

HOUSE BILL No. 4073

January 22, 2009, Introduced by Rep. Hammel and referred to the Committee on Judiciary.

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:

1 (a) "Department" means the department of management and
2 budget.

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

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

8 (d) "Funding account dependent" means 1 or more of the
9 following:

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

15 (ii) A health insurance dependent as that term is defined in
16 section 91 of the public school employees retirement act of 1979,
17 1980 PA 300, MCL 38.1391.

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

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

1 term is defined in section 65 of the Michigan legislative
2 retirement system act, 1957 PA 261, MCL 38.1065, whichever is
3 applicable.

4 (v) A retirement allowance beneficiary as that term is defined
5 in section 4 of the state police retirement act of 1986, 1986 PA
6 182, MCL 38.1604, or a dependent as that term is used in section 42
7 of the state police retirement act of 1986, 1986 PA 182, MCL
8 38.1642.

9 (e) "Medical expenses" means expenses incurred by a past
10 member or his or her dependents that satisfy all of the following
11 conditions:

12 (i) The expenses are medical care expenses that would otherwise
13 qualify for a deduction under section 213(d) of the internal
14 revenue code, 26 USC 213(d), without regard to the income threshold
15 in section 213(a) of the internal revenue code, 26 USC 213(a).

16 (ii) The expenses have not been and will not be reimbursed by
17 any other source.

18 (iii) The expenses must have been incurred while the individual
19 is a past member or after the death of a past member.

20 (iv) The individual properly and timely substantiates the
21 expenses in a manner established by the applicable retirement
22 system.

23 (f) "Member" means a person who is a member, former member,
24 deferred member, qualified participant, or former qualified
25 participant as determined under the applicable retirement act.

26 (g) "Past member" means a former member who has retired with
27 retirement health care benefits payable by a retirement system or a

1 former member who has terminated employment.

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

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

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

7 (iii) The judges retirement act of 1992, 1992 PA 234, MCL
8 38.2101 to 38.2670.

9 (iv) The state police retirement act of 1986, 1986 PA 182, MCL
10 38.1601 to 38.1648.

11 (v) The Michigan legislative retirement system act, 1957 PA
12 261, MCL 38.1001 to 38.1080.

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

16 (j) "Retirement system" means a retirement system established
17 under a retirement act.

18 (k) "State" means this state.

19 (l) "Trust" means an irrevocable trust created under section
20 3(1) of this act.

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

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

27 (2) The governing board of each retirement system shall be the

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

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

17 (4) The assets in the irrevocable trusts shall be invested in
18 accord with the public employee retirement system investment act,
19 1965 PA 314, MCL 38.1132 to 38.1140m. Except as otherwise provided
20 in this subsection, the state treasurer shall be the investment
21 fiduciary of the irrevocable trusts and shall have exclusive
22 authority and responsibility to employ or contract with personnel
23 and for services that the state treasurer determines necessary for
24 the proper investment of the assets in the irrevocable trusts. The
25 governing board of the legislative retirement system may elect, or
26 revoke an election, to be the fiduciary of the funding account
27 assets within its irrevocable trust and retain the exclusive

1 authority to employ or contract with personnel and for services
2 that are necessary for the proper investment of those assets.

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

19 (6) A funding account shall be established by the trustees for
20 the funding and prefunding of payments of retirement health care
21 benefit obligations under the applicable retirement act, and the
22 trustees may create accounts that the trustees determine are
23 necessary for the administration of the trust. Past members in the
24 aggregate shall have contractual rights to the assets in the
25 funding account for the payment of retirement health care benefits
26 required under the applicable retirement act.

27 (7) The governing board of a retirement system may from time

1 to time authorize the deposit into the funding account of any
2 eligible funds on deposit in an account within its retirement
3 system for the purpose of payment of eligible retirement health
4 care benefits. Distributions from the funding account may be made
5 to satisfy the requirements of the retirement system for all
6 retirement health care benefits provided by the retirement system.

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

13 Sec. 4. (1) Except as otherwise provided in this section,
14 section 8, and section 18, assets contributed to the irrevocable
15 trust are irrevocable and may not be refused, refunded, or returned
16 to the employer or employee making such contribution.

17 (2) The trustees of each trust may establish separate reserves
18 within the funding account to ensure that the assets of the funding
19 account are utilized for the exclusive benefit of specified groups
20 of members and past members. The separate reserve accounts shall
21 not be diverted for a purpose other than the payment of retirement
22 health benefits and administrative costs for each specified group
23 until such time as the liabilities for each group have been
24 satisfied. Assets received from specific members shall not be used
25 to pay for health benefits for any other member who is not a
26 beneficiary of that member.

27 Sec. 5. The assets of the irrevocable trust are to be used

1 solely to perform this essential function of state government. The
2 trust shall only provide retirement health care benefits as
3 provided under this act and pay fees and expenses for the
4 administrative costs in carrying out this essential governmental
5 function.

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

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

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

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

1 of the internal revenue code, 26 USC 115.

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

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

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

8 (c) Sections outlining the management and operation of the
9 trust.

10 (d) A description of the various accounts that carry out the
11 functions of the trust.

12 (e) Provisions setting forth the powers and duties of the
13 trustees.

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

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

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

23 Sec. 11. (1) The trustees shall establish a separately written
24 plan document which shall govern the terms and conditions of
25 reimbursement of expenses for medical, dental, and vision care with
26 the terms being consistent with the funding and payment of the
27 expenses under the applicable retirement act.

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

7 (3) Any funds in the funding account may be counted toward and
8 used in the calculation of the annual required contribution for
9 purposes of the annual financial statements prepared pursuant to
10 section 3(8).

11 (4) Notwithstanding anything to the contrary in this act,
12 claims incurred before the past member became entitled to receive
13 reimbursements under the applicable retirement act or this act are
14 not eligible medical expenses.

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

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

25 Sec. 13. The trusts created by this act shall not be deemed to
26 be invalid by reason of any indefiniteness or uncertainty of the
27 persons designated as beneficiaries in this act and agreements

1 creating the trusts, nor shall the trusts be deemed to be invalid
2 as violating any existing law against perpetuities or against
3 suspension of the power of alienation of title to property or
4 against trusts for the purpose of the accumulation of income, but
5 each trust may continue for the amount of time that may be
6 necessary to accomplish the purpose for which it was created.

7 Sec. 14. All assets and income of the trusts shall be exempt
8 from taxation by the state or any political subdivision of this
9 state. Distribution from the trusts will not be treated as taxable
10 income to the past members or their dependents by this state or any
11 political subdivision of this state.

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

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

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

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

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

1 Sec. 17. (1) The benefit obligations referenced in section
2 3(6) shall be construed to define or otherwise grant a contractual
3 right or privilege to a health care benefit or other postemployment
4 benefit to any member or beneficiary of a member if a benefit,
5 right, or privilege is established in the applicable retirement
6 act.

7 (2) Members and past members shall have a contractual right to
8 a health care benefit if a health care benefit right is provided
9 pursuant to the applicable retirement act at the time the member or
10 past member separates from employment.

11 Sec. 18. If a change or error in any records of the trust
12 results in a member, past member, or his or her dependent paying
13 into or receiving from the trust more or less than the member, past
14 member, or his or her dependent should have paid or would have been
15 entitled to receive had the records been correct, the trustees
16 shall correct the error and, as far as practicable, shall
17 incrementally adjust future payments to correct for the change or
18 error.