

HOUSE BILL No. 5913

March 19, 2008, Introduced by Reps. Hammel, Alma Smith, Spade, Valentine, Johnson,
Coulouris and Meadows and referred to the Committee on Retiree Health Care Reforms.

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 or a health reimbursement 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 for a member under the applicable retirement
8 act.

9 (d) "Funding account dependant" means 1 or more of the
10 following:

11 (i) For a past member of the retirement system created under
12 the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69,
13 a dependent as that term is used in section 20d of the state
14 employees retirement act, 1943 PA 240, MCL 38.20d, or a "health
15 benefit dependent" as that term is defined in section 54 of the
16 state employees retirement act, 1943 PA 240, MCL 38.54, whichever
17 is applicable.

18 (ii) A health insurance dependent as that term is defined in
19 section 91 of the public school employees retirement act of 1979,
20 1980 PA 300, MCL 38.1391.

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

26 (iv) A survivor as that term is defined in section 13a of the
27 Michigan legislative retirement system act, 1957 PA 261, MCL

1 38.1013a, a beneficiary of a deceased retirant as that term is used
2 in section 50b of the Michigan legislative retirement system act,
3 1957 PA 261, 1957 PA 261, MCL 38.1050b, or a health benefit
4 dependent as that term is defined in section 65 of the Michigan
5 legislative retirement system act, 1957 PA 261, MCL 38.1065,
6 whichever is applicable.

7 (v) A retirement allowance beneficiary as that term is defined
8 in section 4 of the state police retirement act of 1986, 1986 PA
9 182, MCL 38.1604, or a dependent as that term is used in section 42
10 of the state police retirement act of 1986, 1986 PA 182, MCL
11 38.1642.

12 (e) "Health reimbursement account" means an employer-sponsored
13 individual account within the irrevocable trust administered by the
14 trustees that allows a member and his or her employer to save money
15 for reimbursement of medical expenses that will be incurred on
16 behalf of the member or his or her dependents after the member
17 becomes a past member.

18 (f) "Health reimbursement account dependent" means a past
19 member's spouse or a surviving spouse and any individual who is
20 considered the past member's dependent under section 152 of the
21 internal revenue code, 26 USC 152, determined without regard to
22 section 152(b)(1), (b)(2), or (d)(1)(b) of the internal revenue
23 code.

24 (g) "Mandatory contributions" means required contributions
25 made under the applicable retirement act. The department shall
26 administer contributions made to the trust so that they may be
27 characterized in the manner that the department determines is most

1 favorable under the internal revenue code, 26 USC 1 to 1789.
2 Mandatory contributions also may include any other amounts
3 established by the employer which may be treated as picked up by
4 the employer to the fullest extent permitted by the internal
5 revenue code.

6 (h) "Medical expenses" means expenses incurred by a past
7 member or his or her health reimbursement account dependents that
8 satisfy all of the following conditions:

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

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

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

17 (iv) The individual properly and timely substantiates the
18 expenses in a manner established by the department.

19 (i) "Member" means a person who is a member, former member,
20 deferred member, qualified participant, or former qualified
21 participant as determined under the applicable retirement act.

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

25 (k) "Past member" means a former member who has retired with
26 retirement health care benefits payable by a retirement system or a
27 former member who has terminated employment and has a health

1 reimbursement account.

2 (l) "Retirement health care benefits" means expenses for
3 medical, dental, and vision to be paid for past members or their
4 funding account dependents under the applicable retirement act and
5 medical expenses paid using funds from a health reimbursement
6 account provided under this act.

7 (m) "Retirement act" means 1 or more of the following:

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

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

12 (iii) The judges retirement act of 1992, 1992 PA 234, MCL
13 38.2101 to 38.2670.

14 (iv) The state police retirement act of 1986, 1986 PA 182, MCL
15 38.1601 to 38.1648.

16 (v) The Michigan legislative retirement system act, 1957 PA
17 261, MCL 38.1001 to 38.1080.

18 (n) "Retirement system" means a retirement system established
19 under a retirement act.

20 (o) "State" means this state.

21 (p) "Trust" means an irrevocable trust created under section
22 3(1) of this act.

