

HOUSE BILL 1247

K4

(71r3081)

ENROLLED BILL

— Appropriations / Budget and Taxation —

Introduced by **Delegates Conway, Aumann, Barkley, Barve, Bates, Bohanan, Busch, G. Clagett, DeBoy, Gutierrez, Guzzone, Haynes, Heller, James, Jones, Levy, Murphy, Proctor, Robinson, Schuh, Sophocleus, Stocksdale, and Wood**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Postretirement Health Benefits Trust Fund - Clarification**

3 FOR the purpose of specifying that certain funds shall be deposited into the
4 Postretirement Health Benefits Trust Fund; limiting the amount to be paid for
5 administrative expenses for operating the Postretirement Health Benefits Trust
6 Fund; altering the time period when payments may be made from the
7 Postretirement Health Benefits Trust Fund; altering the amount and the
8 manner in which certain payments may be made from the Postretirement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 Health Benefits Trust Fund; repealing certain provisions that require assets of
 2 the Postretirement Health Benefits Trust Fund to be transferred to the General
 3 Fund under certain circumstances; authorizing the Board of Trustees of the
 4 State Retirement and Pension System to adopt a trust document and regulations;
 5 altering the membership of the Blue Ribbon Commission to Study Retiree
 6 Health Care Funding Options; requiring the State Retirement Agency to
 7 request certain documentation from the Internal Revenue Service; and
 8 generally relating to the Postretirement Health Benefits Trust Fund.

9 BY repealing and reenacting, with amendments,
 10 Article – State Personnel and Pensions
 11 Section 34–101 and 34–201
 12 Annotated Code of Maryland
 13 (2004 Replacement Volume and 2006 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – State Personnel and Pensions**

17 34–101.

18 (a) There is a Postretirement Health Benefits Trust Fund.

19 (b) The Postretirement Health Benefits Trust Fund shall be established as a
 20 tax-exempt trust, in accordance with § 115 of the Internal Revenue Code or other
 21 applicable federal statute.

22 (c) The purpose of the Postretirement Health Benefits Trust Fund is to
 23 assist the State in financing the postretirement health insurance subsidy, as specified
 24 in § 2–508 of this article.

25 (d) Beginning in fiscal year 2008, **THE FOLLOWING FUNDS SHALL BE**
 26 **DEPOSITED INTO THE POSTRETIREMENT HEALTH BENEFITS TRUST FUND:**

27 (1) any subsidy received by the State that is provided to employers as
 28 a result of the federal Medicare Prescription Drug, Improvement, and Modernization
 29 Act of 2003, or similar federal subsidy received as a result of the State's prescription
 30 drug program[, shall be deposited into the Postretirement Health Benefits Trust
 31 Fund]; **AND**

1 **(2) ANY FUNDS APPROPRIATED TO THE POSTRETIREMENT**
2 **HEALTH BENEFITS TRUST FUND, WHETHER DIRECTLY OR THROUGH THE**
3 **BUDGETS OF ANY STATE AGENCY.**

4 ~~(2)~~ **(E) AFTER JUNE 1, 2008, ANY FUNDS DEPOSITED INTO THE**
5 **DEDICATED PURPOSE ACCOUNT IN FISCAL YEAR 2007 AND FISCAL YEAR 2008**
6 **THAT WERE APPROPRIATED IN CHAPTER 216 OF THE ACTS OF 2006 OR**
7 **CHAPTER _____ OF THE ACTS OF 2007 (H.B. 50) FOR THE PURPOSE OF**
8 **DEFRAYING THE FUTURE COSTS ASSOCIATED WITH RETIREMENT BENEFITS FOR**
9 **STATE EMPLOYEES; AND EMPLOYEES, MAY BE DEPOSITED INTO THE**
10 **POSTRETIREMENT HEALTH BENEFITS TRUST FUND.**

11 ~~(3) ANY FUNDS APPROPRIATED IN THE STATE BUDGET BILL FOR~~
12 ~~THE PURPOSE OF FUNDING THE ACCRUED LIABILITY FOR RETIREE HEALTH~~
13 ~~CARE BENEFITS UNDER THE STATE EMPLOYEE AND RETIREE HEALTH AND~~
14 ~~WELFARE BENEFITS PROGRAM.~~

15 ~~(e)~~ **(F)** (1) The Board of Trustees are the trustees of the Postretirement
16 Health Benefits Trust Fund.

17 (2) Notwithstanding any other provision of law:

18 (i) the Board of Trustees shall have full power to invest and
19 manage the assets of the Postretirement Health Benefits Trust Fund to achieve the
20 statutory purpose of the Fund; and

21 (ii) each member of the Board of Trustees shall discharge the
22 member's duties with respect to the Postretirement Health Benefits Trust Fund as a
23 fiduciary and be indemnified in accordance with the provisions of Title 21, Subtitle 2 of
24 this article.

