

## CHAPTER 250

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**GOVERNMENT - STATE**

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**HOUSE BILL 04-1171**

BY REPRESENTATIVE(S) Weddig, Borodkin, Butcher, Carroll, Frangas, Harvey, Madden, Marshall, McGihon, Miller, Paccione, Ragsdale, Romanoff, Vigil, Williams S., and Williams T.;  
also SENATOR(S) Hagedorn, Andrews, Tapia, and Veiga.

**AN ACT**

**CONCERNING DIRECTING THE STATE PERSONNEL DIRECTOR TO INVESTIGATE THE FEASIBILITY OF ESTABLISHING A RETIREMENT HEALTH SAVINGS TRUST FOR THE BENEFIT OF STATE EMPLOYEES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 52.5**  
**Retirement Health Savings Trust**

**24-52.5-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IT IS ESSENTIAL FOR THE STATE TO BE ABLE TO ATTRACT AND RETAIN QUALIFIED EMPLOYEES IN ORDER TO PROVIDE THE HIGHEST QUALITY OF SERVICE TO THE PEOPLE OF COLORADO.

(b) THE QUALITY AND FLEXIBILITY OF HEALTH AND RETIREMENT BENEFITS ARE IMPORTANT FACTORS IN HIRING AND RETAINING QUALIFIED STATE EMPLOYEES.

(c) THE COST OF MEDICAL CARE RISES EVERY YEAR AND BECAUSE MEDICARE AND STATE RETIREE HEALTH BENEFITS DO NOT FULLY COVER THOSE COSTS, RETIREES ARE INCREASINGLY RESPONSIBLE FOR COVERING THEIR MEDICAL COSTS AFTER RETIREMENT.

(d) A PROPERLY CONSTRUCTED PROGRAM TO HELP STATE EMPLOYEES PREPARE FOR THE COSTS OF MEDICAL EXPENSES AFTER RETIREMENT COULD BE CASH FUNDED

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THROUGH CONTRIBUTIONS OF STATE EMPLOYEES AND COULD OPERATE AS AN ENTERPRISE AS DEFINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) A NEW CONCEPT FOR PROVIDING RETIREMENT HEALTH BENEFITS FOR THE EMPLOYEES OF NONPROFIT ENTITIES, INCLUDING STATE GOVERNMENTS, IS FOR THE NONPROFIT ENTITY TO CREATE A RETIREMENT HEALTH SAVINGS TRUST. SUCH TRUST OFFERS THE FOLLOWING ADVANTAGES:

(I) A RETIREMENT HEALTH SAVINGS TRUST IS ESTABLISHED BY THE NONPROFIT ENTITY FOR THE PURPOSE OF PROVIDING RETIREMENT HEALTH BENEFITS TO THE EMPLOYEES OF THE ENTITY.

(II) THE PROVISION OF RETIREMENT HEALTH BENEFITS IS CONSIDERED AN INTEGRAL PART OF THE NONPROFIT ENTITY'S ACTIVITIES.

(III) A RETIREMENT HEALTH SAVINGS TRUST THAT MAKES THE PROVISION OF RETIREMENT HEALTH BENEFITS POSSIBLE IS CONSIDERED A PART OF THE NONPROFIT ENTITY AND THEREFORE MAY BE INCLUDED IN THE ENTITY'S TAX-EXEMPT STATUS.

(IV) A RETIREMENT HEALTH SAVINGS TRUST CREATES AN INDIVIDUAL ACCOUNT WITHIN THE TRUST FOR EACH EMPLOYEE WHO CHOOSES TO PARTICIPATE AND ALLOWS THE EMPLOYER TO MAKE PRETAX CONTRIBUTIONS, INCLUDING UNUSED ANNUAL OR SICK LEAVE, TO AN EMPLOYEE'S ACCOUNT ON BEHALF OF THE EMPLOYEE.

