

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4073

A bill 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:

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

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of technology,
5 management, and budget.

1 (b) "Employer contributions" means the amount transferred by
2 an employer to a funding account.

3 (c) "Funding account" means an account created pursuant to
4 section 3(6) for the deposit of funds and payment of retirement
5 health care benefits under the applicable retirement act.

6 (d) "Funding account dependent" means 1 or more of the
7 following:

8 (i) A dependent as that term is used in section 20d of the
9 state employees retirement act, 1943 PA 240, MCL 38.20d, or a
10 "health benefit dependent" as that term is defined in section 54 of
11 the state employees retirement act, 1943 PA 240, MCL 38.54,
12 whichever is applicable.

13 (ii) A health insurance dependent as that term is defined in
14 section 91 of the public school employees retirement act of 1979,
15 1980 PA 300, MCL 38.1391.

16 (iii) A retirement allowance beneficiary as that term is defined
17 in section 109 of the judges retirement act of 1992, 1992 PA 234,
18 MCL 38.2109, or a health benefit dependent as that term is defined
19 in section 705 of the judges retirement act of 1992, 1992 PA 234,
20 MCL 38.2655, whichever is applicable.

21 (iv) A survivor as that term is defined in section 13a of the
22 Michigan legislative retirement system act, 1957 PA 261, MCL
23 38.1013a, a beneficiary of a deceased retirant as that term is used
24 in section 50b of the Michigan legislative retirement system act,
25 1957 PA 261, MCL 38.1050b, or a health benefit dependent as that
26 term is defined in section 65 of the Michigan legislative
27 retirement system act, 1957 PA 261, MCL 38.1065, whichever is

1 applicable.

2 (v) A retirement allowance beneficiary as that term is defined
3 in section 4 of the state police retirement act of 1986, 1986 PA
4 182, MCL 38.1604, or a dependent as that term is used in section 42
5 of the state police retirement act of 1986, 1986 PA 182, MCL
6 38.1642, whichever is applicable.

7 (e) "Member" means a person who is a member, former member,
8 deferred member, qualified participant, or former qualified
9 participant as determined under the applicable retirement act.

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

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

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

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

18 (iii) The judges retirement act of 1992, 1992 PA 234, MCL
19 38.2101 to 38.2670.

20 (iv) The state police retirement act of 1986, 1986 PA 182, MCL
21 38.1601 to 38.1648.

22 (v) The Michigan legislative retirement system act, 1957 PA
23 261, MCL 38.1001 to 38.1080.

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

27 (i) "Retirement system" means a retirement system established

1 under a retirement act.

2 (j) "State" means this state.

3 (k) "Trust" means an irrevocable trust created under section
4 3(1) of this act.

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

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

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

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

1 (4) The assets in the irrevocable trusts shall be invested in
2 accord with the public employee retirement system investment act,
3 1965 PA 314, MCL 38.1132 to 38.1140m. Except as otherwise provided
4 in this subsection, the state treasurer shall be the investment
5 fiduciary of the irrevocable trusts and shall have exclusive
6 authority and responsibility to employ or contract with personnel
7 and for services that the state treasurer determines necessary for
8 the proper investment of the assets in the irrevocable trusts. The
9 governing board of the legislative retirement system may elect, or
10 revoke an election, to be the investment fiduciary of the funding
11 account assets within its irrevocable trust and retain the
12 exclusive authority to employ or contract with personnel and for
13 services that are necessary for the proper investment of those
14 assets.

15 (5) Each trust shall receive state appropriations, employer
16 contributions, employee contributions, investment earnings, refunds
17 and reimbursements, and other permitted deposits, and shall make
18 distributions for the payment of retirement health care benefits
19 authorized by the trustees for the administration of such trust.
20 However, an amount in excess of twice the annual current
21 obligations of the trust shall not be deposited in or received by
22 the trust unless the state treasurer certifies that the proposed
23 deposit will not materially reduce the amount of federal funds
24 received by the state to support payments made under the social
25 welfare act, 1939 PA 280, MCL 400.1 to 400.119b. The trustees are
26 authorized to establish an administrative and investment fee
27 structure to be charged against the funding account within the

1 trust to defray the costs of administering the trust. An
2 irrevocable trust established under this section shall be kept
3 separate from the pension assets of retirement systems.

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

20 (7) The governing board of a retirement system may from time
21 to time authorize the deposit into the funding account of any
22 eligible funds on deposit in an account within its retirement
23 system for the purpose of payment of eligible retirement health
24 care benefits. Distributions from the funding account may be made
25 to satisfy the requirements of the retirement system for all
26 retirement health care benefits provided by the retirement system.

27 (8) The trustees shall cause the annual financial statements

1 of the trust to be prepared in accordance with generally accepted
2 accounting principles and an audit to be conducted of those
3 financial statements by a qualified independent certified
4 accounting firm for each fiscal year in accordance with generally
5 accepted auditing standards.

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

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

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

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

26 Sec. 8. (1) Any assets remaining in the funding account after
27 all payments for eligible retirement health care benefits have been

1 paid and all other liabilities of the trust have been satisfied
2 shall be distributed to this state or other employers within the
3 applicable retirement system so long as the employers are
4 organizations the income of which is excluded under section 115(1)
5 of the internal revenue code, 26 USC 115.

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

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

15 (a) Recitals describing the creation and purpose of the trust.

16 (b) Language reflecting the requirements of sections 4 through
17 7.

18 (c) Sections outlining the management and operation of the
19 trust.

20 (d) A description of the various accounts that carry out the
21 functions of the trust.

22 (e) Provisions setting forth the powers and duties of the
23 trustees.

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

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

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

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

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

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

20 Sec. 12. (1) If the department receives notification from the
21 United States internal revenue service that this act or any portion
22 of this act will cause any retirement system to be disqualified for
23 tax purposes under the internal revenue code, or prevent any
24 irrevocable trust from meeting the requirements of section 115 of
25 the internal revenue code, 26 USC 115, then the portion that will
26 cause the disqualification does not apply.

27 (2) The provisions of this act are severable. If any part of

1 this act is declared invalid or unconstitutional, that declaration
2 shall not affect the remaining part of this act.

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

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

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

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

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

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

27 (2) The trustees may be indemnified by the trusts and from the

1 fund of the trusts against costs, liabilities, losses, damages, and
2 expenses, including their attorney fees, as more fully provided in
3 the respective trust agreements, unless such costs, liabilities,
4 losses, damages, or expenses arise out of or result from the
5 willful misconduct or intentional wrongdoing of a trustee.

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

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