25 (3) The Board of Trustees may incur reasonable investment expenses
26 payable from the assets of the Postretirement Health Benefits Trust Fund, and in
27 accordance with § 21-315(d) of this article, for:

28 (i) services of managers to invest the assets of the
29 Postretirement Health Benefits Trust Fund;

30 (ii) services of one or more duly qualified banks or trust
31 companies for the safe custody of the investments and banking services; and

1 (iii) any other service that the Board of Trustees deems
2 reasonable and necessary in connection with the investments of the Postretirement
3 Health Benefits Trust Fund.

4 (4) (i) The Board of Trustees may incur reasonable administrative
5 expenses payable from the assets of the Postretirement Health Benefits Trust Fund.

6 (ii) Administrative expenses paid under subparagraph (i) of this
7 paragraph may not exceed [an amount equal to the amount of administrative expenses
8 paid by the Board of Trustees under § 21–315(c) of this article multiplied by a fraction:

9 1. the numerator of which equals the total assets of the
10 Postretirement Health Benefits Trust Fund; and

11 2. the denominator of which equals the combined total
12 assets of the several systems and the Postretirement Health Benefits Trust Fund]
13 **\$100,000 ANNUALLY.**

14 (5) The Board of Trustees is not subject to Division II of the State
15 Finance and Procurement Article for:

16 (i) obtaining services of managers to invest the assets of the
17 Postretirement Health Benefits Trust Fund; and

18 (ii) expenditures to manage, maintain, and enhance the value of
19 the assets of the Postretirement Health Benefits Trust Fund.

20 ~~(G)~~ **(G)** To the extent possible, the assets of the Postretirement Health
21 Benefits Trust Fund shall be invested in the same manner as those of the several
22 systems.

23 ~~(H)~~ **(H)** [For fiscal year 2008 through fiscal year 2017] **PRIOR TO FISCAL**
24 **YEAR 2009**, no payments may be made from the Postretirement Health Benefits
25 Trust Fund.

26 ~~(I)~~ **(I)** [For fiscal year 2018 and each fiscal year thereafter] **BEGINNING**
27 **IN FISCAL YEAR 2009**, the Board of Trustees [shall] **MAY** transfer **AN AMOUNT**
28 **FROM THE POSTRETIREMENT HEALTH BENEFITS TRUST FUND** to the [General
29 Fund] **THE DEPARTMENT OF BUDGET AND MANAGEMENT, SUBJECT TO**
30 **APPROPRIATION IN THE STATE BUDGET**, for the sole purpose of assisting in the
31 payment of the State's postretirement health insurance subsidy[, the lesser of:

1 (1) one-quarter of the prior year's investment gains of the
2 Postretirement Health Benefits Trust Fund; or

3 (2) the amount necessary to pay the annual health insurance
4 premiums and other costs that constitute the State's postretirement health insurance
5 subsidy specified in § 2-508 of this article].

6 ~~(I)~~ **(J)** [If for any reason the State discontinues the postretirement health
7 insurance subsidy specified in § 2-508 of this article or a successor subsidy, the assets
8 of the Postretirement Health Benefits Trust Fund shall be transferred to the General
9 Fund.

10 (j) On or before October 1, 2009, and on or before October 1 thereafter, the
11 Board of Trustees shall publish an annual consolidated report that includes:

12 (1) the fiscal transactions of the Postretirement Health Benefits Trust
13 Fund for the preceding fiscal year; and

14 (2) the amount of the accumulated cash, securities, and other assets of
15 the Postretirement Health Benefits Trust Fund.

16 **(K) THE BOARD OF TRUSTEES MAY ADOPT A TRUST DOCUMENT AND**
17 **REGULATIONS TO CARRY OUT THIS TITLE.**

18 34-201.

19 (a) There is a Blue Ribbon Commission to Study Retiree Health Care
20 Funding Options.

21 (b) The Commission shall consist of the following members:

22 (1) [three] **FIVE** members from the Senate of Maryland, appointed by
23 the President of the Senate[, including:

24 (i) the Senate Chair of the Joint Committee on Pensions; and

25 (ii) two members from among the members of the Joint
26 Committee on Pensions];

27 (2) [three] **FIVE** members from the House of Delegates, appointed by
28 the Speaker of the House[, including:

- 1 (i) the House Chair of the Joint Committee on Pensions; and
- 2 (ii) two members from among the members of the Joint
3 Committee on Pensions];
- 4 (3) the State Treasurer, or the Treasurer's designee;
- 5 (4) the Comptroller, or the Comptroller's designee;
- 6 (5) the Secretary of Budget and Management, or the Secretary's
7 designee;
- 8 (6) the Chancellor of the University System of Maryland, or the
9 Chancellor's designee;
- 10 (7) the Executive Director of the State Retirement and Pension
11 System, or the Executive Director's designee; and
- 12 (8) three members of the public with expertise in either funding
13 retiree health benefits, the economics of affordable retiree health care programs, or
14 investing pension fund assets, with one member each appointed by the Governor, the
15 President of the Senate, and the Speaker of the House.
- 16 (c) [The Senate and House Chairs of the Joint Committee on Pensions shall
17 serve jointly as the Chairs of the Commission.] **THE PRESIDENT OF THE SENATE
18 AND THE SPEAKER OF THE HOUSE SHALL JOINTLY DESIGNATE CO-CHAIRS OF
19 THE COMMISSION FROM THE SENATE MEMBERS AND HOUSE MEMBERS
20 APPOINTED TO THE COMMISSION.**
- 21 (d) The Commission shall be guided by the following principles:
- 22 (1) a recognition that:
- 23 (i) funding State retiree health benefits solely on a
24 pay-as-you-go basis is no longer a viable solution; and
- 25 (ii) any proposed solution, funding or otherwise, should treat
26 employees, retirees, and taxpaying citizens fairly;
- 27 (2) in light of the enormity of the State's projected unfunded accrued
28 liability for retiree health care ~~that is estimated to be as high as \$20,400,000,000~~ and
29 the potential effect this liability may have on the State's bond rating, the State's

