

CHAPTER 355

(Senate Bill 780)

AN ACT concerning

Postretirement Health Benefits Trust Fund – Clarification

FOR the purpose of specifying that certain funds shall be deposited into the Postretirement Health Benefits Trust Fund; limiting the amount to be paid for administrative expenses for operating the Postretirement Health Benefits Trust Fund; altering the time period when payments may be made from the Postretirement Health Benefits Trust Fund; altering the amount and the manner in which certain payments may be made from the Postretirement Health Benefits Trust Fund; repealing certain provisions that require assets of the Postretirement Health Benefits Trust Fund to be transferred to the General Fund under certain circumstances; authorizing the Board of Trustees of the State Retirement and Pension System to adopt a trust document and regulations; altering the membership of the Blue Ribbon Commission to Study Retiree Health Care Funding Options; requiring the State Retirement Agency to request certain documentation from the Internal Revenue Service; ~~making this Act subject to a certain contingency~~; and generally relating to the Postretirement Health Benefits Trust Fund.

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

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

Article – State Personnel and Pensions

34–101.

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

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

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

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

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

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

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

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

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

(2) Notwithstanding any other provision of law:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34–201.

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

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

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

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

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

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

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

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

(3) the State Treasurer, or the Treasurer's designee;

(4) the Comptroller, or the Comptroller's designee;

(5) the Secretary of Budget and Management, or the Secretary's designee;

(6) the Chancellor of the University System of Maryland, or the Chancellor's designee;

(7) the Executive Director of the State Retirement and Pension System, or the Executive Director's designee; and

(8) three members of the public with expertise in either funding retiree health benefits, the economics of affordable retiree health care programs, or

investing pension fund assets, with one member each appointed by the Governor, the President of the Senate, and the Speaker of the House.

(c) [The Senate and House Chairs of the Joint Committee on Pensions shall serve jointly as the Chairs of the Commission.] **THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE SHALL JOINTLY DESIGNATE CO-CHAIRS OF THE COMMISSION FROM THE SENATE MEMBERS AND HOUSE MEMBERS APPOINTED TO THE COMMISSION.**

(d) The Commission shall be guided by the following principles:

(1) a recognition that:

(i) funding State retiree health benefits solely on a pay-as-you-go basis is no longer a viable solution; and

(ii) any proposed solution, funding or otherwise, should treat employees, retirees, and taxpaying citizens fairly;

(2) in light of the enormity of the State's projected unfunded accrued liability for retiree health care ~~that is estimated to be as high as \$20,400,000,000~~ and the potential effect this liability may have on the State's bond rating, the State's ultimate goal should be to fully fund the obligations set forth under the Government Accounting Standards Board (GASB) Statement 45;

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

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

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

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

(e) The Commission shall:

(1) contract with an actuarial consulting firm to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, ~~That, on~~ That:

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

~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect contingent on receipt of a determination letter from the Internal Revenue Service that confirms that the Postretirement Health Benefits Trust Fund qualifies as a tax-exempt trust established in accordance with § 115 of the Internal Revenue Code.~~

~~If a favorable determination letter is received, Section 1 of this Act shall take effect the first day of the month after the State Retirement Agency receives the letter. If the State Retirement Agency does not receive a favorable determination letter, Section 1 of this Act, with no further action required by the General Assembly, shall be null and void and of no further force and effect.~~

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

SECTION ~~2~~ ~~4~~ 3. AND BE IT FURTHER ENACTED, ~~That~~ ~~That, subject to Section 3 of this Act,~~ this Act shall take effect July 1, 2007.

Approved by the Governor, May 8, 2007.