

HOUSE BILL No. 4702

May 31, 2011, Introduced by Rep. Moss and referred to the Committee on Appropriations.

A bill to amend 2010 PA 77, entitled
"Public employee retirement health care funding act,"
by amending the title and sections 1, 2, 3, 4, 8, 10, 11, and 14
(MCL 38.2731, 38.2732, 38.2733, 38.2734, 38.2738, 38.2740, 38.2741,
and 38.2744) and by adding sections 2a, 2b, and 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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**

HOUSE BILL No. 4702

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.

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.**

Sec. 2. ~~As used in this act:~~

(1) ~~(a)~~—"Department" means the department of technology, management, and budget.

(2) ~~(b)~~—"Employer contributions" means the amount transferred by an employer to a funding account **OR A HEALTH REIMBURSEMENT ACCOUNT.**

(3) ~~(c)~~—"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) ~~(d)~~—"Funding account dependent" means 1 or more of the following:

(A) ~~(i)~~—A dependent as that term is used in section 20d of the state ~~employees~~ **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~~ **EMPLOYEES'** retirement act, 1943 PA 240, MCL 38.54, whichever is applicable.

(B) ~~(ii)~~—A health insurance dependent as that term is defined

1 in section 91 of the public school employees retirement act of
2 1979, 1980 PA 300, MCL 38.1391.

3 (C) ~~(iii)~~—A retirement allowance beneficiary as that term is
4 defined in section 109 of the judges retirement act of 1992, 1992
5 PA 234, MCL 38.2109, or a health benefit dependent as that term is
6 defined in section 705 of the judges retirement act of 1992, 1992
7 PA 234, MCL 38.2655, whichever is applicable.

8 (D) ~~(iv)~~—A survivor as that term is defined in section 13a of
9 the Michigan legislative retirement system act, 1957 PA 261, MCL
10 38.1013a, a beneficiary of a deceased retirant as that term is used
11 in section 50b of the Michigan legislative retirement system act,
12 1957 PA 261, MCL 38.1050b, or a health benefit dependent as that
13 term is defined in section 65 of the Michigan legislative
14 retirement system act, 1957 PA 261, MCL 38.1065, whichever is
15 applicable.

16 (E) ~~(v)~~—A retirement allowance beneficiary as that term is
17 defined in section 4 of the state police retirement act of 1986,
18 1986 PA 182, MCL 38.1604, or a dependent as that term is used in
19 section 42 of the state police retirement act of 1986, 1986 PA 182,
20 MCL 38.1642, whichever is applicable.

21 ~~—— (e) "Member" means a person who is a member, former member,~~
22 ~~deferred member, qualified participant, or former qualified~~
23 ~~participant as determined under the applicable retirement act.~~

24 ~~—— (f) "Past member" means a former member or former qualified~~
25 ~~participant who has retired with retirement health care benefits~~
26 ~~payable by a retirement system.~~

27 ~~—— (g) "Retirement act" means 1 or more of the following:~~

~~1 (i) The state employees' retirement act, 1943 PA 240, MCL 38.1~~
~~2 to 38.69.~~

~~3 (ii) The public school employees retirement act of 1979, 1980~~
~~4 PA 300, MCL 38.1301 to 38.1408.~~

~~5 (iii) The judges retirement act of 1992, 1992 PA 234, MCL~~
~~6 38.2101 to 38.2670.~~

~~7 (iv) The state police retirement act of 1986, 1986 PA 182, MCL~~
~~8 38.1601 to 38.1648.~~

~~9 (v) The Michigan legislative retirement system act, 1957 PA~~
~~10 261, MCL 38.1001 to 38.1080.~~

~~11 (h) "Retirement health care benefits" means expenses for~~
~~12 medical, dental, and vision to be paid for past members or their~~
~~13 funding account dependents under the applicable retirement act.~~

~~14 (i) "Retirement system" means a retirement system established~~
~~15 under a retirement act.~~

~~16 (j) "State" means this state.~~

~~17 (k) "Trust" means an irrevocable trust created under section~~
~~18 3(1) of this act.~~

~~19 (l) "Trustee" means a member of a retirement system board.~~

20 (5) "HEALTH REIMBURSEMENT ACCOUNT" MEANS AN EMPLOYER SPONSORED
21 INDIVIDUAL ACCOUNT ESTABLISHED WITHIN THE IRREVOCABLE TRUST AND
22 ADMINISTERED BY THE TRUSTEES INTO WHICH A MEMBER AND HIS OR HER
23 EMPLOYER CONTRIBUTE MONEY TO BE USED FOR THE REIMBURSEMENT OF
24 MEDICAL EXPENSES.

