

Act No. 77
Public Acts of 2010
Approved by the Governor
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Hammel

ENROLLED HOUSE BILL No. 4073

AN ACT to authorize and create irrevocable trusts for the purpose of holding, investing, and distributing assets to be used for certain postemployment health care benefits; to set forth certain rights that public employees have in retirement health care benefits under certain circumstances; to provide for the establishment and amendment of certain irrevocable trust agreements; and to prescribe certain powers and duties of certain retirement systems, state departments, public officials, and public employees.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “public employee retirement health care funding act”.

Sec. 2. As used in this act:

- (a) “Department” means the department of technology, management, and budget.
- (b) “Employer contributions” means the amount transferred by an employer to a funding account.
- (c) “Funding account” means an account created pursuant to section 3(6) for the deposit of funds and payment of retirement health care benefits under the applicable retirement act.
- (d) “Funding account dependent” means 1 or more of the following:
 - (i) A dependent as that term is used in section 20d of the state employees retirement act, 1943 PA 240, MCL 38.20d, or a “health benefit dependent” as that term is defined in section 54 of the state employees retirement act, 1943 PA 240, MCL 38.54, whichever is applicable.
 - (ii) A health insurance dependent as that term is defined in section 91 of the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1391.
 - (iii) A retirement allowance beneficiary as that term is defined in section 109 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2109, or a health benefit dependent as that term is defined in section 705 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2655, whichever is applicable.
 - (iv) A survivor as that term is defined in section 13a of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1013a, a beneficiary of a deceased retirant as that term is used in section 50b of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1050b, or a health benefit dependent as that term is defined in section 65 of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1065, whichever is applicable.
 - (v) A retirement allowance beneficiary as that term is defined in section 4 of the state police retirement act of 1986, 1986 PA 182, MCL 38.1604, or a dependent as that term is used in section 42 of the state police retirement act of 1986, 1986 PA 182, MCL 38.1642, whichever is applicable.
- (e) “Member” means a person who is a member, former member, deferred member, qualified participant, or former qualified participant as determined under the applicable retirement act.

(f) "Past member" means a former member or former qualified participant who has retired with retirement health care benefits payable by a retirement system.

(g) "Retirement act" means 1 or more of the following:

(i) The state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(ii) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(iii) The judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(iv) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(v) The Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

(h) "Retirement health care benefits" means expenses for medical, dental, and vision to be paid for past members or their funding account dependents under the applicable retirement act.

(i) "Retirement system" means a retirement system established under a retirement act.

(j) "State" means this state.

(k) "Trust" means an irrevocable trust created under section 3(1) of this act.

(l) "Trustee" means a member of a retirement system board.

Sec. 3. (1) One irrevocable trust is authorized and created by this act for each retirement system. An irrevocable trust established under this subsection shall at all times be established and administered in accordance with section 115 of the internal revenue code, 26 USC 115.

(2) The governing board of each retirement system shall be the grantor and shall administer the irrevocable trust created for that retirement system in order to pay retirement health care benefits to its past members and their funding account dependents. The members of the retirement system board shall act as the trustees of the irrevocable trust for that retirement system. The trustees shall adopt a written trust agreement that meets all of the requirements set forth in section 9. The trustees of the irrevocable trust may establish and adopt policies and procedures for administering the irrevocable trust.

(3) Each trust shall be managed and operated separately and independent of the other retirement system trusts. The trustees may contract with public and private entities for the provision of bookkeeping, benefit payments, and other plan functions. The department, the department of treasury, and the department of the attorney general shall provide services to the trust as requested by the trustees.

(4) The assets in the irrevocable trusts shall be invested in accord with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m. Except as otherwise provided in this subsection, the state treasurer shall be the investment fiduciary of the irrevocable trusts and shall have exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper investment of the assets in the irrevocable trusts. The governing board of the legislative retirement system may elect, or revoke an election, to be the investment fiduciary of the funding account assets within its irrevocable trust and retain the exclusive authority to employ or contract with personnel and for services that are necessary for the proper investment of those assets.

(5) Each trust shall receive state appropriations, employer contributions, employee contributions, investment earnings, refunds and reimbursements, and other permitted deposits, and shall make distributions for the payment of retirement health care benefits authorized by the trustees for the administration of such trust. However, an amount in excess of twice the annual current obligations of the trust shall not be deposited in or received by the trust unless the state treasurer certifies that the proposed deposit will not materially reduce the amount of federal funds received by the state to support payments made under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b. The trustees are authorized to establish an administrative and investment fee structure to be charged against the funding account within the trust to defray the costs of administering the trust. An irrevocable trust established under this section shall be kept separate from the pension assets of retirement systems.

(6) A funding account shall be established by the trustees for the funding and prefunding of payments of retirement health care benefit obligations under the applicable retirement act, and the trustees may create accounts that the trustees determine are necessary for the administration of the trust. For each retirement system, past members shall have contractual rights only in the aggregate to the payment of health care benefits provided by the applicable retirement act to the extent assets exist in the funding account for that retirement system. This act shall not be construed to define or otherwise assure, deny, diminish, increase, or grant any right or privilege to health care benefits or other postemployment benefits to any person or to assure, deny, diminish, increase, or grant health care benefits or other postemployment benefits, rights, and privileges previously or already granted to members or past members and their dependents by the applicable retirement act.