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

24 (r) "Voluntary employee contributions" means voluntary amounts
25 contributed by a member or participating member into a health
26 reimbursement account. To the extent required by applicable law,
27 voluntary employee contributions shall not be made through a salary

1 reduction election under a cafeteria plan pursuant to section 125
2 of the internal revenue code, 26 USC 125.

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

8 (2) The governing body of each retirement system shall be the
9 grantor and shall administer the irrevocable trust created for that
10 retirement system in order to pay retirement health care benefits
11 to its past members and their funding account dependents or health
12 reimbursement account dependents. The members of the retirement
13 system board shall act as the trustees of the irrevocable trust for
14 that retirement system. The trustees shall adopt a written trust
15 agreement that meets all of the requirements set forth in section
16 9. The trustees of the irrevocable trust may establish and adopt
17 policies and procedures for administering the irrevocable trust.

18 (3) Each trust shall be managed and operated separately and
19 independent of the other retirement system trusts. The trustees may
20 contract with public and private entities for the provision of
21 bookkeeping, benefit payments, and other plan functions. The
22 department, the department of treasury, and the department of the
23 attorney general may provide services to the trust as requested by
24 the trustees.

25 (4) The state treasurer shall be the fiduciary of the
26 irrevocable trusts and shall invest the assets in the trusts in
27 accord with the public employee retirement system investment act,

1 1965 PA 314, MCL 38.1132 to 38.1140m. The state treasurer has the
2 exclusive authority and responsibility to employ or contract with
3 personnel and for services that the state treasurer determines
4 necessary for the proper investment of the assets in the
5 irrevocable trust.

6 (5) Each trust shall receive state appropriations, employer
7 contributions, employee contributions, investment earnings, refunds
8 and reimbursements, and other permitted deposits, and shall make
9 distributions for the payment of retirement health care benefits
10 authorized by the trustees for the administration of such trust.
11 The trustees are authorized to establish an administrative and
12 investment fee structure to be charged against the funding account
13 and the health reimbursement accounts within the trust to defray
14 the costs of administering the trust. An irrevocable trust
15 established under this section shall be kept separate from the
16 pension assets of retirement systems.

17 (6) A funding account shall be established by the trustees for
18 the funding and prefunding of payments of retirement health care
19 benefit obligations, and separate accounts for investment earnings
20 and for administration of the trust may be established. Past
21 members in the aggregate shall have contractual rights to the
22 assets in the funding account for the payment of retirement health
23 care benefits required under the applicable retirement act.

24 (7) Individual health reimbursement accounts shall be
25 established and maintained within each trust to receive and hold
26 the funds collected under section 10. All health reimbursement
27 accounts shall be established in a manner that complies with all

1 relevant statutory provisions, regulatory provisions, and internal
2 revenue service rulings governing health reimbursement
3 arrangements. Deposits to health reimbursement accounts shall
4 include employer contributions and other permitted contributions
5 the deposit of which is authorized by this act.

6 (8) The governing body of a retirement system may from time to
7 time authorize the deposit into the funding account of any eligible
8 funds on deposit in an account within its retirement system for the
9 purpose of payment of retirement health care benefits of its
10 members. Distributions from the funding account may be made to
11 satisfy the requirements of the retirement system for all
12 retirement health care benefits provided by the retirement system.

13 (9) The trustees shall cause the annual financial statements
14 of the trust to be prepared in accordance with generally accepted
15 accounting principles and an audit to be conducted of those
16 financial statements by a qualified independent certified
17 accounting firm for each fiscal year in accordance with generally
18 accepted auditing standards.

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

23 (2) To the extent permitted under state and federal law,
24 vested contributions to a health reimbursement account and any
25 investment income may be distributed to a deceased member's or past
26 member's beneficiaries or estate if a balance of funds exists in
27 the deceased member's or past member's health reimbursement account

1 and all retirement health care benefits have been paid for the
2 deceased member or past member and all of his or her funding
3 account dependents or health reimbursement account dependents.

