

PENSION FUNDaamentals®

Trustee Development Seminar IV

Is That Legal?

MAPERS

Fall 2015 Conference

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Objective for Trustee Development Seminar IV

To provide a general overview of state laws that may affect public employee retirement and healthcare plans.

Art. 9, § 24 Michigan Constitution of 1963

§ 24. Public pension plan and retirement systems, obligation

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial Benefits, Annual Funding

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

Art.1, §10 Michigan Constitution of 1963

§ 10. Attainder; ex post facto laws; impairment of contracts

No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

Public Employees Relations Act (PERA)

Purpose:

- To prohibit strikes by certain public employees
- To provide review from disciplinary action with respect thereto
- To provide for the mediation of grievances and holding of elections
- To declare and protect the rights and privileges of public employees
- To prescribe means of enforcement and penalties for violations of the Act.

DPOA v City of Detroit, 391 Mich 44 (1974)

It is well established that retirement benefits are a mandatory subject of collective bargaining under the Public Employment Relations Act. The Michigan Supreme Court has consistently held that PERA must be viewed as the dominant law regulating public employment relations.

Open Meetings Act

Purpose –

to provide that meetings of public bodies be open to the public and to establish procedures and guidelines for the conduct of said meetings

Open Meetings Act

Important Definitions

- **Public Body**
- **Meeting**
- **Closed Session**
- **Decision**

Open Meetings Act

- **All meetings of a public body shall be open to the public and shall be held in a place available to the general public.**
- **All decisions of a public body shall be made at a meeting open to the public.**
- **The act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.**

Open Meetings Act

Public Notice

- **A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body.**
- **A meeting of a public body shall not be held unless public notice is given. No Agenda Required.**
- **Regular meeting – post within 10 days after first meeting a schedule of all regular meetings for year.**
- **Rescheduled or special meetings – post public notice at least 18 hours before the meeting.**
- **Special Meeting Notices must be posted ONLINE.**

Open Meetings Act

Minutes

- **Public body shall keep minutes of each meeting showing date, time, place, members present and absent, any decisions made, and purpose for closed session.**
- **Minutes shall be public records open to public inspection.**
- **Proposed minutes shall be available for public inspection not more than 8 days after meeting.**
- **Approved minutes shall be available for public inspection no more than 5 days after approval.**

Open Meetings Act

Closed Sessions

- **2/3 roll call vote required to call closed session.**
- **Roll call vote shall be entered into the minutes.**
- **A separate set of minutes shall be taken by the clerk.**
- **Minutes shall not be made available to the public.**
- **Minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.**

Open Meetings Act

Closed Sessions - Purposes

- To consider personnel matters of public officers, employees, staff or agent, if the person requests a closed hearing.
- For strategy and negotiation sessions connected with the negotiation of collective bargaining agreement if either party requests a closed hearing.
- To consider the purchase or lease of real property up to the time an option to purchase or lease is obtained.
- To consult with an attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if open meeting would be detrimental.
- To consider material exempt from discussion or disclosure by state or federal statute.

Open Meetings Act

Closed Sessions - Decisions

Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this Act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any other person may commence a civil action in the circuit court to challenge the validity of the decision of a public body made in violation of this Act.

Open Meetings Act

Closed Sessions - Noncompliance

- The attorney general, county prosecuting attorney or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this Act.
- If a person commences and succeeds in a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance, the person shall recover court costs and actual attorney fees for the action.

Open Meetings Act

Intentional Violations

- Public official who intentionally violates act guilty of misdemeanor punishable by fine of not more than \$1,000
- Public official convicted of intentionally violating Act for second time within same term:
 - Guilty of misdemeanor
 - Fine < \$2,000
 - Imprisoned < one year
- Public official who intentionally violates act personally liable for <\$500

Freedom of Information Act

Purpose:

“It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees . . . so that they may fully participate in the democratic process.”

Freedom of Information Act

Effective July 1, 2015, Public Act 563 of 2014 (“PA 563”) amended the Michigan Freedom of Information Act and changed the way Retirement Systems are required to respond to FOIA requests.