(7) The governing board of a retirement system may from time to time authorize the deposit into the funding account of any eligible funds on deposit in an account within its retirement system for the purpose of payment of eligible

retirement health care benefits. Distributions from the funding account may be made to satisfy the requirements of the retirement system for all retirement health care benefits provided by the retirement system.

(8) The trustees shall cause the annual financial statements of the trust to be prepared in accordance with generally accepted accounting principles and an audit to be conducted of those financial statements by a qualified independent certified accounting firm for each fiscal year in accordance with generally accepted auditing standards.

Sec. 4. Except as otherwise provided in sections 8 and 17, assets contributed to the irrevocable trust are irrevocable and may not be refused, refunded, or returned to the employer or employee making such contribution.

Sec. 5. The assets of the irrevocable trust are to be used solely to perform this essential function of state government. The trust shall only provide retirement health care benefits as provided under this act and pay fees and expenses for the administrative costs in carrying out this essential governmental function.

Sec. 6. The assets of the irrevocable trust and the ability of a member or past member of a retirement system to receive retirement health care benefits shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

Sec. 7. The assets of the irrevocable trust shall be used exclusively for the benefit of past members and their funding account dependents and shall not be diverted for a purpose other than the payment of retirement health care benefits and the administrative costs of providing such benefits.

Sec. 8. (1) Any assets remaining in the funding account after all payments for eligible retirement health care benefits have been paid and all other liabilities of the trust have been satisfied shall be distributed to this state or other employers within the applicable retirement system so long as the employers are organizations the income of which is excluded under section 115(1) of the internal revenue code, 26 USC 115.

(2) Upon dissolution of the irrevocable trust, any assets remaining after the payment of debts and the satisfaction of liabilities are to be distributed to 1 or more states, political subdivisions of states, the District of Columbia, or other organizations the income of which is excluded under section 115(1) of the internal revenue code, 26 USC 115.

Sec. 9. The written trust agreement for each retirement system shall contain all of the following provisions consistent with this act:

- (a) Recitals describing the creation and purpose of the trust.
- (b) Language reflecting the requirements of sections 4 through 7.
- (c) Sections outlining the management and operation of the trust.
- (d) A description of the various accounts that carry out the functions of the trust.
- (e) Provisions setting forth the powers and duties of the trustees.

Sec. 10. (1) This state, an employer of a member within a retirement system, a member, or any other person may contribute amounts to a funding account within an applicable trust for the prefunding of retirement health care benefits.

(2) If a funding account contribution is made to the applicable trust, the contribution shall promptly be credited to the funding account within the applicable trust.

(3) Trustees shall credit the applicable account with the appropriate investment earnings on those assets.

Sec. 11. (1) The trustees shall establish a separately written plan document which shall govern the terms and conditions of payments of retirement health care benefits consistent with the funding and payment under the applicable retirement act.

(2) If the governing board of a retirement system has made a deposit described in section 3(7), the trust shall use the funds in the funding account to satisfy the requirements of the retirement system for all retirement health care benefits provided by the retirement system consistent with this act and the plan document established under this section.

(3) Any funds in the funding account may be counted toward and used in the calculation of the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared pursuant to section 3(8).

Sec. 12. (1) If the department receives notification from the United States internal revenue service that this act or any portion of this act will cause any retirement system to be disqualified for tax purposes under the internal revenue

code, or prevent any irrevocable trust from meeting the requirements of section 115 of the internal revenue code, 26 USC 115, then the portion that will cause the disqualification does not apply.

(2) The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this act.

Sec. 13. The trusts created by this act shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in this act and agreements creating the trusts, nor shall the trusts be deemed to be invalid as violating any existing law against perpetuities or against suspension of the power of alienation of title to property or against trusts for the purpose of the accumulation of income, but each trust may continue for the amount of time that may be necessary to accomplish the purpose for which it was created.

Sec. 14. All assets and income of the trusts shall be exempt from taxation by the state or any political subdivision of this state. Distributions from the trusts will not be treated as taxable income to the past members or their funding account dependents by this state or any political subdivision of this state.

Sec. 15. (1) A trustee shall not be any of the following:

(a) Personally liable for any liability, loss, or expense suffered by the trust, unless the liability, loss, or expense arises out of or results from the willful misconduct or intentional wrongdoing of the trustee.

(b) Responsible for the adequacy of the trust to meet and discharge any obligation under the applicable retirement act and this act.

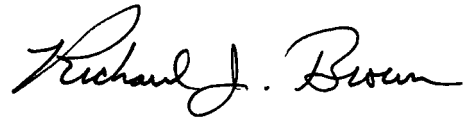
(c) Required to take action to enforce the payment of any contribution or appropriation to the trust.

(2) The trustees may be indemnified by the trusts and from the fund of the trusts against costs, liabilities, losses, damages, and expenses, including their attorney fees, as more fully provided in the respective trust agreements, unless such costs, liabilities, losses, damages, or expenses arise out of or result from the willful misconduct or intentional wrongdoing of a trustee.

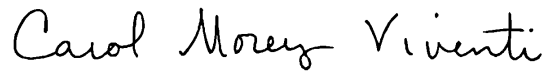
Sec. 17. If a change or error in any records of the trust results in a member, past member, or his or her dependent paying into or receiving from the trust more or less than the member, past member, or his or her dependent should have paid or would have been entitled to receive had the records been correct, the trustees shall correct the error and, as far as practicable, shall incrementally adjust future payments to correct for the change or error.

Enacting section 1. This act does not take effect unless Senate Bill No. 1227 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor