PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT
Act 77 of 2010

AN ACT to authorize and create irrevocable trusts and individual accounts within the trusts for the purpose of holding, investing, and distributing assets to be used for certain postemployment health care benefits and reimbursement of medical expenses; to set forth certain rights that public employees have in retirement health care benefits and reimbursement of medical expenses 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.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

The People of the State of Michigan enact:

38.2731 Short title; meanings of words and phrases.

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

(2) For purposes of this act, the words and phrases defined in sections 2 to 2b have the meanings ascribed to them in those sections.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2732 Definitions; D to H.

Sec. 2. (1) "Department" means the department of technology, management, and budget.

(2) "Employer contributions" means the amount transferred by an employer to a funding account or a health reimbursement account.

(3) "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.

(4) "Funding account dependent" means 1 or more of the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(5) "Health reimbursement account" means an employer-sponsored individual account established within the irrevocable trust and administered by the trustees into which a member and his or her employer contribute money to be used for the reimbursement of medical expenses.

(6) "Health reimbursement account dependent" means a past member's legal spouse and the past member's unmarried children who are considered dependent under section 152 of the internal revenue code, 26 USC 152, determined without regard to the special exclusion under section 152(b)(1) of the internal revenue code, 26 USC 152, or the earnings limit under section 152(d)(1)(B) of the internal revenue code, 26 USC 152.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2732a Definitions; M to P.

Sec. 2a. (1) "Mandatory contributions" means mandatory amounts contributed by a participating member, which amounts, to the extent permitted by applicable law, are treated as a salary increase that has been foregone by the participating member or a permanent reduction in a participating member's compensation, with such amounts being contributed by the employer to each participating member's health reimbursement account. Mandatory contributions include other amounts established by the employer that may be treated as

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picked up by the employer to the fullest extent permitted by the internal revenue code, but do not include any contributions made only by the employer without an impact on the salary of the participating member.

(2) "Medical expense" means an expense incurred at the time a past member or his or her health reimbursement account dependent is furnished the medical care or service. To be considered a medical expense under this act, the expense shall meet all of the following conditions:

(a) Is a medical expense that would otherwise qualify for a deduction under section 213(d) of the internal revenue code, 26 USC 213, irrespective of the income threshold set forth in section 213(a) of the internal revenue code, 26 USC 213.

(b) Has not been and will not be reimbursed by any other source.

(c) Was incurred by a past member or his or her health reimbursement account dependent after the past member became entitled to receive reimbursements for medical expenses under this act.

(d) Is properly and timely substantiated by the individual claiming the expense in a manner established by the department.

(3) "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.

(4) "Participating member" means a member who is required to make mandatory contributions by the applicable retirement act to his or her health reimbursement account.

(5) "Past member" means a former member who has retired with retirement health care benefits payable by a retirement system or a former qualified participant who has terminated employment and has an amount within his or her health reimbursement account.

History: Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2732b Definitions; R to V.

Sec. 2b. (1) "Retirement act" means 1 or more of the following:

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

(b) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

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

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

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

(2) "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.

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

(4) "Trust" means an irrevocable trust created under section 3(1).

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

(6) "Voluntary contributions" means voluntary amounts contributed by a member or participating member into a health reimbursement account. However, to the extent required by applicable law, voluntary amounts shall not be contributed through a salary reduction election under a cafeteria plan pursuant to section 125 of the internal revenue code, 26 USC 125.

History: Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2733 Irrevocable trust; authorization; creation; establishment; governing board of each retirement system as grantor; members of retirement system board as trustees; deposits; distributions; funding account; preparation of annual financial statements; establishment and maintenance of health reimbursement accounts; separate prefunding account.

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 and reimburse medical expenses to its past members and their health reimbursement 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.

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(4) Except as otherwise provided in this subsection, 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 board of trustees of the Michigan legislative retirement system created under the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, 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. This subsection does not apply to assets contributed or credited to a health reimbursement account.

(5) Each trust shall receive state appropriations, employer contributions, mandatory contributions, voluntary contributions, investment earnings, refunds and reimbursements, and other permitted deposits, and shall make distributions for the payment of retirement health care benefits and reimbursement of medical expenses 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 this 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 and the health reimbursement accounts 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 retirement 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 retirement health care benefits or other postemployment benefits to any person or to assure, deny, diminish, increase, or grant retirement 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.

(9) Health reimbursement accounts shall be established and maintained within each irrevocable trust to receive and hold the amounts contributed under section 10. All health reimbursement accounts shall be established in a manner that complies with all applicable statutory provisions, regulatory provisions, and internal revenue service rulings governing health reimbursement arrangements, including, but not limited to, section 105(b) of the internal revenue code, 26 USC 105, internal revenue notice 2002-45, and internal revenue rulings 2005-24 and 2006-36.