Freedom of Information Act

Under the amendments, governmental entities are required to establish specific written procedures and guidelines for FOIA requests, including a separate written summary informing the public on how to submit FOIA requests, how to understand the public body's responses to FOIA requests, deposit requirements, fee calculations, and avenues for challenging and appealing the public body's denial of a request.

Freedom of Information Act

- **Public Body Defined**

- **Request for Public Records**

- **Definition of Public Records**

 - **Public Record**

 - **Writing**

Freedom of Information Act

Material Exempt from Disclosure

- 1. Personal Information**
- 2. Law Enforcement Investigations**
- 3. Statutory Records**
- 4. Trade Secrets**
- 5. Recognized Privilege**
- 6. Bids or Proposals**
- 7. Preliminary Communications**
- 8. Police Records**
- 9. Medical Records**
- 10. Exemptions not mandatory**

See Detroit Free Press v City of Southfield, et al, 269 Mich App 275 (2006)

Freedom of Information Act

Board Considerations

- **Appointment of FOIA Coordinator**
- **Procedures for Receiving FOIA Requests**
- **Appeals to the Retirement Board**
- **Method of Calculating Costs**
- **Violations of FOIA**

Freedom of Information Act

The FOIA requires that the procedures and guidelines include a standard form to detail the itemization of any fee the public body estimates or charges under FOIA. The itemization must clearly list and explain each of the following six fee components authorized under the new legislation.

Freedom of Information Act

1. Labor costs associated with searching for, locating and examining a requested public record;
2. Labor costs associated with a review of a record to separate and delete exempt information from non-exempt information which is disclosed;
3. The costs of computer discs, computer tapes or other digital or similar media when the request asks for records in non-paper physical media;
4. The cost of duplication or publication, not including labor, of paper copies of public records;
5. Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet; and
6. The actual cost of mailing or sending responsive public records to a requestor.

Freedom of Information Act

In addition, the FOIA now:

Prohibits a public body from charging more than \$0.10/sheet for paper copies of public records (excluding labor costs).

Allows a public body to charge for contractual services required to review and separate exempt information from nonexempt information if the public body does not employ a person capable of such activity. The public body may not charge more than an amount equal to six times the state minimum wage rate for such contractual services. Pursuant to Public Act 138 of 2014, as of September 1, 2014, the state minimum wage is set at \$8.15 per hour but that rate is scheduled to increase to \$8.50 beginning January 1, 2016, \$8.50, \$8.90 beginning January 1, 2017, and \$9.25 beginning January 1, 2018.

Freedom of Information Act

Allows a public body to add up to 50 percent to the applicable labor charge to cover or partially cover the cost of employee fringe benefits.

Requires a public body, in certain circumstances, to reduce its charges for labor costs in responding to FOIA request if the public body has not responded in a timely manner.

Allows a public body, under certain circumstances, to require a 100 percent deposit before processing a request from individuals who have not paid the public body for public records acquired pursuant to previous FOIA requests.

Freedom of Information Act

- Allows a public body to inform a FOIA requestor that requested information is available on the public body's website, instead of providing the public records, so long as the records were available on the website at the time of the request.
- Allows FOIA requestors to require that the public body provide records electronically on non-paper physical media, by e-mail, or other electronic media, so long as the public body has the technological capability necessary to provide records on the particular media stipulated by the requestor.

Freedom of Information Act

VIOLATION OF FOIA

If the Circuit Court determines that the public records are not exempt from disclosure, the Court shall order the Public Body to cease withholding or to produce the record or a portion thereof wrongfully withheld. In addition, the Court shall award reasonable attorney's fees, costs and disbursements associated with asserting FOIA claims. If the Court finds that the Public Body acted arbitrarily and capriciously, the Court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$1,000.00. Further, FOIA requires a Court to impose an additional civil fine of \$2,500 to \$7,500 if it finds the public body willfully and intentionally failed to comply with the act or otherwise acted in bad faith.

Public Employee Retirement System Investment Act

(P.A. 314 of 1965, as amended)

The key elements of Act 314 are highlighted in Session 2 of PENSION FUNDamentals.

As always, reference should be made to the specific statutory language when addressing investment issues.

