

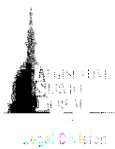
HOUSE BILL NO. 4447

April 11, 2019, Introduced by Reps. Albert and Howell and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 2017 PA 202, entitled "Protecting local government retirement and benefits act," by amending section 3 (MCL 38.2803) 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



1 retirement pension benefits and retirement health benefits as
2 determined under applicable government accounting standards of the
3 Governmental Accounting Standards Board.

4 (b) "Annual required contribution" means the sum of the normal
5 cost payment and the annual amortization payment for past service
6 costs to fund the unfunded actuarial accrued liability.

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

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

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

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

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



1 pension benefits.

2 (h) "Health care stipend" means a fixed amount paid to a
3 former employee on an ongoing basis to be applied toward a health
4 care premium.

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

6 (i) A city.

7 (ii) A village.

8 (iii) A township.

9 (iv) A county.

10 (v) A county road commission.

11 (vi) An authority created under chapter VIA of the aeronautics
12 code of the state of Michigan, 1945 PA 327, MCL 259.108 to
13 259.125c.

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

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

18 (ix) An authority created under 1939 PA 147, MCL 119.51 to
19 119.62.

20 (x) A municipal electric utility system as that term is
21 defined in section 4 of the Michigan energy employment act of 1976,
22 1976 PA 448, MCL 460.804.

23 (xi) A district, authority, commission, public body, or public
24 body corporate created by 1 or more of the entities described in
25 subparagraphs (i) to (x).

26 (j) ~~(i)~~—"Local unit of government" does not include this
27 state, a principal department of state government, a state
28 institution of higher education under section 4, 5, or 6 of article



1 VIII of the state constitution of 1963, a state agency, a state
 2 authority, or a reporting unit under the public school employees
 3 retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

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

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

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

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

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

20 (i) Expenses related to medical, drugs, dental, hearing, or
 21 vision care.

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

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

26 (p) **Retirement health benefit does not include a health care**
 27 **stipend.**

28 (q) ~~(o)~~—"Retirement pension benefit" means an allowance,
 29 right, accrued right, or other pension benefit payable under a



1 defined benefit pension plan to a participant in the plan or a
2 beneficiary of the participant.

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

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

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

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

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

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

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

27 (5) **To be eligible for receiving a grant under this section,**
28 **within 3 years after the effective date of the amendatory act that**
29 **added this section, a local unit of government that is a county**



1 road commission and whose actuarial liability of its retirement
2 health system is less than 40% funded or whose actuarial liability
3 of its retirement pension system is less than 60% funded according
4 to the most recent annual report under section 5 may elect to
5 participate in the local unit recovery status fund under this
6 section if the board approves the local unit of government's
7 corrective action plan under section 10 and the corrective action
8 plan addresses all of the following conditions:

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

13 (b) The local unit of government will not reopen a defined
14 benefit retirement system or reoffer any other defined benefit plan
15 after the effective date that defined benefit retirement system or
16 other defined benefit plan has been closed to new hires.

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

21 (d) The local unit of government's retirement system will use
22 the uniform actuarial assumptions established under section 5.

23 (e) The board determines that the corrective action plan has a
24 reasonable likelihood that either of the following apply, as
25 applicable:

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

29 (ii) The retirement health system will be 40% funded within 30



1 years after the board approves the corrective action plan under
2 section 10.

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

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

10 (b) The county road commission board approves the changes to
11 be made in the corrective action plan.

12 (7) Subject to subsections (8) and (9), the state treasurer
13 shall make grants from the fund, on appropriation, to the
14 irrevocable trust created under section 11a of a local unit of
15 government that is a county road commission if the board approved
16 the local unit of government's corrective action plan under section
17 10 and the corrective action plan addresses all of the conditions
18 listed in subsection (5). Any money received from a grant from the
19 fund must within 30 days after receipt of the money be placed into
20 the irrevocable trust created for the retirement system to pay
21 retirement health benefits or the irrevocable trust created for the
22 retirement system to pay retirement pension benefits of the local
23 unit of government.

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

28 (a) Low funding ratios.

29 (b) High ratio of annual required contributions to the local



1 unit of government's revenue.

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

4 (d) A local unit of government's past history of making the
5 full annual required contribution or payments exceeding the annual
6 required contribution.

7 (9) The state treasurer shall make grants from the fund
8 subject to the following:

9 (a) For a grant to a retirement pension benefit plan, up to a
10 50% matching grant from the fund is available based on any of the
11 following sources of funds:

12 (i) Any money contributed above the annual required
13 contribution.

14 (ii) Any contributions from the county general fund.