(10) A separate prefunding account may be established by the trustees for the prefunding of amounts to be contributed or credited by this state to health reimbursement accounts under the applicable retirement act. A past member has no rights to the funds in the separate prefunding account established under this subsection before amounts are contributed or credited to the past member's health reimbursement account under the applicable retirement act.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2734 Assets as irrevocable.

Sec. 4. (1) Except as otherwise provided in this section and 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 the contribution.

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(2) To the extent permitted under state and federal law, voluntary contributions to a health reimbursement account and any investment income on those amounts may be distributed to a deceased member's or past member's beneficiaries or estate if those amounts exist in the deceased member's or past member's health reimbursement account and all eligible medical expenses have been reimbursed for the deceased member or past member and for all of his or her health reimbursement account dependents.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2735 Assets; use; limitation.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2736 Assets not subject to certain processes of law.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2737 Assets; diversion for other purposes prohibited.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2738 Remaining trust assets; dissolution; distribution; remaining health reimbursement account assets.

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.

(3) Except as otherwise provided in section 4(2), any assets remaining in a health reimbursement account after all reimbursements for medical expenses for the past member and any health reimbursement account dependents of the past member have been paid shall be distributed to the funding account within the irrevocable trust.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2739 Written trust agreement; contents.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2740 Retirement health care benefits; prefunding; credit to funding account; contribution or credit to health reimbursement account.

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.

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

(4) A member shall contribute an amount to the funding account as required by the applicable retirement act.

(5) A participating member shall contribute an amount to his or her health reimbursement account as required by the applicable retirement act.

(6) The employer of a member or participating member shall contribute or credit to the member's or participating member's health reimbursement account an amount as required by the applicable retirement act.

(7) A member or participating member may make voluntary contributions to his or her health reimbursement account in a whole percentage ranging from 1% to 5% of the member's or participating member's compensation, subject to any limit provided under state or federal law. This subsection does not apply to members of a retirement system until the retirement system has determined that voluntary contributions are permitted by law and a procedure has been implemented for the contributions.

(8) The employer of a member or participating member may contribute or credit an amount to the member's or participating member's health reimbursement account as set forth in the applicable retirement act. This subsection does not apply to members of a retirement system until the applicable retirement system has determined that voluntary contributions are permitted by law and a procedure has been implemented for the contributions.

(9) When a participating member makes a mandatory contribution as a result of a provision of the applicable retirement act, the mandatory contribution, along with any other contributions under this section or a provision of the applicable retirement act, shall promptly be credited to that participating member's health reimbursement account.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2740a Health reimbursement account; vesting; rights.

Sec. 10a. (1) A member or participating member is 100% vested in mandatory contributions and voluntary contributions made to his or her health reimbursement account, subject to permissible use of the contributions under this act.

(2) A member or participating member is vested in employer contributions made to his or her health reimbursement account, subject to permissible use of the contributions under this act, according to the following schedule:

(a) Fifty percent vested after earning 2 years of service as determined by the applicable retirement act.

(b) Seventy-five percent vested after earning 3 years of service as determined by the applicable retirement act.

(c) One hundred percent vested after earning 4 years or more of service as determined by the applicable retirement act.

(3) A past member and his or her health reimbursement account dependents have the right to reimbursement of medical expenses under this act to the extent such funds exist in the past member's health reimbursement account.

History: Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2741 Written plan document; terms and conditions of payments of retirement health care benefits and reimbursements of medical expenses.

Sec. 11. (1) The trustees shall establish a separately written plan document that governs the terms and conditions of payments of retirement health care benefits and reimbursements of medical expenses consistent with 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).

(4) Reimbursement of medical expenses from a health reimbursement account shall be in a manner that complies with all applicable statutory provisions, regulatory provisions, and internal revenue service rulings governing health reimbursement arrangements, including, but not limited to, section 105(b) of the internal revenue code, 26 USC 105, internal revenue notice 2002-45 and internal revenue rulings 2005-24 and 2006-36.

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(5) Following termination of employment, the trust for the applicable retirement system shall reimburse medical expenses, as appropriate, from the past member's health reimbursement account at least quarterly, until the past member's health reimbursement account is exhausted.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2742 Severability.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2743 Trusts; validity.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2744 Taxation of assets and income; exemption.

Sec. 14. All assets and income of the trusts shall be exempt from taxation by this state or any political subdivision of this state. Except as otherwise provided in section 4(2), distributions from the trusts shall not be treated as taxable income to the past members, their health reimbursement account dependents, or their funding account dependents by this state or any political subdivision of this state.

History: 2010, Act 77, Imd. Eff. May 19, 2010;—Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011.

38.2745 Trustee; exception from certain responsibilities; indemnification.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

38.2747 Correction of error by trustees.

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.

History: 2010, Act 77, Imd. Eff. May 19, 2010.

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