Public Act 314 of 1965, as amended

Controlling Authority – Section 13(1) and (2). Act 314 “shall supercede any investment authority previously granted to a system under any other law of this state”. “The assets of a system may be invested, reinvested, held in nominee form, and managed by an investment fiduciary subject to the terms, conditions, and limitations provided in this act.”

Public Act 314 of 1965, as amended

Definitions

- **Assets – “Market Value”**
- **Investment Fiduciary**

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

An investment fiduciary shall discharge duties solely in the interest of the plan participants and beneficiaries and shall do the following:

- Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

An investment fiduciary shall do the following:

- **Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.**
- **Make investments for the exclusive purposes of providing benefits and of defraying reasonable expenses.**

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

An investment fiduciary shall do the following:

- **Give appropriate consideration to:**
 - i. The diversification of the investments;**
 - ii. The liquidity and current return of the investments relative to cash flow needs;**
 - iii. The projected return of the investments relative to the funding objectives.**

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

An investment fiduciary shall do the following:

- **Give appropriate consideration to investments that would enhance the general welfare of the state and its citizens if such investments offer the safety and return of other comparable investments permitted under the Act;**
- **Prepare and maintain written investment objectives, policies, and strategies;**

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

An investment fiduciary shall do the following:

- **Monitor the investment of the system's assets with regard to the limitations on those investments pursuant to this act. Upon discovery that an investment causes the system to exceed a limitation prescribed in this act, the investment fiduciary shall reallocate assets in a prudent manner in order to comply with the prescribed limitation.**

Public Act 314 of 1965

Fiduciary Duties – Section 13(3)

Prepare and maintain written policies regarding ethics and professional training and education, including travel, which policies contain clearly defined accountability and reporting requirements for the system's investment fiduciaries.

Public Act 314 of 1965
Fiduciary Duties – Section 13(3)

Publish a Summary Annual Report

See Detailed Materials for Specific
Information Required.

(Note: Report must be posted online)

Public Act 314 of 1965

Investment Restrictions - Section 13(4)

An investment fiduciary who is an investment fiduciary of the State Employees' Retirement Act, the Judges Retirement Act, and the State Police Retirement Act shall comply with the Divestment from Terror Act in making investments under Act 314.

Public Act 314 of 1965

Costs – Section 13(5)

An investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other services necessary for the conduct of the affairs of the system (e.g., investment advisors, consultants, custodians, accountants, auditors, attorneys, actuaries, investment personnel, administrators, and physicians); and may pay reasonable compensation for those services.

Public Act 314 of 1965

Education – Section 13(6)

An investment fiduciary may use a portion of the income of the system to defray the costs of professional training and education, including travel costs, of system board members, which professional training and education, including travel, are directly related to the administration, management, and operation of the system.

Public Act 314 of 1965

Education – Section 13(6)

The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection must reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year must not exceed \$150,000.00 or an amount that is equal to the total number of system board members multiplied by \$12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year must not exceed \$30,000.00.

Public Act 314 of 1965

Investment Advisers – Section 13(7)

Before any investment services are provided and annually thereafter, an investment service provider shall provide the investment fiduciary of the system with a complete written disclosure of all fees or other compensation associated with its relationship with the system, including, but not limited to, commissions, 12b-1 and related fees, compensation paid or to be paid to third parties, and any other compensation paid by the system to the investment fiduciary of the system.

Public Act 314 of 1965

Prohibited Transactions – Section 13(8)

The system shall be a separate and distinct trust fund and the assets of the system shall be for the exclusive benefit of the participants and their beneficiaries and of defraying reasonable expenses of investing the assets of the system. With respect to a system, an investment fiduciary shall not cause the system to engage in a transaction if he or she knows or should know that the transaction is any of the following, either directly or indirectly ...

