PROTECTING LOCAL GOVERNMENT RETIREMENT AND BENEFITS ACT
Act 202 of 2017

AN ACT to create the protecting local government retirement and benefits act; to provide the powers and duties of certain state and local agencies and officials; and to create a municipal stability board.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

The People of the State of Michigan enact:

38.2801 Short title.

Sec. 1. This act shall be known and may be cited as the "protecting local government retirement and benefits act".

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2802 Legislature findings and declarations.

Sec. 2. The legislature finds and declares that this act is intended to reflect the July 2017 Report of Findings and Recommendations for Action of the Responsible Retirement Reform for Local Government Task Force.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2803 Definitions.

Sec. 3. As used in this act:

(a) "Annual report" means the most recent audited financial statement reporting a local unit of government's liability for retirement pension benefits and retirement health benefits as determined under applicable government accounting standards of the Governmental Accounting Standards Board.

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

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

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

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

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

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

(h) "Local unit of government" means any of the following:

(*i*) A city.

(*ii*) A village.

(*iii*) A township.

(*iv*) A county.

(*v*) A county road commission.

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

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

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

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

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

(*xi*) A district, authority, commission, public body, or public body corporate created by 1 or more of the

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entities described in subparagraphs (*i*) to (*x*).

(i) "Local unit of government" does not include this state, a principal department of state government, a state institution of higher education under section 4, 5, or 6 of article VIII of the state constitution of 1963, a state agency, a state authority, or a reporting unit under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(j) "Municipal stability board" or "board" means the municipal stability board created in section 7.

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

(*l*) "Retirant" means an individual who has retired with a retirement benefit payable from a retirement system of a local unit of government.

(m) "Retirement benefit" includes a retirement health benefit or retirement pension benefit, or both.

(n) "Retirement health benefit" means an annuity, allowance, payment, or contribution to, for, or on behalf of a former employee or a dependent of a former employee to pay for any of the following components:

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

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

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

(o) "Retirement pension benefit" means an allowance, right, accrued right, or other pension benefit payable under a defined benefit pension plan to a participant in the plan or a beneficiary of the participant.

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

(q) "Underfunded local unit of government" means a local unit of government that is in underfunded status.

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

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

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38.2804 Retirement health benefit offered by local unit of government; requirements; "summary retiree health care report" defined.

Sec. 4. (1) Beginning July 1, 2018, if a local unit of government offers or provides an employee of the local unit of government, or a former employee first employed by the local unit of government before the effective date of this act, with a retirement health benefit, all of the following apply to the local unit of government:

(a) The local unit of government must pay at least both of the following:

(*i*) Normal costs for employees first hired after June 30, 2018.

(*ii*) Any retiree premiums that are due for retirants in the retirement system.

(b) The local unit of government shall electronically submit a summary retiree health care report in a form prescribed by the department of treasury on an annual basis to the governing body of the local unit of government and the department of treasury no later than 6 months after the end of the local unit of government's fiscal year. The department of treasury shall post on its website an executive summary of each summary retiree health care report submitted to the department of treasury under this subdivision. The executive summary must include the applicable system's unfunded actuarial accrued liability. The department of treasury shall submit each executive summary required under this subdivision to the senate and the house of representatives appropriations committees and the senate and house fiscal agencies not less than 30 days after posting.

(c) At least every 5 years, the local unit of government shall have an actuarial experience study conducted by the plan actuary for each retirement system of the local unit of government.

(d) At least every 8 years, the local unit of government shall do at least 1 of the following:

(*i*) Have a peer actuarial audit conducted by an actuary that is not the plan actuary.

(*ii*) Replace the plan actuary.

(e) A local unit of government that is eligible to use a specified alternative measurement method under Governmental Accounting Standards Board standards is exempt from the requirements under subdivisions (c) and (d).

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(2) As used in this section, "summary retiree health care report" means a report that includes all of the following for each retirement system of the local unit of government that provides retirement health benefits:

(a) The name of the retirement system.

(b) The names of the retirement system's investment fiduciaries.

(c) The names of the retirement system's service providers.

(d) The retirement system's assets and liabilities and changes in net plan assets on a plan-year basis.

(e) The retirement system's funded ratio based on the ratio of valuation assets to actuarial accrued liabilities on a plan-year basis.

(f) The assumed rate of return of the retirement system.

(g) The actual rate of return of the retirement system for the previous 1-year period, the previous 5-year period, and the previous 10-year period.

(h) The discount rate used by the retirement system.

(i) The retirement system's amortization method for unfunded liability, indicating whether it is open or closed.

(j) The retirement system's amortization method, indicating whether it is level percent or level dollar, and the assumed payroll growth rate.

(k) The retirement system's remaining amortization time period.

(*l*) The annual required contribution for the retirement system, indicating the normal cost and the amortization payment toward the unfunded actuarial accrued liability.

(m) The retirement system's health care inflation assumptions.

(n) The number of active employees and retirants in the retirement system.

