The Spotlight
Special Edition - Acts 44 and 51 of 2009

MMOs
Relief for Municipal Pension Plans

The metamorphosis that began with the concept of municipal pension reform legislation and ended with what is now Act 44 of 2009 can truly be characterized as transformational. The end result is a code of laws with some provisions that are clearly unrelated to the genesis of the original legislation. The staff of PMRS was an early participant in the development of the proposal and can speak first-hand about that experience. Credit for the original legislation, however, must be given to the staff of the Public Employee Retirement Commission (PERC). Late in 2008, PERC Executive Director Jim McAneny approached PMRS staff with an idea for a three-pronged solution to what many professionals in the municipal pension field foresaw as a train wreck about to happen. That wreck was in large measure caused by the global collapse of the world’s financial markets in late 2008.

PERC foresaw the need to provide temporary relief from what the municipal pension experts predicted would be a double whammy – higher MMOs based upon actuarial losses recognized in the January 1, 2009 Act 205 Valuations and less municipal revenues being available to pay the higher MMOs due to shrinking municipal tax bases caused by the loss of jobs and home values. In addition to seeking a way to address these two problems, PERC thought it would be an excellent opportunity to “take away the shovel” from those municipalities that were burying themselves so deep in pension obligations that they would never get above ground again. The goal was to require a reduced level of benefits for new members in the most severely distressed plans while also prohibiting any future benefit improvements for the existing members.

These three goals were all partially addressed in the end product – Act 44 of 2009, signed by Governor Rendell on September 18, 2009. However, that legislation also saw the legalization of Deferred Retirement Option Programs (DROPs); tough, new bidding standards for municipal pensions’ professional services contracts – including contributions reporting and disclosure requirements; and, authority for new or continued special taxing authority for Pittsburgh and Philadelphia. The new law did provide a framework for municipal officials to build a way around the immediate funding crisis. It also threatened to impose further mandatory remedies on the City of Pittsburgh if the funded status of the city’s pensions has not reached certain levels by the January 1, 2011 Valuation.

We provide here (through page 4) a synopsis of the legislation’s permanent changes as well as those directed at providing short-term relief for both distressed and non-distressed plans. We also indicate if PMRS-enrolled plans can or are likely to be impacted by the particular provisions.

(Article continued on page 2...)

DROPs
Deferred Retirement Option Plans

Act 44 of 2009 amended Act 205 of 1984 to add a new chapter to the law entitled, “Deferred Retirement Option Plans.” This chapter authorizes, for the first time in Pennsylvania law, DROPs (their abbreviated name). While a number of municipalities in the Commonwealth have instituted DROPs, recent court rulings called into question the pension plans’ underlying authority to establish such a benefit provision. This legislation is primarily intended to structure DROPs created after the effective date of the act. While it provides some legitimacy for the plans created before the enactment of Act 44, the legislation also restricts, to some extent, those same plans. PMRS municipalities will now be able to institute a DROP for the first time.

What is a DROP?

The DROP is an alternative way to pay retirement benefits which allows employees who are at or beyond normal retirement age to continue to work while receiving retirement benefits. The two important considerations are that the employee can no longer be earning retirement benefits and that the employee can not be in “constructive” receipt of the monthly retirement benefit. In a DROP, the employee announces a retirement date and, from the date of retirement to date of separation from employment (usually three to five years into the future), the monthly retirement benefit is held by the retirement plan in an investment vehicle earning money. Once separation occurs, the individual receives the accumulated monthly payments deposited to the DROP account through the month of termination. Then, and only then, is the member in constructive receipt of the benefit and then, and only then, are the monies taxable as federal income.

Who can participate in a DROP?