25 (6) "HEALTH REIMBURSEMENT ACCOUNT DEPENDENT" MEANS A PAST
26 MEMBER'S LEGAL SPOUSE AND THE PAST MEMBER'S UNMARRIED CHILDREN WHO
27 ARE CONSIDERED DEPENDENT UNDER SECTION 152 OF THE INTERNAL REVENUE

1 CODE, 26 USC 152, DETERMINED WITHOUT REGARD TO THE SPECIAL
2 EXCLUSION UNDER SECTION 152(B)(1) OF THE INTERNAL REVENUE CODE, 26
3 USC 152, OR THE EARNINGS LIMIT UNDER SECTION 152(D)(1)(B) OF THE
4 INTERNAL REVENUE CODE, 26 USC 152.

5 SEC. 2A. (1) "MANDATORY CONTRIBUTIONS" MEANS MANDATORY AMOUNTS
6 CONTRIBUTED BY A PARTICIPATING MEMBER, WHICH AMOUNTS, TO THE EXTENT
7 PERMITTED BY APPLICABLE LAW, ARE TREATED AS A SALARY INCREASE THAT
8 HAS BEEN FOREGONE BY THE PARTICIPATING MEMBER OR A PERMANENT
9 REDUCTION IN A PARTICIPATING MEMBER'S COMPENSATION, WITH SUCH
10 AMOUNTS BEING CONTRIBUTED BY THE EMPLOYER TO EACH PARTICIPATING
11 MEMBER'S HEALTH REIMBURSEMENT ACCOUNT. MANDATORY CONTRIBUTIONS
12 INCLUDE OTHER AMOUNTS ESTABLISHED BY THE EMPLOYER THAT MAY BE
13 TREATED AS PICKED UP BY THE EMPLOYER TO THE FULLEST EXTENT
14 PERMITTED BY THE INTERNAL REVENUE CODE, BUT DO NOT INCLUDE ANY
15 CONTRIBUTIONS MADE ONLY BY THE EMPLOYER WITHOUT AN IMPACT ON THE
16 SALARY OF THE PARTICIPATING MEMBER.

17 (2) "MEDICAL EXPENSE" MEANS AN EXPENSE INCURRED AT THE TIME A
18 PAST MEMBER OR HIS OR HER HEALTH REIMBURSEMENT ACCOUNT DEPENDENT IS
19 FURNISHED THE MEDICAL CARE OR SERVICE. TO BE CONSIDERED A MEDICAL
20 EXPENSE UNDER THIS ACT, THE EXPENSE SHALL MEET ALL OF THE FOLLOWING
21 CONDITIONS:

22 (A) IS A MEDICAL EXPENSE THAT WOULD OTHERWISE QUALIFY FOR A
23 DEDUCTION UNDER SECTION 213(D) OF THE INTERNAL REVENUE CODE, 26 USC
24 213, IRRESPECTIVE OF THE INCOME THRESHOLD SET FORTH IN SECTION
25 213(A) OF THE INTERNAL REVENUE CODE, 26 USC 213.

26 (B) HAS NOT BEEN AND WILL NOT BE REIMBURSED BY ANY OTHER
27 SOURCE.

1 (C) WAS INCURRED BY A PAST MEMBER OR HIS OR HER HEALTH
2 REIMBURSEMENT ACCOUNT DEPENDENT AFTER THE PAST MEMBER BECAME
3 ENTITLED TO RECEIVE REIMBURSEMENTS FOR MEDICAL EXPENSES UNDER THIS
4 ACT.

