the investment of the pension funds 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.
- b. The Department of Technology and Information.
- c. The Department of Justice.

(6) To determine the interest rate to be credited to employee contributions and the rate to be charged on repayment of contributions previously withdrawn;

(7) To issue subpoenas and administer oaths in any proceeding and in all other cases where it is necessary in the exercise of the powers and duties of the Board. Such oaths may be administered and such subpoenas issued by any member of the Board. Any subpoena, process or order of the Board or any notice or paper requiring service may be sent by certified mail, return receipt requested, or may be served by any

constable or any state employee designated by the Board, with the return to be made to the Board. If service is made by a constable, the constable shall receive the same fees as are provided by law for like service in civil actions; if service is made by a state employee designated by the Board, such state employee shall not receive any fee, but shall be reimbursed such state employee's actual expenses;

(8) To examine persons as witnesses, take evidence, require the production of documents and do all other things pursuant to law which are necessary to enable it effectively to discharge its duties of office. In proceedings before the Board, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined by members of the Board, disobeys or resists any lawful order or process or misbehaves during a hearing in a manner intended to obstruct the hearing, the Board shall certify the facts under signature of its Chairperson to any Judge of the Superior Court, which Judge shall thereupon hear the evidence as to the acts complained of. The Judge shall, if the Judge deems the evidence so warrants, issue an order requiring such person to testify, produce documents or otherwise comply with the requirements of the Board, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;

(9)a. In any Pension Office appeal hearing submitted to the Board, the Board shall designate 1 or more of its members to act as hearing officer or officers. The hearing officer or officers shall hear the evidence and arguments presented by the parties. The hearing officer or officers shall have all the powers of the Board in exercise of their responsibilities during the hearing.

b. In every case, the hearing officer or officers shall prepare and transmit a decision containing the findings of fact and conclusions of law to the Board within 60 days of the hearing for consideration at the next regularly scheduled Board meeting.

c. The Board may accept, reject or modify the hearing officer's or officers' decision and shall prepare a final decision ("final decision"). Within 5 days of the Board meeting, the final decision shall be mailed to the parties on record at their designated addresses via first class U.S. mail.

d. The Board's final decision may be appealed to the Superior Court within 30 days after it is mailed to the parties by the Board. The appeal shall be on the record established at the hearing.

(10) To administer any pension plan established by the Diamond State Port Corporation, upon such terms as negotiated with the Diamond State Port Corporation;

(11) To maintain and invest the OPEB Fund provided for in paragraph (b)(5) of this section. Fees and expenses authorized by the Board shall be paid from the assets of the OPEB Fund as applicable;

(12) To make and enter into any and all contracts with any agency of the State, or any outside agency, or company for the purposes of assisting in the general administration and the investing or advising as to the investment of the OPEB Fund under its control and management.

(13) To adopt rules and regulations appropriate or necessary to maintain the qualified status of each state pension plan and benefit set forth in subsection (b) of this section under Internal Revenue Code §§ 401(a)

and 414(d) [26 U.S.C. §§ 401(a) and 414(d)] or such other provision of the Internal Revenue Code as applicable;

(14) To adopt by rule and regulation a qualified excess benefit arrangement under Internal Revenue code § 415(m) [26 U.S.C. § 415(m)] with respect to any state pension plan that is qualified under Internal Revenue Code §§ 401(a) and 414(d) [26 U.S.C. §§ 401(a) and 414(d)] in order to pay benefits that cannot be paid from that pension plan because of the limits under Internal Revenue Code § 415 [26 U.S.C. § 415].

(15) To establish committees. 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.

(16) To approve the annual budget for each of the plans listed under subsection (b) of this section.

(17) To arrange 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. Payment for each audit must be approved by the Board.

(d) All records maintained by the Board or the Office of Pensions and Investments relating to the pensions or pension eligibility of persons receiving pensions from the State or other post-employment benefits and who are not presently employed by or serving as officers of the State or its political subdivisions shall be confidential. Any record, material or data received, prepared, used or retained by the Board or its employees, investment professionals or agents relating to an investment shall not constitute a public record subject to Chapter 100 of this title.