All boroughs, cities, towns, townships, counties, and authorities may establish a DROP, provided they have a defined benefit retirement plan that is insured in whole or in part by the local government. (Article continued on page 6...)
Permanent Changes

<table>
<thead>
<tr>
<th>New Amortization Time Table</th>
<th>Change</th>
<th>Impact</th>
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<tbody>
<tr>
<td>Actuarial gains and losses</td>
<td>Effective until the 1/1/09 Valuation, goes from 15 years to 20 years (or the remaining working life time of the members if the municipality is not moderately or severely distressed).</td>
<td>PMRS-enrolled plans will benefit from this change (even though actuarial losses from investments will be non-existent).</td>
</tr>
<tr>
<td>Changes in assumptions</td>
<td>Effective 9/18/09, goes from 20 years to 15 years.</td>
<td>Any assumption changes effective after 9/18/09 will first use new amortization schedule in 1/1/11 Valuation.</td>
</tr>
<tr>
<td>State mandated benefit changes</td>
<td>Effective 9/18/09, new category - 20 years.</td>
<td>Any changes effective after 9/18/09 will first use new amortization schedule in 1/1/11 Valuation.</td>
</tr>
<tr>
<td>Local benefit changes – Active plan members</td>
<td>Effective 9/18/09, new category - 10 years.</td>
<td>Any plan that has a change effective after 9/18/09 will first use new amortization schedule in 1/1/11 Valuation.</td>
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<tr>
<td>Local benefit changes – Retired plan members</td>
<td>Effective 9/18/09, new category - 1 year.</td>
<td>Any plan that has a change effective after 9/18/09 will first use new amortization schedule in 1/1/11 Valuation.</td>
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Short-Term Relief

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<thead>
<tr>
<th>New Asset Smoothing Method</th>
<th>Change</th>
<th>Impact</th>
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<tr>
<td>Optional method to value 1/1/09 assets</td>
<td>For 1/1/09 Valuation, assets can be equal to the 1/1/07 assets plus contributions minus expenses and benefit payments plus interest credited at 1% less than the plan's assumed rate (so long as value is between 70% &amp; 130% of market value).</td>
<td>Plans enrolled in PMRS will not be using this asset smoothing method.</td>
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Assistance for Distressed Municipalities

The legislation introduced a new twist to the distress determination process. Essentially, the procedure for determining whether a municipality was in a distressed state due to the funding status of the municipality’s pension plans was significantly simplified. After combining, for distress consideration purposes only, a municipality’s pension plans’ accrued liability and matching it to the actuarial value of the combined assets of the plans, a determination is made of assets to liabilities. If the ratio is 90% or above, the municipality is not considered distressed.

If the ratio is between 70% and 89%, the level of distress is determined to be Minimal with a score of I. If the ratio is between 50% and 69%, the level of distress is described as Moderate and the plan is assigned a score of II. Finally, if the ratio of assets to liabilities is less than 50%, the municipality is considered Severely distressed and is assigned a score of III.

What does the distress level assignment mean in practical terms? It means that certain municipalities are given additional actuarial and legal latitude in the administration and funding of their distressed plans. The new structure is to be in place with the January 1, 2009 Valuation. As a result, a determination of distress will not be available to a municipality until 2010, presumably for use with the 2011 MMO. Note - the first valuation that a new plan undertakes is not to be included in the municipality’s distress determination. Please see page 3 for the optional and mandatory tools made available to distressed municipalities.

(Article continued on page 3...)
### Minimal Distress (Level I)

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<thead>
<tr>
<th>Voluntary</th>
<th>Change</th>
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<tr>
<td></td>
<td>Aggregate trust funds.</td>
<td>N/A to PMRS enrolled plans.</td>
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<td></td>
<td>Change member contribution rates. New hires could be made to pay in</td>
<td>PMRS-enrolled municipality could start a two-tier plan.</td>
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<td></td>
<td>more to fund the plan.</td>
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<td></td>
<td>If the municipality is subject to a contribution limit to a pension</td>
<td>Applicable also to a PMRS-enrolled municipality.</td>
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<tr>
<td></td>
<td>plan, that limitation is made null &amp; void.</td>
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<td></td>
<td>Is given permission to pay only 75% of the portion of the MMO</td>
<td>Applicable also to a PMRS-enrolled municipality.</td>
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<td>associated with the amortization of any unfunded liability (limited to</td>
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<td>a two-year period).</td>
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<td></td>
<td>May extend for two years more (total of 4 years) the assets</td>
<td>Plans enrolled in PMRS will not be using this asset smoothing method.</td>
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<td>smoothing corridor of 70% to 130%.</td>
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### Moderate Distress (Level II)