4 Sec. 5. The assets of the irrevocable trust are to be used
5 solely to perform an essential function of state government. The
6 trust may only provide retirement health care benefits to eligible
7 past members and their funding account dependents or health
8 reimbursement account dependents under the provisions of the
9 applicable retirement act, or to pay fees and expenses for the
10 administrative costs in carrying out this essential governmental
11 function.

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

17 Sec. 7. The assets of the irrevocable trust shall be used
18 exclusively for the benefit of past members and their funding
19 account dependents or health reimbursement account dependents, and
20 shall not be diverted for a purpose other than the payment of
21 retirement health care benefits and the administrative costs of
22 providing such benefits.

23 Sec. 8. (1) Except as provided in section 4(2), any assets
24 remaining in any individual health reimbursement account within the
25 irrevocable trust after all payments for costs of eligible
26 retirement health care benefits for the individual past member and
27 any eligible funding account dependents or health reimbursement

1 account dependents of the past member have been paid shall be
2 distributed to the funding account within the irrevocable trust.

3 (2) Any assets remaining in the funding account after all
4 payments for eligible retirement health care benefits have been
5 paid and all other liabilities of the trust have been satisfied
6 shall be distributed to this state or other employers within the
7 applicable retirement system so long as the employers are
8 organizations the income of which is excluded under section 115(1)
9 of the internal revenue code, 26 USC 115.

10 (3) Upon dissolution of the irrevocable trust, any assets
11 remaining after the payment of debts and the satisfaction of
12 liabilities are to be distributed to 1 or more states, political
13 subdivisions of states, the District of Columbia, or other
14 organizations the income of which is excluded under section 115(1)
15 of the internal revenue code, 26 USC 115.

16 Sec. 9. The written trust agreement for each retirement system
17 shall contain all of the following provisions consistent with this
18 act:

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

20 (b) Language reflecting the requirements of sections 4 through
21 7.

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

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

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

1 Sec. 10. (1) If a member or participating member has a
2 mandatory percentage or a fixed dollar amount of salary reduced for
3 contribution to the trust as a result of a collective bargaining
4 agreement or other terms of employment and this section, or a
5 provision of the applicable retirement act, the deduction together
6 with any employer contributions under this section shall promptly
7 be credited to that member or participating member's individual
8 health reimbursement account within the trust. To the extent
9 permitted by applicable law, any mandatory employee contribution
10 shall be treated as a salary increase that has been foregone by the
11 employee.

12 (2) A participating member shall contribute an amount to his
13 or her health reimbursement account as required within the
14 applicable retirement act.

15 (3) The employer of a participating member shall contribute to
16 a participating member's health reimbursement account within the
17 trust an amount as required within the applicable retirement act.

18 (4) A participating member or other member within a retirement
19 system may voluntarily contribute an amount to the health
20 reimbursement account in a whole percentage ranging from 1% to 5%
21 of the compensation paid to the participating member or other
22 member, subject to any limit provided under state or federal law.

23 (5) The employer of a participating member or other member
24 within the retirement system may contribute an amount to the
25 participating member's or member's health reimbursement account as
26 set forth in the applicable retirement act, as agreed to in a
27 collective bargaining agreement or other terms of employment.

1 (6) A participating member shall contribute an amount to the
2 funding account as required within the applicable retirement act.

3 (7) The employer within a retirement system may contribute
4 amounts to the funding account as set forth in the applicable
5 retirement act, as agreed to in a collective bargaining agreement
6 or other terms of employment for the prefunding of retirement
7 health care benefits.

8 (8) This state or the employer may make other contributions to
9 the funding account for the prefunding of retirement health care
10 benefits.

11 Sec. 11. (1) A past member is 100% vested in mandatory and
12 voluntary employee contributions made to his or her health
13 reimbursement account.

14 (2) A past member is vested in employer contributions made to
15 his or her health reimbursement account according to the following
16 schedule:

17 (a) 50% vested after earning 2 years of service as determined
18 under the applicable retirement act.

19 (b) 75% vested after earning 3 years of service as determined
20 under the applicable retirement act.

21 (c) 100% vested after earning 4 years or more of service as
22 determined under the applicable retirement act.

23 (3) A past member shall have contractual rights to
24 reimbursement of medical expenses under this act to the extent such
25 funds exist in his or her health reimbursement account.