Public Act 314 of 1965

Prohibited Transactions – Section 13(8)

An investment fiduciary shall not cause the system to engage in a transaction ... either directly or indirectly:

- (a) A sale or exchange or a leasing of any property from the system to a party in interest for less than the fair market value, or from a party in interest to the system for more than the fair market value.**
- (b) A lending of money or other extension of credit from the system to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to the system with the provision of excessive security or at an unreasonably high rate of interest.**
- (c) A transfer to, or use by or for the benefit of, the political subdivision sponsoring the system of any assets of the system for less than adequate consideration.**
- (d) The furnishing of goods, services, or facilities from the system to a party in interest for less than adequate consideration, or from a party in interest to the system for more than adequate consideration.**

Public Act 314 of 1965

Prohibited Transactions – Section 13(9)

An investment fiduciary shall not do any of the following:

- (a) Deal with the assets of the system in his or her own interest or for his or her own account.**
- (b) In his or her individual or any other capacity act in any transaction involving the system on behalf of a party whose interests are adverse to the interests of the system or the interest of its participants or participants' beneficiaries.**
- (c) Receive any consideration for his or her own personal account from any party dealing with the system in connection with a transaction involving the assets of the system.**

Public Act 314 of 1965

Prohibited Transactions – Section 13(10)

This section does not prohibit an investment fiduciary from doing any of the following:

- (a) Receiving any benefit to which he or she may be entitled as a participant or participant's beneficiary.**
- (b) Receiving any reimbursement of expenses properly and actually incurred in the performance of his or her duties for the system.**
- (c) Serving as an investment fiduciary in addition to being an officer, employee, agent, or other representative of the sponsoring employer**
- (d) Receiving agreed upon compensation for services from the system.**

Public Act 314 of 1965

Investment Advisers – Section 13(11)

An investment fiduciary who is qualified under section 12c(1)(b) shall meet 1 of the following requirements:

- (a) Be a registered investment adviser under the Investment Advisers Act of 1940 or the Michigan Uniform Securities Act.**
- (b) Be a bank as defined under the Investment Advisers Act of 1940.**
- (c) Be an insurance company qualified under section 16(3).**

Public Act 314 of 1965

Debt Instruments Issued by Foreign Countries Engaging in Terrorism – Section 13(12)

An investment fiduciary shall not invest in a debt instrument issued by a foreign country that has been identified by the United States state department as engaging in or sponsoring terrorism.

Public Act 314 of 1965

Travel – Section 13(13)

A large sponsored system shall not pay the expenses for a person to travel outside this state from funds under its control unless 1 or more of the following conditions apply to the travel:

- (a) It is required by legal mandate or court order or for law enforcement purposes.
- (b) It is necessary to protect the health or safety of citizens of, or visitors to, this state or to assist other states in similar circumstances.
- (c) It is necessary to produce budgetary savings or to increase revenues, including protecting existing federal funds or securing additional federal funds.
- (d) It is necessary to secure specialized training for that person that is substantially related to performing the duties of the position and is not available within this state.

Public Act 314 of 1965

Scrutinized Companies - Sections 13c and 13d

Establishes restrictions on investments in Scrutinized Companies. These provisions are only applicable to fiduciaries of the Michigan legislative retirement system; the state police retirement system, the judge's retirement system, the state employees retirement system and the public school employees retirement system.

Public Act 314 of 1965

Prohibited Conduct by Investment Fiduciary – Section 13e

Prohibits payment by the Plan Fiduciary to any service provider(s) who has made political contributions, including contributions to a legal defense fund, in violation of the Act.

An investment fiduciary shall not make a payment from the assets of a system to a service provider if the service provider or a covered associate of the service provider has made a contribution to an official of a governmental entity during the immediately preceding 24-calendar-month period.

Public Act 314 of 1965

Prohibited Conduct by Investment Fiduciary – Section 13e

“Service provider” means a person retained to provide services to a system and includes investment advisers, consultants, custodians, accountants, auditors, attorneys, actuaries, administrators, and physicians. Service provider includes an investment service provider as defined in section 13(7). Service provider does not include a regulated investment adviser.

Public Act 314 of 1965

Prohibited Conduct by Investment Fiduciary – Section 13e

- (a) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$350.00 per election.
- (b) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was not entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed \$150.00 per election.

Public Act 314 of 1965

Investment Fiduciary Breach of Public Trust - Section 13f

An investment fiduciary or a service provider who is convicted of or who enters a nolo contendere plea accepted by a court for a felony or misdemeanor arising out of his or her service to a system is considered to have breached the public trust and shall reimburse the system for all costs, including legal defense fees, that were paid by the system. The system shall use reasonable efforts to collect any fees and costs recoverable under this subsection.