5 (D) IS PROPERLY AND TIMELY SUBSTANTIATED BY THE INDIVIDUAL
6 CLAIMING THE EXPENSE IN A MANNER ESTABLISHED BY THE DEPARTMENT.

7 (3) "MEMBER" MEANS A PERSON WHO IS A MEMBER, FORMER MEMBER,
8 DEFERRED MEMBER, QUALIFIED PARTICIPANT, OR FORMER QUALIFIED
9 PARTICIPANT AS DETERMINED UNDER THE APPLICABLE RETIREMENT ACT.

10 (4) "PARTICIPATING MEMBER" MEANS A MEMBER WHO IS REQUIRED TO
11 MAKE MANDATORY CONTRIBUTIONS BY THE APPLICABLE RETIREMENT ACT TO
12 HIS OR HER HEALTH REIMBURSEMENT ACCOUNT.

13 (5) "PAST MEMBER" MEANS A FORMER MEMBER WHO HAS RETIRED WITH
14 RETIREMENT HEALTH CARE BENEFITS PAYABLE BY A RETIREMENT SYSTEM OR A
15 FORMER QUALIFIED PARTICIPANT WHO HAS TERMINATED EMPLOYMENT AND HAS
16 AN AMOUNT WITHIN HIS OR HER HEALTH REIMBURSEMENT ACCOUNT.

17 SEC. 2B. (1) "RETIREMENT ACT" MEANS 1 OR MORE OF THE
18 FOLLOWING:

19 (A) THE STATE EMPLOYEES' RETIREMENT ACT, 1943 PA 240, MCL 38.1
20 TO 38.69.

21 (B) THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF 1979, 1980
22 PA 300, MCL 38.1301 TO 38.1437.

23 (C) THE JUDGES RETIREMENT ACT OF 1992, 1992 PA 234, MCL
24 38.2101 TO 38.2670.

25 (D) THE STATE POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL
26 38.1601 TO 38.1648.

27 (E) THE MICHIGAN LEGISLATIVE RETIREMENT SYSTEM ACT, 1957 PA

1 261, MCL 38.1001 TO 38.1080.

2 (2) "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.

5 (3) "RETIREMENT SYSTEM" MEANS A RETIREMENT SYSTEM ESTABLISHED
6 UNDER A RETIREMENT ACT.

7 (4) "TRUST" MEANS AN IRREVOCABLE TRUST CREATED UNDER SECTION
8 3(1).

9 (5) "TRUSTEE" MEANS A MEMBER OF A RETIREMENT SYSTEM BOARD.

10 (6) "VOLUNTARY CONTRIBUTIONS" MEANS VOLUNTARY AMOUNTS
11 CONTRIBUTED BY A MEMBER OR PARTICIPATING MEMBER INTO A HEALTH
12 REIMBURSEMENT ACCOUNT. HOWEVER, TO THE EXTENT REQUIRED BY
13 APPLICABLE LAW, VOLUNTARY AMOUNTS SHALL NOT BE CONTRIBUTED THROUGH
14 A SALARY REDUCTION ELECTION UNDER A CAFETERIA PLAN PURSUANT TO
15 SECTION 125 OF THE INTERNAL REVENUE CODE, 26 USC 125.

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

21 (2) The governing board of each retirement system shall be the
22 grantor and shall administer the irrevocable trust created for that
23 retirement system in order to pay retirement health care benefits
24 to its past members and their funding account dependents **AND**
25 **REIMBURSE MEDICAL EXPENSES TO ITS PAST MEMBERS AND THEIR HEALTH**
26 **REIMBURSEMENT ACCOUNT DEPENDENTS.** The members of the retirement
27 system board shall act as the trustees of the irrevocable trust for

1 that retirement system. The trustees shall adopt a written trust
2 agreement that meets all of the requirements set forth in section
3 9. The trustees of the irrevocable trust may establish and adopt
4 policies and procedures for administering the irrevocable trust.