1 ultimate goal should be to fully fund the obligations set forth under the Government
2 Accounting Standards Board (GASB) Statement 45;

3 (3) a clear message should be sent to the bond rating agencies that the
4 State is taking this issue seriously, and a multiyear plan that clearly articulates the
5 State's commitment to address this issue should be implemented as soon as
6 practicable;

7 (4) any funding solution proposed by the Commission will likely
8 include some direct State appropriation, with the Commission pursuing any and all
9 viable funding sources, including the possibility of employee contributions during
10 active service;

11 (5) the Commission should consider the actual impact any changes in
12 the State Employee and Retiree Health and Welfare Benefits Program will have on
13 the State's annual required contribution and should look for appropriate cost
14 efficiencies that maintain the quality health care coverage the State provides for
15 retirees; and

16 (6) special consideration should be given to State retirees who are
17 receiving benefits or State employees who have accrued at least 16 years of service
18 with the State and have vested for State retiree health benefits under current law,
19 recognizing that while there may be no legal obligation on the part of the State to
20 provide retiree health care benefits to these individuals, the Commission should view
21 the commitment to provide retiree health care benefits to these individuals as an
22 ethical one.

23 (e) The Commission shall:

24 (1) contract with an actuarial consulting firm to:

25 (i) commission an actuarial valuation that illustrates the
26 State's annual required contribution as both a fixed dollar amount and also as a
27 percentage of payroll; and

28 (ii) provide ongoing services to the Commission throughout its
29 existence;

30 (2) review the specific legal obligations of the State to provide retiree
31 health benefits to existing retirees, fully vested employees, active employees, and new
32 employees;

1 (3) study the cost drivers associated with the State's unfunded retiree
2 health care liabilities which provide the basis for the unfunded accrued liability ~~that is~~
3 ~~estimated to be as high as \$20,400,000,000~~ as well as the ongoing normal costs
4 associated with the retiree health care liabilities;

5 (4) review the current health care benefit levels for both State
6 employees and retirees and how the benefits compare to benefits provided under
7 Medicare, by private employers, and by other public employers, with a particular
8 emphasis on whether the various levels are appropriate, equitable, and sustainable;

9 (5) review the eligibility requirements for State retiree health care
10 benefits with a particular emphasis on whether the requirements are appropriate and
11 equitable;

12 (6) review alternative vehicles for providing health care benefits to
13 State retirees including Voluntary Employee Beneficiary Accounts (VEBAs), Section
14 401(h) accounts, Section 115 trusts, health reimbursement arrangements, and health
15 savings accounts; and

16 (7) recommend a multiyear implementation plan to address fully
17 funding the obligations of the State as set forth in GASB Statement 45 as soon as
18 practicable.

19 (f) (1) The Commission shall be staffed by the Department of Legislative
20 Services.

21 (2) (i) The Department of Budget and Management shall provide
22 any information the Commission may require with regard to health care benefits and
23 health benefit costs for State employees and retirees.

24 (ii) If the Department of Budget and Management is unable to
25 provide the information requested by the Commission under subparagraph (i) of this
26 paragraph, the Commission may contract with an independent health care consulting
27 firm for assistance.

28 (3) (i) The Department of Budget and Management shall provide
29 the funding for the Commission to hire more than one actuarial consulting firm and a
30 health care consulting firm.

31 (ii) 1. The Commission may request up to two actuarial
32 valuations annually.

1 2. If the Commission requests two actuarial valuations
2 in the same year, each shall be performed by a different actuarial consulting firm.

3 (g) On or before December 31, 2008, the Commission shall issue a final
4 report of its findings and recommendations to the Governor and, in accordance with §
5 2-1246 of the State Government Article, the General Assembly.

6 SECTION 2. AND BE IT FURTHER ENACTED, That:

7 (a) On or before August 1, 2007, the State Retirement Agency shall request a
8 determination letter ruling from the Internal Revenue Service that confirms the
9 qualification of the Postretirement Health Benefits Trust Fund under Section 1 of this
10 Act as a tax-exempt trust established in accordance with § 115 of the Internal
11 Revenue Code.

12 (b) The State Retirement Agency, within 5 days after receiving the
13 determination letter ruling from the Internal Revenue Service, shall forward a copy of
14 the ruling to the Executive Director of the Department of Legislative Services, 90
15 State Circle, Annapolis, Maryland 21401.

16 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect July 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.