

**PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT (EXCERPT)**  
**Act 77 of 2010**

**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.

(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