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<tr>
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<td>Change member contribution rates. New hires could be made to pay in</td>
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<td>plan, that limitation is made null &amp; void.</td>
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<td></td>
<td>May utilize additional taxing authority if the municipality is at the</td>
<td>Applicable also to a PMRS-enrolled municipality.</td>
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<td>current rate limits.</td>
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<td></td>
<td>Is given permission to pay only 75% of the portion of the MMO</td>
<td>Applicable also to a PMRS-enrolled municipality.</td>
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<td>smoothing corridor of 70% to 130%.</td>
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<th>Mandatory</th>
<th>Change</th>
<th>Impact</th>
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<tr>
<td>Aggregate trust funds</td>
<td>N/A to PMRS-enrolled plans</td>
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<tr>
<td>Must submit a plan to PERC detailing how administrative improvements will be made.</td>
<td>Applicable also to a PMRS plan.</td>
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### Severe Distress (Level III)

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<td>plan, that limitation is made null &amp; void.</td>
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<td>current rate limits.</td>
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</table>
Is given permission to pay only 75% of the portion of the MMO associated with the amortization of any unfunded liability (limited to a six-year period).

May extend for two years more (total of 6 years) the asset smoothing corridor of 70% to 130%.

Applicable also to a PMRS-enrolled municipality.

Plans enrolled in PMRS will not be using this asset smoothing method.

PERC has already made public the stipulation that every distressed municipality will be required to report on the bi-annual valuation reports the remedies they opt to institute.

**The Tidbits**

The legislation modified Act 205 language that was specific to the Cities of Philadelphia and Pittsburgh’s pension plans. Philadelphia has been given an additional taxing power (a 1% sales tax and two years of pension funding relief) before even higher funding standards and requirements will be placed upon the city. Pittsburgh’s relief was less dramatic. The city was given access to an additional funding source but told that if the combined plans were not at least 50% funded by January 1, 2011, the Pennsylvania Municipal Retirement System (PMRS) would be responsible for the administration of the city’s pension programs. That determination must be made by September of 2011. NO OTHER distressed municipality would be forced into a PMRS-administered plan under Act 44.

**What’s the Net Effect?**

It appears to PMRS staff that, after much wrangling and even more political maneuvering, the law does accomplish the first purpose of providing temporary relief from possible spikes in the MMOs due to the market downturn. ✗

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**Contracting Standards**

**New Procedures for Municipal Pension Systems**

In what appears to be a reaction to the recent news stories from Arizona, California, and New York involving public pension plans and certain criminal corruption charges, the Pennsylvania legislature also used Act 44 of 2009 to amend into Act 205 of 1984 an entirely new provision on contracting. Applicable specifically to municipal pension systems, the new chapter, entitled “Standards for Municipal Pension Systems,” addresses the procedure municipal pension systems must follow to enter into professional services contracts. While it is always difficult to encapsulate the intent of any legislation, the process by which this language appeared during legislative consideration makes decoding its function rather difficult. PMRS staff can only speculate that it was designed to prevent Pennsylvania’s municipal pension systems from becoming involved in any “pay-to-play” scheme or any “third-party-placement fees” fiasco.

First, a few definitions: The legal definition for “municipal pension system” states that it specifically “Includes the Pennsylvania Municipal Retirement System.” We can not be sure what isn’t included, but we do know that PMRS is specifically included. A “Professional services contract” is a contract to which a municipal pension system is a party and which is for the purchase or provision of professional services, including investment services, legal services, real estate services, and other consulting services (emphasis ours) which are not subject to a requirement that the lowest bid be accepted.

The new law requires that each municipal pension system develop procedures to select the most qualified person with whom to enter into a professional services contract. The procedures must include an application and disclosure form to be used by those who will submit a proposal for a professional services contract. All proposals must be advertised and the advertisement must contain the following:

1. The services that are the subject of the proposed contract.
2. Specifications relating to the services.
3. Procedures to compete for the contracts.
4. Required disclosures.