Public Act 314 of 1965

Employee Contributions – Section 19b

A public employer may deduct from the compensation of an employee an amount for contribution to an individual account for the employee's benefit in a plan maintained under section 125, 401(k), 403(b), 408, 408A, or 457 of the IRC.

Public Act 314 of 1965

Reporting Requirements – Section 20h

Actuarial Reports

- A system shall have an annual actuarial valuation with assets valued on a market-related basis.
- A system that has assets of less than \$20,000,000.00 is only required to have the actuarial valuation done every other year.

Public Act 314 of 1965

Reporting Requirements – Section 20h

A system shall retain its financial records for a minimum period of 6 years from the date of the creation of the record unless state or federal law requires a longer retention period.

Except as otherwise provided in this subsection, information regarding the calculation of actual or estimated retirement benefits for members of the system is exempt from disclosure by the system or the political subdivision sponsoring the system pursuant to section 13(1)(d) of the Freedom of Information Act, 1976 PA 442.

Public Act 314 of 1965

Supplemental Actuarial Reports-Section 20h

A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. The supplemental actuarial analysis shall:

- be provided by the system's actuary;**
- shall include an analysis of the long-term costs associated with any proposed pension benefit change;**
- be provided to the board of the particular system and to the decision-making body at least 7 days prior to adoption.**

For purposes of this subsection, "proposed pension benefit change" means a proposal to change the amount of pension benefits.

Public Act 314 of 1965

Funding Requirement - Section 20m

The Board of Trustees shall act upon the recommendation of an actuary and the board and the actuary shall take into account the standards of practice in making the determination of the required employer contribution.

Public Act 314 of 1965

Funding Requirement – Section 20m

The Board of Trustees shall:

- **Confirm in the annual actuarial valuation and summary annual report that the plan provides for the payment of the required employer contribution; and**
- **Confirm that the system has received the required employer contribution which is the actuarially determined contribution amount and shall consist of a current service cost payment and a payment of at least the annual accrued amortized interest and principal on any unfunded actuarial liability.**

Public Act 314 of 1965

Board Member Removal – Section 21

Subject to this section, the governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system may remove a member of the board.

Reciprocal Retirement Act

Purpose

The Reciprocal Retirement Act was enacted to provide for the preservation and continuity of retirement system service credit for public employees who transfer their employment between units of government. An eligible person may combine credited service with a preceding reciprocal retirement system with credited service acquired with a succeeding governmental unit for purposes of qualifying for an age and service retirement from either retirement system, provided the conditions of the Act are observed.

Reciprocal Retirement Act

- Total Number of Act 88 Units: 406
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- A list of municipalities which have adopted Public Act 88 can be found at:
- http://www.mersofmich.com/images/stories/Forms/Member/form_77.pdf

Reciprocal Retirement Act

- **Section 4 of the Act allows an employee who leaves a preceding reciprocal unit and becomes employed by a succeeding governmental unit to be entitled to a retirement benefit from the preceding unit. Section 4 is used when a member does not have enough service credit in force with his or her current retirement system to vest in the retirement system. The member uses credited service from a subsequent governmental unit to vest in the current retirement system. The member cannot begin receiving benefits under Section 4 until he or she reaches the age of 60.**

Reciprocal Retirement Act

- **Section 5 of the Act is used when a member is old enough to retire, but has not yet earned enough service credit to retire from his or her current retirement system. Section 5 allows a member to use service credit from a preceding reciprocal unit to meet the retirement eligibility requirements of his or her current retirement system.**

Reciprocal Retirement Act

- **Section 6 of the Act allows a member to transfer service credit from a preceding reciprocal unit to a succeeding reciprocal unit with an actual transfer of funds. Adoption of Section 6 is voluntary for a reciprocal unit and also requires the satisfaction of a number of conditions.**

Public Employee Health Care Fund Investment Act

DEFINITIONS

P.A. 149 of 1999

“*Fund*”. An account established for funding retiree health care benefits.

“*Investment fiduciary*”. A person(s) who:

- i. Exercises discretion or control over investment of assets.
- ii. Renders investment advice for fee or compensation.

(Note: Same as PERSIA, P.A. 314 of 1965, as amended)

“*Public corporation*”. A governmental entity.

