

**SUBSTITUTE FOR  
HOUSE BILL NO. 4447**

A bill to amend 2017 PA 202, entitled  
"Protecting local government retirement and benefits act,"  
by amending sections 3, 4, and 5 (MCL 38.2803, 38.2804, and  
38.2805), and by adding sections 11 and 11a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3. As used in this act:

2           ~~(a) "Annual report" means the most recent audited financial~~  
3 ~~statement reporting a local unit of government's liability for~~  
4 ~~retirement pension benefits and retirement health benefits as~~  
5 ~~determined under applicable government accounting standards of the~~  
6 ~~Governmental Accounting Standards Board.~~

7           **(a) (b) "Annual required "Actuarially determined contribution"**  
8 means the sum of the normal cost payment and the annual



1 amortization payment for past service costs to fund the unfunded  
2 actuarial accrued liability.

3       **(b) "Annual report" means the most recent audited financial**  
4 **statement reporting a local unit of government's liability for**  
5 **retirement pension benefits and retirement health benefits as**  
6 **determined under applicable government accounting standards of the**  
7 **Governmental Accounting Standards Board.**

8       (c) "Corrective action plan" means a plan that details the  
9 actions to be taken by a local unit of government to address and  
10 resolve the underfunded status of the local unit of government.

11       (d) "Employee" means an individual holding a position by  
12 election, appointment, or employment in a local unit of government.

13       (e) "Evaluation system" means the local government retirement  
14 and benefits fiscal impact evaluation system created under section  
15 5 to provide for the identification of, and a corrective action  
16 plan to resolve, the underfunded status of a local unit of  
17 government under this act.

18       (f) "Former employee" means an individual who was an employee  
19 who terminated employment with the applicable local unit of  
20 government.

21       (g) "General fund operating revenues" means the sum of all  
22 governmental activity fund revenues of a local unit of government  
23 as determined by the state treasurer based on applicable government  
24 accounting standards of the Governmental Accounting Standards  
25 Board. General fund operating revenues do not include any fund of  
26 the local unit of government that the state treasurer determines  
27 based on applicable government accounting standards of the  
28 Governmental Accounting Standards Board is a proprietary,  
29 fiduciary, enterprise, or other restricted fund that may not be



1 expended to provide retirement health benefits or retirement  
2 pension benefits.

3 (h) "Health care stipend" means a fixed amount paid to a  
4 former employee on an ongoing basis for either of the following  
5 purposes:

6 (i) To offset the cost of a retirement health benefit.

7 (ii) To pay for medical care as that term is defined in section  
8 213 of the internal revenue code of 1986, 26 USC 213.

9 (i) ~~(h)~~—"Local unit of government" means any of the following:

10 (i) A city.

11 (ii) A village.

12 (iii) A township.

13 (iv) A county.

14 (v) A county road commission.

15 (vi) An authority created under chapter VIA of the aeronautics  
16 code of the state of Michigan, 1945 PA 327, MCL 259.108 to  
17 259.125c.

18 (vii) A metropolitan government or authority established under  
19 section 27 of article VII of the state constitution of 1963.

20 (viii) A metropolitan district created under the metropolitan  
21 district act, 1929 PA 312, MCL 119.1 to 119.18.

22 (ix) An authority created under 1939 PA 147, MCL 119.51 to  
23 119.62.

24 (x) A municipal electric utility system as that term is  
25 defined in section 4 of the Michigan energy employment act of 1976,  
26 1976 PA 448, MCL 460.804.

27 (xi) A district, authority, commission, public body, or public  
28 body corporate created by 1 or more of the entities described in



1 subparagraphs (i) to (x).

2 (j) ~~(i)~~—"Local unit of government" does not include this  
 3 state, a principal department of state government, a state  
 4 institution of higher education under section 4, 5, or 6 of article  
 5 VIII of the state constitution of 1963, a state agency, a state  
 6 authority, or a reporting unit under the public school employees  
 7 retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

8 (k) ~~(j)~~—"Municipal stability board" or "board" means the  
 9 municipal stability board created in section 7.

10 (l) ~~(k)~~—"Normal cost" means the annual service cost of  
 11 retirement health benefits as they are earned during active  
 12 employment of employees of the local unit of government in the  
 13 applicable fiscal year, using an individual entry-age normal and  
 14 level percent of pay actuarial cost method.

15 (m) ~~(l)~~—"Retirant" means an individual who has retired with a  
 16 retirement benefit payable from a retirement system of a local unit  
 17 of government.

18 (n) ~~(m)~~—"Retirement benefit" includes a retirement health  
 19 benefit or retirement pension benefit, or both.

20 (o) ~~(n)~~—"Retirement health benefit" means, **subject to**  
 21 **subdivision (p)**, an annuity, allowance, payment, or contribution  
 22 to, for, or on behalf of a former employee or a dependent of a  
 23 former employee to pay for any of the following components:

24 (i) Expenses related to medical, drugs, dental, hearing, or  
 25 vision care.

26 (ii) Premiums for insurance covering medical, drugs, dental,  
 27 hearing, or vision care.

28 (iii) Expenses or premiums for life, disability, long-term care,  
 29 or similar welfare benefits for a former employee.



1           **(p) Retirement health benefit does not include a health care**  
 2 **stipend.**

3           **(q)** ~~(o)~~—"Retirement pension benefit" means an allowance,  
 4 right, accrued right, or other pension benefit payable under a  
 5 defined benefit pension plan to a participant in the plan or a  
 6 beneficiary of the participant.

7           **(r)** ~~(p)~~—"Retirement system" means a retirement system, trust,  
 8 plan, or reserve fund that a local unit of government establishes,  
 9 maintains, or participates in and that, by its express terms or as  
 10 a result of surrounding circumstances, provides retirement pension  
 11 benefits or retirement health benefits, or both. Retirement system  
 12 does not include a state unit as that term is defined in section 2  
 13 of the public employee retirement benefit protection act, 2002 PA  
 14 100, MCL 38.1682.

15           **(s)** ~~(q)~~—"Underfunded local unit of government" means a local  
 16 unit of government that is in underfunded status.

17           **(t)** ~~(r)~~—"Underfunded status" means that the state treasurer  
 18 has determined that the local unit of government is underfunded  
 19 under the review provided in section 5 and the local unit of  
 20 government does not have a waiver under section 6.

21           Sec. 4. (1) Beginning July 1, 2018, if a local unit of  
 22 government offers or provides an employee of the local unit of  
 23 government, or a former employee first employed by the local unit  
 24 of government before ~~the effective date of this act,~~ **December 20,**  
 25 **2017,** with a retirement health benefit, all of the following apply  
 26 to the local unit of government:

27           (a) The local unit of government must pay at least both of the  
 28 following:

29           (i) Normal costs for employees first hired after June 30, 2018.



1           (ii) Any retiree premiums that are due for retirants in the  
2 retirement system.

3           (b) The local unit of government shall electronically submit a  
4 summary retiree health care report in a form prescribed by the  
5 department of treasury on an annual basis to the governing body of  
6 the local unit of government and the department of treasury no  
7 later than 6 months after the end of the local unit of government's  
8 fiscal year. The department of treasury shall post on its website  
9 an executive summary of each summary retiree health care report  
10 submitted to the department of treasury under this subdivision. The  
11 executive summary must include the applicable system's unfunded  
12 actuarial accrued liability. The department of treasury shall  
13 submit each executive summary required under this subdivision to  
14 the senate and the house of representatives appropriations  
15 committees and the senate and house fiscal agencies not less than  
16 30 days after posting.

17           (c) At least every 5 years, the local unit of government shall  
18 have an actuarial experience study conducted by the plan actuary  
19 for each retirement system of the local unit of government.

20           (d) At least every 8 years, the local unit of government shall  
21 do at least 1 of the following:

22           (i) Have a peer actuarial audit conducted by an actuary that is  
23 not the plan actuary.

24           (ii) Replace the plan actuary.

25           (e) A local unit of government that is eligible to use a  
26 specified alternative measurement method under Governmental  
27 Accounting Standards Board standards is exempt from the  
28 requirements under subdivisions (c) and (d).

29           (2) As used in this section, "summary retiree health care



1 report" means a report that includes all of the following for each  
2 retirement system of the local unit of government that provides  
3 retirement health benefits:

4 (a) The name of the retirement system.

5 (b) The names of the retirement system's investment  
6 fiduciaries.

7 (c) The names of the retirement system's service providers.

8 (d) The retirement system's assets and liabilities and changes  
9 in net plan assets on a plan-year basis.

10 (e) The retirement system's funded ratio based on the ratio of  
11 valuation assets to actuarial accrued liabilities on a plan-year  
12 basis.

13 (f) The assumed rate of return of the retirement system.

14 (g) The actual rate of return of the retirement system for the  
15 previous 1-year period, the previous 5-year period, and the  
16 previous 10-year period.

17 (h) The discount rate used by the retirement system.

18 (i) The retirement system's amortization method for unfunded  
19 liability, indicating whether it is open or closed.

20 (j) The retirement system's amortization method, indicating  
21 whether it is level percent or level dollar, and the assumed  
22 payroll growth rate.

23 (k) The retirement system's remaining amortization time  
24 period.

25 (l) The ~~annual required~~ **actuarially determined** contribution for  
26 the retirement system, indicating the normal cost and the  
27 amortization payment toward the unfunded actuarial accrued  
28 liability.

29 (m) The retirement system's health care inflation assumptions.



1 (n) The number of active employees and retirants in the  
2 retirement system.

3 (o) The amount of premiums paid on behalf of retirants in the  
4 retirement system.

5 Sec. 5. (1) For purposes of reporting under this section, the  
6 state treasurer shall annually establish uniform actuarial  
7 assumptions of retirement systems that include, but are not limited  
8 to, investment returns, salary increase rates, mortality tables,  
9 discount rates, and health care inflation.

10 (2) The state treasurer shall create an evaluation system and  
11 provide for review and oversight under this act of an underfunded  
12 local unit of government beginning on the effective date of the  
13 determination by the state treasurer that the local unit of  
14 government is in underfunded status.

15 (3) Each year beginning after December 31, 2017, the state  
16 treasurer shall determine the underfunded status of each local unit  
17 of government.

18 (4) The state treasurer shall determine that a local unit of  
19 government is in underfunded status if any of the following apply:

20 (a) The actuarial accrued liability of a retirement health  
21 system of the local unit of government is less than 40% funded,  
22 according to the most recent annual report, and, if the local unit  
23 of government is a city, village, township, or county, the ~~annual~~  
24 ~~required~~ **actuarially determined** contribution for all of the  
25 retirement health systems of the local unit of government is  
26 greater than 12% of the local unit of government's annual general  
27 fund operating revenues, based on the most recent fiscal year.

28 (b) The actuarial accrued liability of a retirement pension  
29 system of the local unit of government is less than 60% funded,



1 according to the most recent annual report, and, if the local unit  
2 of government is a city, village, township, or county, the ~~annual~~  
3 ~~required~~**actuarially determined** contribution for all of the  
4 retirement pension systems of the local unit of government is  
5 greater than 10% of the local unit of government's annual general  
6 fund operating revenues, based on the most recent fiscal year.

7 (c) The local unit of government has not submitted reports as  
8 required under this section.

9 (d) The local unit of government fails to make the payments as  
10 described under section 4(1).

11 (5) For purposes of the report under subsection (6), a local  
12 unit of government shall annually calculate the funded ratios of  
13 each retirement system of the local unit of government using the  
14 uniform actuarial assumptions established under subsection (1).