The procedures to select the most qualified person are also to include a review of the person’s qualifications, experience, and expertise as well as the compensation to be charged.

(Article continued on page 5...)
Prior to entering into a professional services contract, a potential contractor must disclose the names and titles of each individual who will be providing professional services to the municipal pension system, including advisors or subcontractors. Specific items to be disclosed are:

1. Whether the individual is a current or former official or employee of the municipality entering into the contract.
2. Whether the individual has been a registered Federal or State lobbyist.
3. A description of the responsibilities of each individual in connection with the contract.

The communications are also to be regulated. The law states that, upon the municipal pension system’s advertising for a professional services contract, the potential contractor may not allow a third party to communicate with officials or employees of the municipal pension system except in the case of requests for technical clarification. The requests for technical clarification are to be made “by” (note: the law says “by” instead of “to”) a designated employee of the municipal pension system. The potential contractor may respond to requests for clarification or additional information from the municipal pension system.

The municipal pension system must also adopt policies relating to potential conflicts of interest in the review of a proposal or the negotiation of a contract. The policies must include a minimum one-year restriction on the participation by a former employee of a contractor or potential contractor in the review of a proposal or negotiation of a contract with that contractor. The policy must also prohibit a former employee of the municipal pension system from the submission of a proposal or the performance of a contract.

The legislation also sets forth specific requirements that come into play after the awarding of a professional services contract occurs. All applications and disclosure forms are public documents except for any proprietary information or other information protected by law. Also, once a contract has been awarded, any increase in the cost of the original contract that is more than 10% or $10,000, whichever is greater, can not be made unless a written justification for the increase is made public and posted on the municipal pension system’s Internet website, if an Internet website is maintained, at least seven days prior to the effective date of the amendment.

Another requirement placed upon the municipal pension plan after the awarding of the contract takes place is that the relevant factors that resulted in the award must be summarized in a written statement. The statement is to be included in or attached to the documents associated with the awarding of the contract. Within ten days of the awarding of the professional services contract, the original application, a summary of the basis for the award, and all required disclosure forms must be transmitted to all unsuccessful applicants. The documents must also be posted on the municipal pension system’s Internet website, if an Internet website is maintained, at least seven days prior to the execution of the professional services contract.

All prospective contractors also have certain disclosure obligations. Any person or entity that intends to enter into a professional services contract must disclose the employment and/or the compensation of a third party intermediary, agent, or lobbyist who will directly or indirectly communicate with a municipal pension system official or employee, or a municipal official or employee, in connection with any transaction or investment involving the contractor and the municipal pension system. The disclosure does not apply to an officer or employee of any investment firm who is acting within the scope of the firm’s standard professional duties on behalf of the firm. These duties are deemed to include the actual provision of legal, accounting, engineering, real estate, or other professional advice, services, or assistance pursuant to a professional services contract.

The heart of the restrictions on the prospective contractor, though, comes in the form of a prohibition on making political contributions. Any person who applies for a proposal, submits an offer or bids for a proposal, responds to a request for proposal, or otherwise solicits a professional services contract with a municipal pension system may not solicit a contribution for any municipal official or candidate for municipal office in the municipality where the municipal pension system is organized. They also may not solicit for any political party or political action committee of which that official or candidate is a member.

There are several other conditions that would disqualify a person from being retained by a municipal pension plan. A person who has, within the past two years, made a contribution to a municipal official or candidate for municipal office in the municipality which controls the municipal pension system may not enter into a professional services contract with the municipal pension system. Additionally, a person that enters into a professional services contract with a municipal pension system may not have a direct financial, commercial, or business relationship with any official of the municipal pension system or the municipality which controls the municipal pension system unless the municipal pension system consents in writing to the relationship following full disclosure.

A restriction that is important for municipal pension officials to understand is that a person with a professional services contract may not offer or confer a gift having more than a nominal value. This includes money, services, loans, travel, lodging, entertainment, discounts, or other things of value given to any official, employee, or fiduciary of a municipal pension system.