5 (3) Each trust shall be managed and operated separately and
6 independent of the other retirement system trusts. The trustees may
7 contract with public and private entities for the provision of
8 bookkeeping, benefit payments, and other plan functions. The
9 department, the department of treasury, and the department of the
10 attorney general shall provide services to the trust as requested
11 by the trustees.

12 (4) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE**
13 assets in the irrevocable trusts shall be invested in accord with
14 the public employee retirement system investment act, 1965 PA 314,
15 MCL 38.1132 to 38.1140m. Except as otherwise provided in this
16 subsection, the state treasurer shall be the investment fiduciary
17 of the irrevocable trusts and shall have exclusive authority and
18 responsibility to employ or contract with personnel and for
19 services that the state treasurer determines necessary for the
20 proper investment of the assets in the irrevocable trusts. The
21 ~~governing board of~~ **TRUSTEES OF the MICHIGAN** legislative retirement
22 system **CREATED UNDER THE MICHIGAN LEGISLATIVE RETIREMENT SYSTEM**
23 **ACT, 1957 PA 261, MCL 38.1001 TO 38.1080,** may elect, or revoke an
24 election, to be the investment fiduciary of the funding account
25 assets within its irrevocable trust and retain the exclusive
26 authority to employ or contract with personnel and for services
27 that are necessary for the proper investment of those assets. **THIS**

1 **SUBSECTION DOES NOT APPLY TO ASSETS CONTRIBUTED OR CREDITED TO A**
2 **HEALTH REIMBURSEMENT ACCOUNT.**

3 (5) Each trust shall receive state appropriations, employer
4 contributions, ~~employee~~ **MANDATORY CONTRIBUTIONS, VOLUNTARY**
5 contributions, investment earnings, refunds and reimbursements, and
6 other permitted deposits, and shall make distributions for the
7 payment of retirement health care benefits **AND REIMBURSEMENT OF**
8 **MEDICAL EXPENSES** authorized by the trustees for the administration
9 of such trust. However, an amount in excess of twice the annual
10 current obligations of the trust shall not be deposited in or
11 received by the trust unless the state treasurer certifies that the
12 proposed deposit will not materially reduce the amount of federal
13 funds received by ~~the~~ **THIS** state to support payments made under the
14 social welfare act, 1939 PA 280, MCL 400.1 to 400.119b. The
15 trustees are authorized to establish an administrative and
16 investment fee structure to be charged against the funding account
17 **AND THE HEALTH REIMBURSEMENT ACCOUNTS** within the trust to defray
18 the costs of administering the trust. An irrevocable trust
19 established under this section shall be kept separate from the
20 pension assets of retirement systems.

21 (6) A funding account shall be established by the trustees for
22 the funding and prefunding of payments of retirement health care
23 benefit obligations under the applicable retirement act, and the
24 trustees may create accounts that the trustees determine are
25 necessary for the administration of the trust. For each retirement
26 system, past members shall have contractual rights only in the
27 aggregate to the payment of **RETIREMENT** health care benefits

1 provided by the applicable retirement act to the extent assets
2 exist in the funding account for that retirement system. This act
3 shall not be construed to define or otherwise assure, deny,
4 diminish, increase, or grant any right or privilege to **RETIREMENT**
5 health care benefits or other postemployment benefits to any person
6 or to assure, deny, diminish, increase, or grant **RETIREMENT** health
7 care benefits or other postemployment benefits, rights, and
8 privileges previously or already granted to members or past members
9 and their dependents by the applicable retirement act.

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

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

23 (9) **HEALTH REIMBURSEMENT ACCOUNTS SHALL BE ESTABLISHED AND**
24 **MAINTAINED WITHIN EACH IRREVOCABLE TRUST TO RECEIVE AND HOLD THE**
25 **AMOUNTS CONTRIBUTED UNDER SECTION 10. ALL HEALTH REIMBURSEMENT**
26 **ACCOUNTS SHALL BE ESTABLISHED IN A MANNER THAT COMPLIES WITH ALL**
27 **APPLICABLE STATUTORY PROVISIONS, REGULATORY PROVISIONS, AND**

1 INTERNAL REVENUE SERVICE RULINGS GOVERNING HEALTH REIMBURSEMENT
2 ARRANGEMENTS, INCLUDING, BUT NOT LIMITED TO, SECTION 105(B) OF THE
3 INTERNAL REVENUE CODE, 26 USC 105, INTERNAL REVENUE NOTICE 2002-45,
4 AND INTERNAL REVENUE RULINGS 2005-24 AND 2006-36.