15 (6) A local unit of government shall electronically submit a  
16 report in a form prescribed by the department of treasury on an  
17 annual basis to the governing body of the local unit of government  
18 and the department of treasury no later than 6 months after the end  
19 of the local unit of government's fiscal year. The report under  
20 this subsection must include at least all of the following:

21 (a) The funded ratios of each retirement system of the local  
22 unit of government.

23 (b) ~~Annual required~~**Actuarially determined** contributions for  
24 each retirement system of the local unit of government.

25 (c) The local unit of government's annual general fund  
26 operating revenues, if any.

27 (7) The state treasurer shall post publicly on the department  
28 of treasury website all of the following:

29 (a) The uniform actuarial assumptions under subsection (1).



1 (b) A summary report of the local unit of government reports  
2 submitted under subsection (6).

3 (c) The underfunded status of local units of government as  
4 determined under subsection (3).

5 (d) The current waiver status of local units of government  
6 provided under section 6.

7 (e) Any corrective action plan approved under section 10.

8 (8) A local unit of government shall post publicly on its  
9 website, or in a public place if it does not have a website, the  
10 information as provided in subsection (7) that is applicable to  
11 that local unit of government.

12 **Sec. 11. (1) The local unit recovery status fund is created**  
13 **within the state treasury.**

14 **(2) The state treasurer may receive money or other assets from**  
15 **any source for deposit into the fund. The state treasurer shall**  
16 **direct the investment of the fund. The state treasurer shall credit**  
17 **to the fund interest and earnings from fund investments.**

18 **(3) Money in the fund at the close of the fiscal year must**  
19 **remain in the fund and must not lapse to the general fund.**

20 **(4) The state treasurer is the administrator of the fund for**  
21 **auditing purposes.**

22 **(5) Within 5 years after the effective date of the amendatory**  
23 **act that added this section, a local unit of government that is a**  
24 **county road commission and whose actuarial liability of its**  
25 **retirement health system is less than 40% funded or whose actuarial**  
26 **liability of its retirement pension system is less than 60% funded**  
27 **according to the most recent annual report submitted under section**  
28 **5 may apply under subsection (6) to participate in the local unit**  
29 **recovery status fund under this section if the board approves the**



1 local unit of government's corrective action plan under section 10  
2 and the corrective action plan addresses all of the following  
3 conditions:

4 (a) The local unit of government will not offer or provide a  
5 retirement benefit other than a health care stipend to an employee  
6 first employed by the local unit of government after the local unit  
7 of government approves the corrective action plan.

8 (b) The local unit of government will not reopen a retirement  
9 benefit or reoffer any other retirement benefit after the state  
10 treasurer makes a grant under subsection (7) to the irrevocable  
11 trust created under section 11a or to a retirement pension system  
12 of the local unit of government. For purposes of this subdivision,  
13 "reoffer any other retirement benefit" does not include changing  
14 the cost of living adjustment, the multiplier, or any other change  
15 to a closed benefit of a retirement system with active members.

16 (c) The local unit of government will make its actuarially  
17 determined contributions to the retirement health benefit component  
18 of a retirement system using measures that ensure sustainability,  
19 as determined by the state treasurer.

20 (d) The local unit of government will make its annual required  
21 contributions to the retirement pension benefit component of a  
22 retirement system.

23 (e) The local unit of government's retirement system will use  
24 the uniform actuarial assumptions established under section 5. If  
25 the state treasurer changes the uniform actuarial assumptions under  
26 section 5 after the local unit of government applies under  
27 subsection (6) to participate in the local unit recovery status  
28 fund, the retirement system is not required to use those new  
29 uniform actuarial assumptions under section 5 to meet the condition



1 under this subdivision.

2 (f) The board determines that the corrective action plan has a  
3 reasonable likelihood that either of the following applies, as  
4 applicable:

5 (i) The retirement pension system will be 60% funded within 20  
6 years after the board approves the corrective action plan under  
7 section 10.

8 (ii) The retirement health system will be 40% funded within 30  
9 years after the board approves the corrective action plan under  
10 section 10.