As to the disclosure of contributions and gifts, a person who has a professional services contract with a municipal pension system must disclose all contributions to which all of the following apply:

1. A contribution was made within the last five years.
2. A contribution was made by an officer, director, executive-level employee, or owner of at least 5% of the person or affiliated entity.
3. The amount of the contribution was at least $500.
4. The contribution was made to a candidate for any public office in the Commonwealth or to an individual who holds that office.
5. The contribution was made to a political committee of a candidate for public office in the Commonwealth or to an individual who holds that office.

(Article continued on page 6...
The disclosed information must be updated at least annually. A person who must make a disclosure must provide the following information relating to the contributions: their name and address, the contributor’s relationship to the contractor, the name and office or position of each person receiving a contribution, the amount of the contribution, and the date of the contribution. Also to be disclosed are any gifts to an official or employee of the municipal pension system or the municipality which controls the municipal pension system, and / or the employment or retention of any third-party intermediary, agent, or lobbyist and the duties of that person.

The required disclosure must be made on a form prepared by the municipal pension system. The disclosure form is to be attached to the contract and posted on the system’s Internet website, if an Internet website is maintained. During the term of the contract, an updated form is to be filed annually.

The penalties for failure to comply with the provisions of the law are as follows: A municipal pension system is to void the professional services contract of a person who knowingly makes a material misstatement or omission in a disclosure form and must prohibit the person from entering into a contract for a period of up to three years. If a contractor or person has submitted a proposal or bid in violation of the procedures more than two times in a 36-month period, all contracts between that contractor and the municipal pension plan are to be made void. The person is then barred from making a proposal for a period of at least three years from the date of the last violation.

If a person who enters into, or has applied for, submitted an offer or bid for, responded to a request for, or otherwise solicited, a proposal or a contract with a municipal pension system or an officer, director, or employee of a municipal pension system and that person is aware, or reasonably should be aware, (emphasis added) of an apparent, potential or actual conflict of interest, the person must disclose the conflict and promptly eliminate the conflict.

While each municipal pension system will need to examine the new chapter to determine how best to implement its provisions, we can share that the Office of Chief Counsel for PMRS is reviewing the law and its interaction with the Commonwealth Purchasing Law, the State Ethics Act, and the Campaign Contribution Law. Local plan officials might also want to undertake an examination of existing local purchasing requirements to ensure consistency and clarity.

A local government that has established a defined benefit plan which has joined PMRS may establish a DROP only through participation in the DROP established and administered by PMRS. The PMRS Board must establish a DROP for those local government plans desiring to participate in the program. It is an “optional” benefit.

The DROP has to provide for a uniform participation period of not more than five years. One specific provision in the new law is that elected officials are to be excluded from the DROP program.

An active member of a plan who is eligible for a normal retirement benefit under a pension plan or will be eligible for a normal retirement benefit under a pension plan prior to participation in the DROP and who is not an elected official may participate in the DROP by filing a written application with the retirement system at least 30 days before the member’s effective date of retirement.

The application must include a binding and irrevocable letter of resignation from regular employment with the local government that discloses the member’s intent to retire and specifies the member’s retirement date. Effective with the date of retirement, the member’s monthly, normal retirement benefit under the pension plan, the member’s effective date of retirement, and the member’s effective dates of beginning and terminating employment as a DROP participant shall all be fixed.

The application will serve as an irrevocable written election to participate in the DROP and must contain all of a participant’s rights and obligations under the DROP. Participation in a DROP does not guarantee the participant’s employment by the local government during the specified period of the DROP.

The member must agree to forgo further active membership in the retirement plan, any growth in the salary base used for calculating the regular retirement benefit, and any additional benefit accrual for retirement purposes, including length-of-service increments. The effective date of participation in the DROP is the day after the specified retirement date. The termination date of participation in the DROP is to be set forth in the DROP application. A participant may change the DROP termination date to an earlier date without penalty for the early termination of DROP participation.

Once the member elects to participate in the DROP, their monthly, normal retirement benefit and interest thereon at the “actual rate earned” shall be credited to the participant’s “Subsidiary DROP Participant Account” in the pension trust fund. A separate accounting of the DROP participant’s accrued benefit accumulation under the DROP shall be calculated annually and provided to the DROP participant. The DROP account is to be an interest-bearing ledger account in the pension trust fund. The interest is to be compounded and credited monthly. It can be no less than 0.0% and no more than 4.5%. The account balance is to be accounted for separately but need not be physically segregated from other pension trust fund assets.