26 Sec. 12. (1) The trustees shall establish a separately written
27 plan document which shall govern the terms and conditions of both

1 of the following:

2 (a) Reimbursement of expenses for medical, dental, and vision
3 care with the terms being consistent with the funding and payment
4 of the expenses under the applicable retirement act.

5 (b) Reimbursement of medical expenses from the health
6 reimbursement accounts in a manner that complies with all
7 applicable statutory provisions, regulatory provisions, and
8 internal revenue service rulings governing health reimbursement
9 arrangements.

10 (2) If the governing board of a retirement system has made a
11 transfer described in subsection (1)(a), the trust shall use the
12 funds in the funding account to satisfy the requirements of the
13 retirement system for all retirement health care benefits provided
14 by the retirement system consistent with this act and the plan
15 document established under this section.

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

20 (4) Following termination of employment, the trust for the
21 applicable retirement system shall reimburse a past member or the
22 dependents of the past member from the past member's health
23 reimbursement account, as appropriate, at least quarterly, for
24 medical expenses incurred by the past member or the dependents of
25 the past member for health care benefits authorized under the
26 applicable retirement act but not paid by the retirement system
27 until the past member's health reimbursement account is exhausted.

1 (5) Notwithstanding anything to the contrary, claims that are
2 incurred before the past member became entitled to receive
3 reimbursements under the applicable retirement act or this act are
4 not eligible medical expenses.

5 Sec. 13. (1) If the department receives notification from the
6 United States internal revenue service that this act or any portion
7 of this act will cause any retirement system or health
8 reimbursement account to be disqualified for tax purposes under the
9 internal revenue code, or prevent any irrevocable trust from
10 meeting the requirements of section 115 of the internal revenue
11 code, 26 USC 115, then the portion that will cause the
12 disqualification does not apply.

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

16 Sec. 14. The trusts created by this act shall not be deemed to
17 be invalid by reason of any indefiniteness or uncertainty of the
18 persons designated as beneficiaries in this act and agreements
19 creating the trusts, nor shall the trusts be deemed to be invalid
20 as violating any existing law against perpetuities or against
21 suspension of the power of alienation of title to property or
22 against trusts for the purpose of the accumulation of income, but
23 each trust may continue for the amount of time that may be
24 necessary to accomplish the purpose for which it was created.

25 Sec. 15. All assets and income of the trusts shall be exempt
26 from taxation by the state or any political subdivision of this
27 state. Except as provided in section 4(2), distribution from the

1 trusts will not be treated as taxable income to the past members or
2 their funding account dependents or health reimbursement account
3 dependents by this state or any political subdivision of this
4 state.

5 Sec. 16. (1) A trustee shall not be any of the following:

6 (a) Personally liable for any liability, loss, or expense
7 suffered by the trust, unless the liability, loss, or expense
8 arises out of or results from the willful misconduct or intentional
9 wrongdoing of the trustee.

10 (b) Responsible for the adequacy of the trust to meet and
11 discharge any obligation under the applicable retirement act and
12 this act.

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

15 (2) The trustees may be indemnified by the trusts and from the
16 fund of the trusts against costs, liabilities, losses, damages, and
17 expenses, including their attorney fees, as more fully provided in
18 the respective trust agreements, unless such costs, liabilities,
19 losses, damages, or expenses arise out of or result from the
20 willful misconduct or intentional wrongdoing of a trustee.

21 Sec. 17. Except for retirement health care benefits to be paid
22 from amounts within a health reimbursement account, nothing in this
23 act shall be construed to define or otherwise grant any right or
24 privilege to health care benefits or other postemployment benefits
25 to any person other than those health care benefits or other
26 postemployment benefits, rights, and privileges previously or
27 already granted to members and past members and their dependents by

1 the applicable retirement act. This act is not intended to assure
2 or deny to any existing or future employee, past member, any of
3 their funding account dependents or health reimbursement account
4 dependents, or any other person any right of entitlement to any
5 health care benefit or other postemployment benefit or limit or
6 otherwise restrict the ability of this state or any employer to
7 modify or eliminate any existing or future health care benefit or
8 other postemployment benefit.

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