11 (6) A local unit of government that is a county road  
12 commission may apply to the department of treasury for a grant from  
13 the fund, and is eligible to receive a grant from the fund, if both  
14 of the following occur:

15 (a) The board approves the local unit of government's  
16 corrective action plan under section 10 and the corrective action  
17 plan addresses all of the conditions in subsection (5).

18 (b) The governing body of the local unit of government  
19 approves the changes to be made in the corrective action plan.

20 (7) Subject to subsections (8) and (9), the state treasurer  
21 shall make grants from the fund, on appropriation, to the  
22 irrevocable trust created under section 11a or to a retirement  
23 pension system of a local unit of government that is a county road  
24 commission if the board approved the local unit of government's  
25 corrective action plan under section 10 and the corrective action  
26 plan addresses all of the conditions listed in subsection (5). Any  
27 money received from a grant from the fund must within 30 days after  
28 receipt of the money be placed into the irrevocable trust created  
29 for the retirement system to pay retirement health benefits or to



1 the retirement system to pay retirement pension benefits of the  
2 local unit of government.

3 (8) The state treasurer shall establish a method of  
4 prioritizing the fund for distribution. The state treasurer shall  
5 include, but is not limited to, all of the following factors in  
6 establishing a method under this subsection:

7 (a) Low funding ratios.

8 (b) High ratio of actuarially determined contributions to the  
9 local unit of government's revenue.

10 (c) The amount of any additional contributions necessary to be  
11 eligible under subsection (5).

12 (d) A local unit of government's past history of making the  
13 full annual required contribution or payments exceeding the annual  
14 required contribution.

15 (9) Subject to subsection (10), the state treasurer shall make  
16 matching grants from the fund subject to the following:

17 (a) For a grant to a retirement pension benefit plan, up to a  
18 50% matching grant from the fund is available based on any money  
19 contributed above the actuarially determined contribution,  
20 including, but not limited to, any contributions from any of the  
21 following:

22 (i) The county general fund.

23 (ii) County road millages.

24 (b) For a grant to a retirement health benefit plan, up to a  
25 50% matching grant from the fund is available based on any money  
26 contributed toward a full actuarially determined contribution.

27 (10) The state treasurer shall not make a matching grant to a  
28 local unit of government under subsection (9) if both of the  
29 following apply:



1 (a) The actuarial liability of the local unit of government's  
2 retirement health system is 40% or more funded according to the  
3 most recent annual report under section 5.

4 (b) The actuarial liability of the local unit of government's  
5 retirement pension system is 80% or more funded according to the  
6 most recent annual report under section 5.

7 (11) If the board determines that the conditions of a local  
8 unit of government's corrective action plan, or a subsequent  
9 revised corrective action plan approved by the municipal stability  
10 board and the governing body of the local unit of government,  
11 described in subsection (5) are not being met, by a certain date  
12 established by the state treasurer, the local unit of government  
13 shall pay to the state treasurer all money the irrevocable trust of  
14 the local unit of government created under section 11a received  
15 from the fund under this section, and shall also pay interest, at a  
16 rate as determined by the department of treasury, on all money  
17 received from the fund under this section. In addition, the board  
18 shall continue to monitor that local unit of government until it is  
19 no longer an underfunded local unit of government.

20 (12) As used in this section:

21 (a) "County road commission" means that term as defined in  
22 section 10c of 1951 PA 51, MCL 247.660c.

23 (b) "Local unit recovery status fund" or "fund" means the fund  
24 created in subsection (1).

25 Sec. 11a. An irrevocable trust is authorized and created by  
26 this act for each retirement system. An irrevocable trust  
27 established under this section must at all times be established and  
28 administered in accordance with section 115 of the internal revenue  
29 code of 1986, 26 USC 115. All of the following apply to an



1 irrevocable trust:

2 (a) The governing board of each retirement system is the  
3 grantor and shall administer the irrevocable trust created for that  
4 retirement system in order to pay retirement health benefits. The  
5 members of the retirement system board, or the governing body of  
6 the local unit of government if there is no retirement system  
7 board, shall act as the trustees of the irrevocable trust for that  
8 retirement system.