When the DROP participant terminates participation in the DROP they must be separated from employment with the local government. A participant is ineligible to reenroll in the DROP thereafter even if they are reemployed by the local government with renewed active membership rights in the retirement system. Payment of the participant’s “Subsidiary DROP Participant Account” must be paid within 45 days in accordance with the election of the former participant or, if deceased, the participant’s survivor provided it is within one of the following options:

(i) The balance in the account (less withholding taxes, if any, remitted to the Internal Revenue Service) shall be paid to the DROP participant or surviving beneficiary, or (Article continued on page 7...)

(...) “Contracting Standards”... continued from page 5)

(...) “DROPs”... continued from page 1)
(ii) The balance in the account shall be paid directly to the custodian of an eligible retirement plan as defined in section 402(c)(8)(b) of the Internal Revenue Code, or

(iii) In the case of an eligible rollover distribution to the surviving spouse of a deceased DROP participant, the balance in the account shall be paid to an eligible retirement plan that is an individual retirement account or an individual retirement annuity as described in section 402(c)(9) of the Internal Revenue Code.

If the DROP participant or beneficiary fails to elect a method of payment within 60 days after the participant’s termination date, the retirement system is required to pay the balance as a lump sum as outlined in paragraph (i). The form of payment selected must comply with the minimum distribution requirements of the Internal Revenue Code.

It should be noted that the right of a DROP participant to any benefit and the moneys in the DROP participant’s subsidiary DROP participant account are exempt from any State or municipal tax, levy and sale, garnishment, attachment, spouse’s election, or any other process whatsoever, except that the assets are subject to attachment in favor of an alternate payee as set forth in a qualified domestic relations order and are subject to forfeiture as provided by the act of July 8, 1978 (P.L.752, No.140), known as the Public Employee Pension Forfeiture Act.

As to the applicability of death, disability, and other pre-retirement benefits, the following shall apply:

**Death** If a DROP participant dies, the DROP participant’s named beneficiary shall be entitled to apply for and receive the benefits accrued in the DROP participant’s subsidiary DROP participant account. A DROP participant’s eligibility to participate in the DROP terminates upon his/her death. The DROP participant’s survivor shall be eligible to receive any death benefits normally payable in the event of the death of a retired employee.

**Disability** If a DROP participant becomes eligible for a disability pension benefit and terminates employment, the monthly normal retirement benefit of the DROP participant terminates and the disability retirement replaces it.

### KIS Benefit

**Killed-in-Service Benefit**

Less than one month after passing Act 44, the General Assembly passed, and Governor Rendell signed into law, Act 51 of 2009. This legislation is intended to provide a uniform “Killed-in-Service” (KIS) benefit to the beneficiaries of all paid firefighters, law enforcement officers, and ambulance service or rescue squad members of the Commonwealth. This is regardless of whether they are employed by the Commonwealth or one of the Commonwealth’s political subdivisions.

A very important consequence is that the new law relieves “Act 600” pension plans from the obligation of providing a KIS benefit. In fact, PMRS’s interpretation of the new law, and the repeals contained therein, is that boroughs, townships, and regional police departments subject to Act 600 are NOT ALLOWED to provide a KIS benefit in their pension plan, whether that plan is self-administered or enrolled in PMRS. More information on this line of reasoning will follow.

As to the new benefit, in addition to the existing $100,000 (indexed for inflation) Emergency and Law Enforcement Personnel Death Benefit lump sum payment currently existing in the law, a new series of monthly payments are to be made to the deceased officer’s survivor. *(Article continued on page 8)*
These payments are to be equal to the monthly salary (also adjusted for inflation) of the officer less any Workers Compensation payments or pension payments. They are payable until there is no longer an eligible survivor. An eligible survivor is defined as the spouse of the deceased officer or, if there is no surviving spouse, the child or children under the age of eighteen (or, if attending college, under the age of twenty-three).