(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;

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

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

(f) The terms of the appointed members shall be staggered. The first appointee shall serve for a term of 1 year; the second appointee shall serve for a term of 2 years; the third appointee shall serve for a term of 3 years; and the fourth appointee shall serve for a term of 4 years. Thereafter, appointed members shall serve for a term of 4 years. The seventh member shall serve at the pleasure of the Governor and shall be Chairperson of the Board.

(g) Each appointed member of the Board shall be paid \$150 for each day devoted to Board business. Members shall be entitled to reimbursement for travel and other expenses made necessary by their official duties.

(h) Any appointment, by the Governor by and with the consent of a majority of the members elected to the Senate, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.

(i) Any applicant for a pension aggrieved by a decision after a hearing by the Board of Pension Trustees may appeal that decision to the Superior Court and such appeal and review shall be conducted according to the provisions governing judicial review of case decisions under the Administrative Procedures Act.

(j) The State shall indemnify Board or committee members were or are a party, or are threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the Board or committee member is or was a Board member expenses, including attorneys' fees if the Attorney General determines that he or she may not provide representation, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in the best interest of the State and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. Expenses incurred in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of final disposition of such action, suit or proceeding if:

(1) Initially authorized by a majority vote of the Board exclusive of the member or members to be indemnified unless more than a majority of the Board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the Governor of the State; and

(2) Such Board member agrees to repay such amount if it is ultimately determined by the Board or the Governor, as the case may be, pursuant to paragraph (1) of this subsection that such member is not entitled to indemnification under this section.

(k) No member of the Board of Pension Trustees appointed under subsection (e)(2) of this section shall receive a pension credit for his or her service as a trustee under any state pension system administered by the Board.

(l) The Board shall establish a Local Government Retirement Investment Pool with the following powers, duties and functions:

(1) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay public retirement moneys of the local government into the Local Government Retirement Investment Pool which shall be in the custody of the Board of Pension Trustees. The Board of Pension Trustees shall invest the funds in the same manner and in the same types of investments and subject to the same limitations provided for the deposit and investment of state retirement funds. Funds of the local governments may be commingled with funds of the state pension trust for investment purposes only and shall be accounted for separately.

(2) The Board of Pension Trustees shall adopt such rules and regulations as are necessary for the administration of this Investment Pool including specification of minimum amounts which may be paid into the Pool and minimum periods of time for which such payments shall be retained in the Pool. Earnings shall be

equitably prorated among the local governments in the Pool based upon the amount and length of time the moneys are on deposit in the Pool. All costs of participation and administration in the Pool shall be equitably prorated among the participating local governments.

(3) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay Other Post Employment Benefit funds of the local government into the Local Government Retirement Investment Pool which shall be in the custody of the Board of Pension Trustees. The Board of Pension Trustees shall invest the funds in the same manner and in the same types of investments and subject to the same limitations provided for the deposit and investment of state Other Post Employment Benefit funds. Funds of the local governments may be commingled with funds of the state Other Post Employment Benefit trust for investment purposes only and shall be accounted for separately.

(m) The Board of Pension Trustees shall have the authority to levy interest penalties on participating employers in the Delaware Public Employees Retirement System, who fail to remit employee and employer pension contributions to the Delaware Public Employees' System when due. In the exercise of this authority the Board of Pension Trustees shall adopt such rules and regulations as are necessary to encourage the timely payment of these funds, to provide a mechanism to collect overdue contributions, and to reimburse the Delaware Public Employees' Retirement System for lost investment revenue. These actions may include, among other actions, the imposition of interest and/or the adoption of an assessment for late payment of contributions by an employer at a rate not to exceed the Board's economic assumption for investment return.

(n) The Board shall meet as often as necessary to properly discharge its duties, but no less than 10 times annually. The Chairperson of the Board is authorized to call special meetings of the Board in addition to the minimum 10 annual meetings and to set the agenda for these meetings.

(o) The use of teleconferencing or videoconferencing is authorized for use in conducting meetings of the Board and its committees, including for the purposes of obtaining quorum and voting.

Approved July 17, 2017