9 (b) The trustees shall adopt a written trust agreement that  
10 contains all of the following provisions consistent with this act:

11 (i) Recitals describing the creation and purpose of the trust.

12 (ii) Language reflecting the requirements of this subsection.

13 (iii) Sections outlining the management and operation of the  
14 trust.

15 (iv) A description of the various accounts that carry out the  
16 functions of the trust.

17 (v) Provisions setting forth the powers and duties of the  
18 trustees.

19 (vi) Policies and procedures for administering the irrevocable  
20 trust.

21 (c) Each trust must 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.

25 (d) Assets contributed to the irrevocable trust are  
26 irrevocable and may not be refused, refunded, or returned to the  
27 employer or employee making the contribution.

28 (e) The assets of the irrevocable trust are to be used solely  
29 to perform this essential function of the local unit of government.



1 The trust must only provide retirement health benefits as provided  
2 under applicable law and pay fees and expenses for the  
3 administrative costs in carrying out this essential governmental  
4 function.

5 (f) The assets in the irrevocable trust must be invested in  
6 accord with the public employee retirement system investment act,  
7 1965 PA 314, MCL 38.1132 to 38.1141.

8 (g) The assets of the irrevocable trust and the ability of a  
9 retirant to receive retirement health benefits is not subject to  
10 execution, garnishment, attachment, the operation of bankruptcy or  
11 insolvency laws, or other process of law and is unassignable.

12 (h) The assets of the irrevocable trust must be used  
13 exclusively for retirement health benefits and must not be diverted  
14 for a purpose other than the payment of retirement health benefits  
15 and the administrative costs of providing retirement health  
16 benefits.

17 (i) The governing board of a retirement system may from time  
18 to time authorize the deposit into the irrevocable trust of any  
19 eligible money on deposit within its retirement system for the  
20 purpose of payment of eligible retirement health benefits.  
21 Distributions from the irrevocable trust may be made to satisfy the  
22 requirements of the retirement system for retirement health  
23 benefits provided by the retirement system.

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



1 (k) The irrevocable trust is not considered to be invalid  
2 because of any indefiniteness or uncertainty of the persons  
3 designated as beneficiaries. The irrevocable trust is not  
4 considered to be invalid as violating any existing law against  
5 perpetuities, against suspension of the power of alienation of  
6 title to property, or against trusts for the purpose of the  
7 accumulation of income, but each trust may continue for the amount  
8 of time that may be necessary to accomplish the purpose for which  
9 it was created.

10 (l) All assets and income of the irrevocable trust are exempt  
11 from taxation by this state or any political subdivision of this  
12 state. Distributions from the irrevocable trust shall not be  
13 treated as taxable income to former employees or their retiree  
14 health dependents by this state or any political subdivision of  
15 this state.

16 (m) A trustee of the irrevocable trust is not any of the  
17 following:

18 (i) 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 (ii) Responsible for the adequacy of the trust to meet and  
23 discharge any obligation under applicable law.

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

26 (n) A trustee of the irrevocable trust may be indemnified by  
27 the trust against costs, liabilities, losses, damages, and  
28 expenses, including attorney fees, as more fully provided in the  
29 respective trust agreements, unless the costs, liabilities, losses,



1 damages, or expenses arise out of or result from the willful  
2 misconduct or intentional wrongdoing of the trustee.

3 (o) Any assets remaining in the irrevocable trust after all  
4 payments for eligible retirement health benefits have been paid and  
5 all other liabilities of the trust have been satisfied must be  
6 distributed to this state, the local unit of government, or other  
7 employers within the applicable retirement system if the employers  
8 are organizations, the income of which is excluded under section  
9 115(1) of the internal revenue code of 1986, 26 USC 115.