The confusing piece to most observers is the melding of the previous pension plan provisions with the new amendments to the Emergency and Law Enforcement Personnel Death Benefit Act. The questions become: Who is obligated to pay for what? and, Is insurance needed to cover any possible benefit payment? What follows is PMRS’s interpretation which should be considered applicable to only law enforcement plans enrolled in PMRS.

Prior to Act 51, boroughs, townships, and regional police departments subject to Act 600 (those with three or more full-time officers who are not enrolled in PMRS) were required to provide a KIS benefit of 100% of salary through the pension plan.

Pension benefits for boroughs, townships, and regional police departments (those with three or more full-time officers who are enrolled in PMRS) are subject to Act 15, the Pennsylvania Municipal Retirement Law, not Act 600, as long as the benefits do not exceed those provided under Act 600. Therefore, the KIS benefit that was mandated for Act 600 plans was considered an optional benefit for plans enrolled in PMRS.

Boroughs, townships, and regional police departments with less than three full-time officers (whether enrolled in PMRS or not) were previously, and still are, authorized but not required to include KIS benefits in the pension plan.

PMRS currently provides a wide range of KIS benefits at different levels (100% of the deceased officer’s pay, 50% of the deceased officer’s pay, with and without offsets for Worker’s Compensation and Social Security benefits, etc.) to both those municipalities that are subject to the limits of Act 600 and those that are not.

Under Act 51, the authority to provide a KIS benefit under Act 600 has been specifically repealed, effective immediately. Thus, PMRS plans that provide a KIS benefit and have three or more full-time officers have lost the right to provide the KIS benefit, even if the PMRS plan documents and/or an existing collective bargaining contract provides for the KIS benefit. (Emphasis ours.)

We do not want to suggest that this article is providing legal advice. It clearly does not. What is unknown to PMRS – and should be discussed with the municipality’s labor attorneys – is what effect this repeal of the KIS benefit in Act 600 will have on existing collective bargaining agreements that already contain the provision. We can only advise that PMRS’s Office of Chief Counsel has advised that we no longer have the authority to make a death benefit payment under a KIS clause of any existing pension agreement if the payment is to an officer who had been a member of a plan that had three or more officers.

One of the interesting twists is that, since Act 51 did NOT repeal the general authority given to plans with two or less officers to provide a KIS benefit, if plans have a KIS clause in their PMRS agreement, we still must pay a KIS benefit and the pension plan is still required to fund the benefit should an officer be killed. This is because the new Act 51 KIS benefit is offset by any pension benefit that is to be paid. Our interpretation is that these smaller plans are clearly liable should an unfortunate incident occur, unless the KIS provision is removed from the pension plan. These plans may want to consider removing the KIS benefit from their pension plan or consider purchasing KIS benefit insurance to help offset this potential liability.

In conclusion, PMRS police pension plans that have three or more enrolled members and that suffer a loss due to a KIS death, regardless of whether the existing plan documents specifically provide for a KIS benefit or not, will not be deemed to have a KIS benefit and PMRS will not make payment. We will be working with these plans to remove the KIS benefit language from the plan documents in the coming month.

Those police pension plans with two or less officers that have a KIS benefit in their PMRS agreements may want to consider removing this provision because, if an application for a KIS benefit is made, PMRS will need to make payment of the same and the plan will suffer the financial loss. The state will supplement the benefit if necessary to bring the total benefit up to 100% of the member’s salary, but the first line of liability will befall the pension plan. As stated above, we believe that by eliminating any such provision in a PMRS plan agreement, the municipality can transfer this potential liability to the state.

And, finally, all of the above observations are provided for guidance purposes only. The comments expressed here are to let our members know how PMRS will be interpreting Act 51 as it relates to Act 15 and any existing KIS benefits in PMRS plans. Clearly, any plan that has been subject to the collective bargaining process should seek the guidance of the attorneys who assisted in the development of that document.

If you would like a hardcopy of this Special Edition, please contact PMRS and we will provide one to you.

www.pmrs.state.pa.us
E-mail: ra-staff@state.pa.us
Office Hours: Monday thru Friday 7:45 a.m. to 4:15 p.m.

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