15 (iii) Any contributions from county road millages.

16 (b) For a grant to a retirement health benefit plan, up to a
17 50% matching grant from the fund is available based on any money
18 contributed toward a full annual required contribution.

19 (10) If the board determines that the conditions of a local
20 unit of government's corrective action plan, or a subsequent
21 revised corrective action plan approved by the municipal stability
22 board and the county road commission board, described in subsection
23 (5) are not being met, by a certain date established by the state
24 treasurer, the local unit of government shall pay to the state
25 treasurer all money the irrevocable trust of the local unit of
26 government created under section 11a received from the fund under
27 this section, and shall also pay interest, at a rate as determined
28 by the department of treasury, on all money received from the fund
29 under this section. In addition, the board shall continue to



1 monitor that local unit of government until it is no longer an
2 underfunded local unit of government.

3 (11) As used in this section, "local unit recovery status
4 fund" or "fund" means the fund created in subsection (1).

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

11 (a) The governing board of each retirement system is the
12 grantor and shall administer the irrevocable trust created for that
13 retirement system in order to pay retirement health benefits. The
14 members of the retirement system board, or the governing body of
15 the local unit of government if there is no retirement system
16 board, shall act as the trustees of the irrevocable trust for that
17 retirement system.

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

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

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

22 (iii) Sections outlining the management and operation of the
23 trust.

24 (iv) A description of the various accounts that carry out the
25 functions of the trust.

26 (v) Provisions setting forth the powers and duties of the
27 trustees.

28 (vi) Policies and procedures for administering the irrevocable
29 trust.



1 (c) Each trust must be managed and operated separately and
2 independent of the other retirement system trusts. The trustees may
3 contract with public and private entities for the provision of
4 bookkeeping, benefit payments, and other plan functions.

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

8 (e) The assets of the irrevocable trust are to be used solely
9 to perform this essential function of the local unit of government.
10 The trust must only provide retirement health benefits as provided
11 under applicable law and pay fees and expenses for the
12 administrative costs in carrying out this essential governmental
13 function.

14 (f) The assets in the irrevocable trust must be invested in
15 accord with the public employee retirement system investment act,
16 1965 PA 314, MCL 38.1132 to 38.1141.

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

21 (h) The assets of the irrevocable trust must be used
22 exclusively for retirement health benefits and must not be diverted
23 for a purpose other than the payment of retirement health benefits
24 and the administrative costs of providing retirement health
25 benefits.

26 (i) The governing board of a retirement system may from time
27 to time authorize the deposit into the irrevocable trust of any
28 eligible money on deposit within its retirement system for the
29 purpose of payment of eligible retirement health benefits.



1 Distributions from the irrevocable trust may be made to satisfy the
2 requirements of the retirement system for retirement health
3 benefits provided by the retirement system.

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

10 (k) The irrevocable trust is not considered to be invalid
11 because of any indefiniteness or uncertainty of the persons
12 designated as beneficiaries. The irrevocable trust is not
13 considered to be invalid as violating any existing law against
14 perpetuities, against suspension of the power of alienation of
15 title to property, or against trusts for the purpose of the
16 accumulation of income, but each trust may continue for the amount
17 of time that may be necessary to accomplish the purpose for which
18 it was created.

19 (l) All assets and income of the irrevocable trust are exempt
20 from taxation by this state or any political subdivision of this
21 state. Distributions from the irrevocable trust shall not be
22 treated as taxable income to former employees or their retiree
23 health dependents by this state or any political subdivision of
24 this state.

25 (m) A trustee of the irrevocable trust is not any of the
26 following:

27 (i) Personally liable for any liability, loss, or expense
28 suffered by the trust, unless the liability, loss, or expense
29 arises out of or results from the willful misconduct or intentional



1 wrongdoing of the trustee.

2 (ii) Responsible for the adequacy of the trust to meet and
3 discharge any obligation under applicable law.

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

6 (n) A trustee of the irrevocable trust may be indemnified by
7 the trust against costs, liabilities, losses, damages, and
8 expenses, including attorney fees, as more fully provided in the
9 respective trust agreements, unless the costs, liabilities, losses,
10 damages, or expenses arise out of or result from the willful
11 misconduct or intentional wrongdoing of the trustee.

12 (o) Any assets remaining in the irrevocable trust after all
13 payments for eligible retirement health benefits have been paid and
14 all other liabilities of the trust have been satisfied must be
15 distributed to this state, the local unit of government, or other
16 employers within the applicable retirement system if the employers
17 are organizations, the income of which is excluded under section
18 115(1) of the internal revenue code of 1986, 26 USC 115.