5 (10) A SEPARATE PREFUNDING ACCOUNT MAY BE ESTABLISHED BY THE
6 TRUSTEES FOR THE PREFUNDING OF AMOUNTS TO BE CONTRIBUTED OR
7 CREDITED BY THIS STATE TO HEALTH REIMBURSEMENT ACCOUNTS UNDER THE
8 APPLICABLE RETIREMENT ACT. A PAST MEMBER HAS NO RIGHTS TO THE FUNDS
9 IN THE SEPARATE PREFUNDING ACCOUNT ESTABLISHED UNDER THIS
10 SUBSECTION BEFORE AMOUNTS ARE CONTRIBUTED OR CREDITED TO THE PAST
11 MEMBER'S HEALTH REIMBURSEMENT ACCOUNT UNDER THE APPLICABLE
12 RETIREMENT ACT.

13 Sec. 4. (1) Except as otherwise provided in THIS SECTION AND
14 sections 8 and 17, assets contributed to the irrevocable trust are
15 irrevocable and may not be refused, refunded, or returned to the
16 employer or employee making ~~such~~ THE contribution.

17 (2) TO THE EXTENT PERMITTED UNDER STATE AND FEDERAL LAW,
18 VOLUNTARY CONTRIBUTIONS TO A HEALTH REIMBURSEMENT ACCOUNT AND ANY
19 INVESTMENT INCOME ON THOSE AMOUNTS MAY BE DISTRIBUTED TO A DECEASED
20 MEMBER'S OR PAST MEMBER'S BENEFICIARIES OR ESTATE IF THOSE AMOUNTS
21 EXIST IN THE DECEASED MEMBER'S OR PAST MEMBER'S HEALTH
22 REIMBURSEMENT ACCOUNT AND ALL ELIGIBLE MEDICAL EXPENSES HAVE BEEN
23 REIMBURSED FOR THE DECEASED MEMBER OR PAST MEMBER AND FOR ALL OF
24 HIS OR HER HEALTH REIMBURSEMENT ACCOUNT DEPENDENTS.

25 Sec. 8. (1) Any assets remaining in the funding account after
26 all payments for eligible retirement health care benefits have been
27 paid and all other liabilities of the trust have been satisfied

1 shall be distributed to this state or other employers within the
2 applicable retirement system so long as the employers are
3 organizations the income of which is excluded under section 115(1)
4 of the internal revenue code, 26 USC 115.

5 (2) Upon dissolution of the irrevocable trust, any assets
6 remaining after the payment of debts and the satisfaction of
7 liabilities are to be distributed to 1 or more states, political
8 subdivisions of states, the District of Columbia, or other
9 organizations the income of which is excluded under section 115(1)
10 of the internal revenue code, 26 USC 115.

11 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 4(2), ANY ASSETS
12 REMAINING IN A HEALTH REIMBURSEMENT ACCOUNT AFTER ALL
13 REIMBURSEMENTS FOR MEDICAL EXPENSES FOR THE PAST MEMBER AND ANY
14 HEALTH REIMBURSEMENT ACCOUNT DEPENDENTS OF THE PAST MEMBER HAVE
15 BEEN PAID SHALL BE DISTRIBUTED TO THE FUNDING ACCOUNT WITHIN THE
16 IRREVOCABLE TRUST.

17 Sec. 10. (1) This state, an employer of a member within a
18 retirement system, a member, or any other person may contribute
19 amounts to a funding account within an applicable trust for the
20 prefunding of retirement health care benefits.

21 (2) If a funding account contribution is made to the
22 applicable trust, the contribution shall promptly be credited to
23 the funding account within the applicable trust.