(o) The amount of premiums paid on behalf of retirants in the retirement system.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2805 State treasurer; establishment of uniform actuarial assumptions of retirement systems; evaluation system; review and oversight of underfunded local unit of government; determination; calculation of funded ratios by local governmental unit; report; posting on website.

Sec. 5. (1) For purposes of reporting under this section, the state treasurer shall annually establish uniform actuarial assumptions of retirement systems that include, but are not limited to, investment returns, salary increase rates, mortality tables, discount rates, and health care inflation.

(2) The state treasurer shall create an evaluation system and provide for review and oversight under this act of an underfunded local unit of government beginning on the effective date of the determination by the state treasurer that the local unit of government is in underfunded status.

(3) Each year beginning after December 31, 2017, the state treasurer shall determine the underfunded status of each local unit of government.

(4) The state treasurer shall determine that a local unit of government is in underfunded status if any of the following apply:

(a) The actuarial accrued liability of a retirement health system of the local unit of government is less than 40% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement health systems of the local unit of government is greater than 12% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.

(b) The actuarial accrued liability of a retirement pension system of the local unit of government is less than 60% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement pension systems of the local unit of government is greater than 10% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.

(c) The local unit of government has not submitted reports as required under this section.

(d) The local unit of government fails to make the payments as described under section 4(1).

(5) For purposes of the report under subsection (6), a local unit of government shall annually calculate the funded ratios of each retirement system of the local unit of government using the uniform actuarial assumptions established under subsection (1).

(6) A local unit of government shall electronically submit a report in a form prescribed by the department of treasury on an annual basis to the governing body of the local unit of government and the department of treasury no later than 6 months after the end of the local unit of government's fiscal year. The report under this subsection must include at least all of the following:

(a) The funded ratios of each retirement system of the local unit of government.

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(b) Annual required contributions for each retirement system of the local unit of government.

(c) The local unit of government's annual general fund operating revenues, if any.

(7) The state treasurer shall post publicly on the department of treasury website all of the following:

(a) The uniform actuarial assumptions under subsection (1).

(b) A summary report of the local unit of government reports submitted under subsection (6).

(c) The underfunded status of local units of government as determined under subsection (3).

(d) The current waiver status of local units of government provided under section 6.

(e) Any corrective action plan approved under section 10.

(8) A local unit of government shall post publicly on its website, or in a public place if it does not have a website, the information as provided in subsection (7) that is applicable to that local unit of government.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2806 Underfunded status; waiver; duties of state treasurer if local unit of government not granted waiver.

Sec. 6. (1) To apply for a waiver of the underfunded status determination under section 5, the local unit of government's administrative officer and governing body must approve a plan demonstrating the underfunded status is being addressed and must approve the waiver application. The state treasurer shall issue a waiver of the determination of underfunded status for a local unit of government if the state treasurer determines that the underfunded status is adequately being addressed by the local unit of government.

(2) For any underfunded local unit of government that is not granted a waiver, the department of treasury shall do all of the following:

(a) Undertake an individualized and comprehensive internal review of the local unit of government's retirement system.

(b) Discuss changes or reforms that have been made with the local unit of government's designated officials.

(c) Review actuarial projections, including trends and forecasts.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2807 Municipal stability board; creation; powers, duties, and functions; membership; appointment by governor; qualifications; terms; vacancy; chairperson; quorum; meetings; bylaws; contract for professional services; travel and expenses; ethics policy; oath of office; "professional services" defined.

Sec. 7. (1) The municipal stability board is created within the department of treasury. Except as otherwise provided in this act, the board shall exercise its powers, duties, and functions independently of the state treasurer. The budgeting, procurement, and related management functions of the board must be performed under the direction and supervision of the state treasurer. The department of treasury shall provide administrative support to the board.

(2) Subject to subsection (3), the board consists of all of the following members appointed by the governor:

(a) One resident of this state representing state officials.

(b) One resident of this state representing local officials.

(c) One resident of this state representing employees and retirees.

(3) Members appointed under subsection (2) must have knowledge, skill, or experience in accounting, actuarial science, retirement systems, retirement health benefits, or government finance.

(4) Of the members initially appointed by the governor under subsection (2), 1 member must be appointed for an initial term of 4 years, 1 member must be appointed for an initial term of 3 years, and 1 member must be appointed for an initial term of 2 years. After the initial terms, members appointed by the governor under subsection (2) must be appointed for terms of 4 years.

(5) A vacancy for an unexpired term must be filled in the same manner as the original appointment for the remainder of the term. After the expiration of a term, a member may continue to serve until a successor is appointed and qualified.

(6) The member of the board appointed under subsection (2)(a) shall serve as the chairperson of the board.

(7) A majority of the members of the board authorized to take an action constitute a quorum of the board for the transaction of business on that action. The board shall meet not less than quarterly and at the times and places within this state designated by the chairperson. An action of the board must be approved by a majority of the members authorized to take that action.