“*Qualified person*”. Individual(s) designated as eligible to receive health care benefits.

“*Trust*”. A trust authorized by state or federal law for the funding of retiree health care benefits.

Public Employee Health Care Fund Investment Act

Establishment

P.A. 149 of 1999

The “fund” may be established by resolution of governing body and shall:

- a) Designate a person(s) to act as the investment fiduciary.
- b) Allow withdrawals only to pay health care benefits or administrative expenses of the fund.
- c) Designate eligibility for health care benefits.
- d) Determine if fund will be funded on an actuarial basis.

Public Employee Health Care Fund Investment Act

P.A. 149 of 1999

➤ Investment

➤ Trust

➤ Reporting

Public Act 28 of 1966

PURPOSE

An Act to authorize the Board of Trustees of police and fire or municipal employees retirement systems to contribute for the medical, hospital, or nursing care of a member.

Public Act 28 of 1966

HEALTH CARE CONTRIBUTION

- **The Board of Trustees with the approval of the governing body may use not more than $\frac{1}{2}$ of the interest earned by any reserve fund in the system to contract for medical, hospital, or nursing care for any person receiving benefits of the system.**
- **“Reserve Fund” means the moneys contributed by the city, village or township.**
- **The amount of interest used shall be included as interest and other earnings on the money of the retirement system in the computation of any employer liability for regular interest. These supplemental benefits shall not be considered an increase in the rate of retirement allowance to be paid. They shall be on a year-to-year basis and shall not create a liability for their continuance.**

Divorce

MCL §552.18. Rights to vested or unvested pensions or retirement benefits; inclusion in marital estate; EDROs

- **Sec. 18. (1) Any rights in and to vested pension or retirement benefits payable to a party on account of service credit accrued during marriage shall be considered part of the marital estate subject to award by the court .**
- **(2) Any rights or contingent rights in and to unvested pension or retirement benefits payable to a party on account of service credit accrued during marriage may be considered part of the marital estate subject to award by the court where just and equitable.**
- **(3) Upon motion of a party or upon consent of the parties, an order of the court entered before the effective date of the amendatory act that added this subsection shall be amended to satisfy the requirements of an eligible domestic relations order (EDRO).**

Eligible Domestic Relations Order Act

The Eligible Domestic Relations Order Act, Public Act 46 of 1991, effective June 27, 1991 (Act 46), mandates that all public employee retirement systems comply with Eligible Domestic Relations Orders (EDRO) issued by State Courts and establishes specific requirements for those systems created and covered by State laws.

There are certain terms in the Act 46 that you as Trustees should be basically familiar with in your administration of pension benefits.

DOMESTIC RELATIONS ORDER (DRO) - A judgment or order of the court involving the state domestic relations laws relating to alimony payments, child support, or marital property rights to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child or dependent of a participant.

Eligible Domestic Relations Order Act

ELIGIBLE DOMESTIC RELATIONS ORDER (EDRO) -
A domestic relations order that is considered an Eligible Domestic Relations Order under the provisions of Act 46 and meets the following requirements:

- 1. The order must state the name, last known address and social security number of the participant and alternate payee.**
- 2. The order must state the amount or percentage of the benefit to be paid to an alternate payee or the manner under which the retirement system is to determine such amount.**
- 3. The order states that it applies to the retirement system and that the retirement system shall make payments to the alternate payee as required under the EDRO and the Act.**

Eligible Domestic Relations Order Act

ELIGIBLE DOMESTIC RELATIONS ORDER (EDRO) –

A DRO that meets the following requirements:

- 5. The order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by the Act.**
- 6. The order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value.**
- 7. The order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under previously filed eligible domestic relations order.**
- 8. The order is filed before the participant's retirement allowance effective date.**

Benefit Payments

BENEFIT PAYMENTS. The payment of a benefit under an EDRO and Act 46 shall be paid in one of the following forms:

- A single life annuity that is equal to the actuarial equivalent of the alternate payee's share of the benefit payable throughout the life of the alternate payee.
- If an option benefit is elected, then a reduced benefit that is equal to the actuarial equivalent of the total benefit being divided under the EDRO payable throughout the lives of the participant and the alternate payee.
- A single life annuity that is equal to the alternate payee's share of the benefit payable throughout the life of the participant.