24 (3) Trustees shall credit the applicable **FUNDING** account with
25 the appropriate investment earnings on those assets.

26 (4) **A MEMBER SHALL CONTRIBUTE AN AMOUNT TO THE FUNDING ACCOUNT**
27 **AS REQUIRED BY THE APPLICABLE RETIREMENT ACT.**

1 (5) A PARTICIPATING MEMBER SHALL CONTRIBUTE AN AMOUNT TO HIS
2 OR HER HEALTH REIMBURSEMENT ACCOUNT AS REQUIRED BY THE APPLICABLE
3 RETIREMENT ACT.

4 (6) THE EMPLOYER OF A MEMBER OR PARTICIPATING MEMBER SHALL
5 CONTRIBUTE OR CREDIT TO THE MEMBER'S OR PARTICIPATING MEMBER'S
6 HEALTH REIMBURSEMENT ACCOUNT AN AMOUNT AS REQUIRED BY THE
7 APPLICABLE RETIREMENT ACT.

8 (7) A MEMBER OR PARTICIPATING MEMBER MAY MAKE VOLUNTARY
9 CONTRIBUTIONS TO HIS OR HER HEALTH REIMBURSEMENT ACCOUNT IN A WHOLE
10 PERCENTAGE RANGING FROM 1% TO 5% OF THE MEMBER'S OR PARTICIPATING
11 MEMBER'S COMPENSATION, SUBJECT TO ANY LIMIT PROVIDED UNDER STATE OR
12 FEDERAL LAW. THIS SUBSECTION DOES NOT APPLY TO MEMBERS OF A
13 RETIREMENT SYSTEM UNTIL THE RETIREMENT SYSTEM HAS DETERMINED THAT
14 VOLUNTARY CONTRIBUTIONS ARE PERMITTED BY LAW AND A PROCEDURE HAS
15 BEEN IMPLEMENTED FOR THE CONTRIBUTIONS.

16 (8) THE EMPLOYER OF A MEMBER OR PARTICIPATING MEMBER MAY
17 CONTRIBUTE OR CREDIT AN AMOUNT TO THE MEMBER'S OR PARTICIPATING
18 MEMBER'S HEALTH REIMBURSEMENT ACCOUNT AS SET FORTH IN THE
19 APPLICABLE RETIREMENT ACT. THIS SUBSECTION DOES NOT APPLY TO
20 MEMBERS OF A RETIREMENT SYSTEM UNTIL THE APPLICABLE RETIREMENT
21 SYSTEM HAS DETERMINED THAT VOLUNTARY CONTRIBUTIONS ARE PERMITTED BY
22 LAW AND A PROCEDURE HAS BEEN IMPLEMENTED FOR THE CONTRIBUTIONS.

23 (9) WHEN A PARTICIPATING MEMBER MAKES A MANDATORY CONTRIBUTION
24 AS A RESULT OF A PROVISION OF THE APPLICABLE RETIREMENT ACT, THE
25 MANDATORY CONTRIBUTION, ALONG WITH ANY OTHER CONTRIBUTIONS UNDER
26 THIS SECTION OR A PROVISION OF THE APPLICABLE RETIREMENT ACT, SHALL
27 PROMPTLY BE CREDITED TO THAT PARTICIPATING MEMBER'S HEALTH

1 REIMBURSEMENT ACCOUNT.

2 SEC. 10A. (1) A MEMBER OR PARTICIPATING MEMBER IS 100% VESTED
3 IN MANDATORY CONTRIBUTIONS AND VOLUNTARY CONTRIBUTIONS MADE TO HIS
4 OR HER HEALTH REIMBURSEMENT ACCOUNT, SUBJECT TO PERMISSIBLE USE OF
5 THE CONTRIBUTIONS UNDER THIS ACT.