(8) The board shall adopt bylaws for governance of the board, which must, at a minimum, address the procedures for conducting meetings, including voting procedures, and the requirements of its members to attend meetings. Bylaws required by this section are not subject to the administrative procedures act of 1969,

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1969 PA 306, MCL 24.201 to 24.328.

(9) The board may contract for professional services, as it requires, and shall determine the qualifications for persons providing those professional services it considers necessary.

(10) Members of the board serve without compensation but may receive reimbursement for travel and expenses incurred in the discharge of official duties. The members of the board and contractors or agents of the board are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310.

(11) A member of the board, and any person the board contracts with, shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. The board shall adopt an ethics policy governing the conduct of board members and officers and employees of the board.

(12) Board members shall take and subscribe to the constitutional oath of office under section 1 of article XI of the state constitution of 1963. The oath must be filed with the secretary of state.

(13) As used in this section, "professional services" means services that require a high degree of intellectual skill, an advanced degree, or professional licensing or certification. Those providing the professional services must be distinguished based on their specialized knowledge, experience, and expertise. Professional services include, but are not limited to, accounting, actuarial, appraisal, auditing, investment advisor, and legal services.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2808 Development of corrective action plan; list of best practices and strategies.

Sec. 8. The board shall review and annually update a list of best practices and strategies that will assist an underfunded local unit of government in developing a corrective action plan.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2809 Corrective action plan; development and submission for approval.

Sec. 9. An underfunded local unit of government shall develop and submit for approval a corrective action plan for the local unit of government. The local unit of government shall determine the components of the corrective action plan.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2810 Corrective action plan; review and approval by board; inclusion of corrective options and additional solutions; disapproval; notification and report; implementation of plan; monitor and certification of compliance; contents of plan.

Sec. 10. (1) The board shall review and vote on the approval of a corrective action plan submitted by a local unit of government. A local unit of government that is in underfunded status shall submit a corrective action plan to the board within 180 days after the determination of underfunded status. The board may extend the 180-day deadline by up to an additional 45 days if the local unit of government submits a reasonable draft of a corrective action plan and requests an extension. The governing body of the local unit of government shall approve the corrective action plan before submission to the board. The board shall approve or reject a corrective action plan within 45 days after it is submitted.

(2) A corrective action plan may include the corrective options for correcting underfunded status as set forth in subsection (7) and any additional solutions to address underfunded status. A local unit of government may also include in its corrective action plan a review of the local unit of government's budget and finances to determine any alternative methods available to address its underfunded status.

(3) The board may review the inclusion of the corrective options and additional solutions as described in subsection (7) as part of its approval criteria to determine whether a corrective action plan is designed to remove the local unit of government from underfunded status.

(4) If the board votes to disapprove a corrective action plan that has been submitted, the board shall within 15 days provide a notification and report to the local unit of government detailing the reasons for the disapproval of the corrective action plan. The local unit of government has 60 days from the date of the notification to address the reasons for disapproval and resubmit a corrective action plan for approval.

(5) The local unit of government has up to 180 days after the approval of a corrective action plan to begin to implement the corrective action plan to address its underfunded status.

(6) The board shall monitor each underfunded local unit of government's compliance with this act and any corrective action plan. The board shall adopt a schedule, not less than every 2 years, to certify that the underfunded local unit of government is in substantial compliance with this act. If the board determines that an underfunded local unit of government is not in substantial compliance under this subsection, the board shall within 15 days provide notification and report to the local unit of government detailing the reasons for

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the determination of noncompliance with the corrective action plan. The local unit of government has 60 days from the date of the notification to address the determination of noncompliance.

(7) A corrective action plan under this section may include the development and implementation of corrective options for the local unit of government to address its underfunded status. The corrective options as described in this section may include, but are not limited to, any of the following:

(a) For retirement pension benefits, any of the following:

(*i*) Closing the current defined benefit plan.

(*ii*) Implementing a multiplier limit.

(*iii*) Reducing or eliminating new accrued benefits.

(*iv*) Implementing final average compensation standards.

(b) For retirement health benefits, any of the following:

(*i*) Requiring cost sharing of premiums and sufficient copays.

(*ii*) Capping employer costs.

(8) Except as otherwise provided in this act, while any corrective action plan is in effect for an underfunded local unit of government, the local unit of government is not required to submit any additional corrective action plan for approval.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

38.2812 Board as state board; members as state officers; presumption of validity; court jurisdiction; department of treasury as party.

Sec. 12. (1) The board is a state board and its members are state officers for the purposes of section 6419 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6419.

(2) The validity of the board is conclusively presumed unless questioned in an original action filed in the court of claims within 60 days after the effective date of this act. The court of claims has original jurisdiction to hear an action under this subsection. The court shall hear the action in an expedited manner. The department of treasury is a necessary party in an action under this subsection.

(3) The court of claims has exclusive jurisdiction over any action challenging the validity of this act or an action or inaction under this act. The department of treasury is a necessary party in an action under this subsection.

History: 2017, Act 202, Imd. Eff. Dec. 20, 2017.

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