Eligible Domestic Relations Orders

The EDRO may provide for:

- 1. The alternate payee's benefit begins at time that participant retires or on any date on or after the participants earliest retirement date prior to the participant's termination of employment in an actuarially equivalent amount.**
- 2. The alternate payee may be determined to be the spouse of the participant for surviving spouse benefits (or a portion of such benefits).**
- 3. If an alternate payee dies before receiving any payment, that interest reverts to the Participant.**
- 4. The alternate payee to share in the post-retirement benefits of the participant.**

Eligible Domestic Relations Orders

- Alternate Payee Election
- Survivor Benefit
- Procedures

Public Employee Retirement Benefit Protection Act

PURPOSE: To protect certain rights that public employees have in retirement benefits under certain circumstances; to provide for the establishment of certain funds and arrangements; and to prescribe the powers and duties of certain retirement systems, state departments, courts, public officials, and public employees.

Public Employee Retirement Benefit Protection Act

DEFINITIONS

“Department” means the department of management and budget.

“Employer contributions” means the amount transferred by an employer to a participating unit retirement system on behalf of members of the retirement system to pay for the actuarial accrued liabilities of the retirement system.

“Member” means a member, vested former member, deferred member, beneficiary, designated beneficiary, or refund beneficiary of a retirement system.

“Participating unit” means a retirement system that elects to come under the provisions of section 6.

“Retirant” means a person who has retired with a retirement benefit payable from a retirement system.

Public Employee Retirement Benefit Protection Act

DEFINITIONS

“Retirement benefit” means an annuity, a retirement allowance, an optional benefit, a postretirement benefit, a benefit received from a defined contribution plan, defined benefit plan, deferred compensation plan, disability plan, life insurance plan, all money, investments and income of the various funds created under a public employee retirement system, and any other right accruing to a member under a retirement system.

“Retirement system” means a public employee retirement system established by this state or a political subdivision of this state.

“State unit” means a retirement system established under the state employees' retirement act, the public school employees retirement act, the judges retirement act, the state police retirement act, the Michigan legislative retirement system act.

Public Employee Retirement Benefit Protection Act

- **Rights not subject to process of law or assignment**
- **Rights subject to forfeiture and domestic relations orders**
- **Award or order requiring withholding payments; limitations**
- **Benefit payment; establishment of arrangement and fund**
- **Retirement system and benefits subject to Correctional Facility Reimbursement Act**
- **Loan eligibility; Correcting records and recovering overpayments**

Public Employee Retirement Benefits Forfeiture Act

PURPOSE

An Act to provide for the forfeiture of retirement benefits by public employees under certain circumstances; to prescribe the powers and duties of certain retirement systems, state departments, courts, public officials, and public employees; and to prescribe penalties and provide remedies.

Public Employee Retirement Benefits Forfeiture Act

DEFINITIONS

“Felony arising out of his or her service as a public employee” means: (1) a felony resulting from the misuse of public funds; and, (2) a felony resulting from the receipt of a bribe or other financial benefit in that person’s capacity as a public employee.

“Member” means a member, vested former member, or deferred member of a retirement system.

“Retirant” means a person who has retired with a retirement benefit payable from a retirement system.

“Retirement benefit” means an annuity, a retirement allowance, a pension, an optional benefit, a postretirement benefit including but not limited to health benefits, and any other right accrued or accruing to a member under a retirement system.

“Retirement system” means a public employee retirement system established by this state or a political subdivision of this state.

Public Employee Retirement Benefits Forfeiture Act

- **Forfeiture of Rights and Contributions to Retirement System**
- **Court Orders; Delivery of Orders to Retirement System**
- **Compliance with Court Order; Payment, Release, and Discharge of Liability**

Social Security Number Privacy Act

Requires the adoption of a privacy policy which at least:

- **Ensures to the extent practicable the confidentiality of social security numbers;**
- **Prohibits unlawful disclosure of social security numbers;**
- **Limits who has access to information or documents that contain social security numbers;**
- **Describes how to properly dispose of documents that contain social security numbers; and,**
- **Establishes penalties for violation of the privacy policy.**

Question / Comments

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