6 (2) A MEMBER OR PARTICIPATING MEMBER IS VESTED IN EMPLOYER
7 CONTRIBUTIONS MADE TO HIS OR HER HEALTH REIMBURSEMENT ACCOUNT,
8 SUBJECT TO PERMISSIBLE USE OF THE CONTRIBUTIONS UNDER THIS ACT,
9 ACCORDING TO THE FOLLOWING SCHEDULE:

10 (A) FIFTY PERCENT VESTED AFTER EARNING 2 YEARS OF SERVICE AS
11 DETERMINED BY THE APPLICABLE RETIREMENT ACT.

12 (B) SEVENTY-FIVE PERCENT VESTED AFTER EARNING 3 YEARS OF
13 SERVICE AS DETERMINED BY THE APPLICABLE RETIREMENT ACT.

14 (C) ONE HUNDRED PERCENT VESTED AFTER EARNING 4 YEARS OR MORE
15 OF SERVICE AS DETERMINED BY THE APPLICABLE RETIREMENT ACT.

16 (3) A PAST MEMBER AND HIS OR HER HEALTH REIMBURSEMENT ACCOUNT
17 DEPENDENTS HAVE THE RIGHT TO REIMBURSEMENT OF MEDICAL EXPENSES
18 UNDER THIS ACT TO THE EXTENT SUCH FUNDS EXIST IN THE PAST MEMBER'S
19 HEALTH REIMBURSEMENT ACCOUNT.

20 Sec. 11. (1) The trustees shall establish a separately written
21 plan document ~~which shall govern~~ **THAT GOVERNS** the terms and
22 conditions of payments of retirement health care benefits **AND**
23 **REIMBURSEMENTS OF MEDICAL EXPENSES** consistent with the ~~funding and~~
24 ~~payment under the applicable retirement act.~~

25 (2) If the governing board of a retirement system has made a
26 deposit described in section 3(7), the trust shall use the funds in
27 the funding account to satisfy the requirements of the retirement

1 system for all retirement health care benefits provided by the
 2 retirement system consistent with this act and the plan document
 3 established under this section.

4 (3) Any funds in the funding account may be counted toward and
 5 used in the calculation of the annual required contribution as used
 6 by the governmental accounting standards board and for purposes of
 7 the annual financial statements prepared pursuant to section 3(8).

8 (4) REIMBURSEMENT OF MEDICAL EXPENSES FROM A HEALTH
 9 REIMBURSEMENT ACCOUNT SHALL BE IN A MANNER THAT COMPLIES WITH ALL
 10 APPLICABLE STATUTORY PROVISIONS, REGULATORY PROVISIONS, AND
 11 INTERNAL REVENUE SERVICE RULINGS GOVERNING HEALTH REIMBURSEMENT
 12 ARRANGEMENTS, INCLUDING, BUT NOT LIMITED TO, SECTION 105(B) OF THE
 13 INTERNAL REVENUE CODE, 26 USC 105, INTERNAL REVENUE NOTICE 2002-45
 14 AND INTERNAL REVENUE RULINGS 2005-24 AND 2006-36.

15 (5) FOLLOWING TERMINATION OF EMPLOYMENT, THE TRUST FOR THE
 16 APPLICABLE RETIREMENT SYSTEM SHALL REIMBURSE MEDICAL EXPENSES, AS
 17 APPROPRIATE, FROM THE PAST MEMBER'S HEALTH REIMBURSEMENT ACCOUNT AT
 18 LEAST QUARTERLY, UNTIL THE PAST MEMBER'S HEALTH REIMBURSEMENT
 19 ACCOUNT IS EXHAUSTED.

20 Sec. 14. All assets and income of the trusts shall be exempt
 21 from taxation by ~~the~~ **THIS** state or any political subdivision of
 22 this state. ~~Distributions~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION**
 23 **4(2), DISTRIBUTIONS** from the trusts ~~will~~ **SHALL** not be treated as
 24 taxable income to the past members, **THEIR HEALTH REIMBURSEMENT**
 25 **ACCOUNT DEPENDENTS**, or their funding account dependents by this
 26 state or any political subdivision of this state.

27 Enacting section 1. This amendatory act does not take effect

- 1 unless Senate Bill No.____ or House Bill No. 4701(request no.
- 2 01959'11) of the 96th Legislature is enacted into law.