(V) THE NONPROFIT ENTITY THAT CREATES A RETIREMENT HEALTH SAVINGS TRUST MAINTAINS SUBSTANTIAL CONTROL OF THE TRUST IN THAT IT HAS THE POWER TO AMEND OR TERMINATE THE TRUST AND TO APPOINT THE TRUSTEES OF THE TRUST.

(VI) A RETIREMENT HEALTH SAVINGS TRUST ALLOWS EACH PARTICIPATING EMPLOYEE TO DETERMINE HOW HIS OR HER MONEY WILL BE INVESTED.

(VII) ALL EARNINGS IN A RETIREMENT HEALTH SAVINGS TRUST GROW ON A TAX-DEFERRED BASIS, AND A PARTICIPATING EMPLOYEE MAY MAKE WITHDRAWALS ON A TAX-FREE BASIS AFTER REACHING A CERTAIN AGE, SO LONG AS THE MONEYS ARE USED FOR QUALIFIED MEDICAL EXPENSES.

(VIII) ANY ASSETS THAT REMAIN IN A PARTICIPATING EMPLOYEE'S ACCOUNT AT THE TIME OF THE EMPLOYEE'S DEATH MAY BE USED FOR QUALIFIED MEDICAL EXPENSES BY THE EMPLOYEE'S SPOUSE, DEPENDENTS, OR OTHER BENEFICIARIES.

(b) THE CREATION OF A RETIREMENT HEALTH SAVINGS TRUST BY THE STATE FOR THE BENEFIT OF STATE EMPLOYEES WOULD GIVE SUCH EMPLOYEES AN OPPORTUNITY TO PREPARE FOR HEALTH COSTS THAT THEY WILL INCUR DURING RETIREMENT AND WOULD BE BENEFICIAL TO THE HEALTH AND WELL-BEING OF SUCH EMPLOYEES.

**24-52.5-102. Retirement health savings trust - state personnel director - investigation and report.** (1) THE STATE PERSONNEL DIRECTOR SHALL INVESTIGATE THE BENEFITS AND DRAWBACKS OF ESTABLISHING A RETIREMENT HEALTH SAVINGS TRUST FOR THE BENEFIT OF STATE EMPLOYEES. THE DIRECTOR

SHALL INCLUDE THE FINDINGS OF THE INVESTIGATION AND RECOMMENDATIONS REGARDING THE ESTABLISHMENT OF SUCH A TRUST IN A REPORT AS SPECIFIED IN SUBSECTION (5) OF THIS SECTION.

(2) IN INVESTIGATING THE BENEFITS AND DRAWBACKS OF ESTABLISHING A RETIREMENT HEALTH SAVINGS TRUST, THE STATE PERSONNEL DIRECTOR SHALL CONSIDER THE FEASIBILITY OF THE FOLLOWING:

(a) THE STATE, AS AN EMPLOYER, ESTABLISHING A TRUST FOR THE PURPOSE OF PROVIDING RETIREMENT HEALTH SAVINGS BENEFITS TO STATE EMPLOYEES WHO CHOOSE TO PARTICIPATE IN THE TRUST;

(b) THE STATE SPECIFYING THAT PROVIDING RETIREMENT HEALTH SAVINGS BENEFITS IS AN INTEGRAL PART OF THE STATE'S ACTIVITIES;

(c) THE STATE TREATING A TRUST THAT MAKES THE PROVISION OF RETIREMENT HEALTH BENEFITS POSSIBLE AS AN INTEGRAL PART OF THE STATE AND THEREFORE INCLUDING THE TRUST IN THE STATE'S TAX-EXEMPT STATUS;

(d) THE STATE CREATING AN INDIVIDUAL ACCOUNT WITHIN THE TRUST FOR EACH STATE EMPLOYEE WHO CHOOSES TO PARTICIPATE AND ALLOWING THE STATE TO MAKE PRETAX CONTRIBUTIONS, INCLUDING UNUSED ANNUAL OR SICK LEAVE, TO A STATE EMPLOYEE'S ACCOUNT ON BEHALF OF THE EMPLOYEE;

(e) THE STATE MAINTAINING SUBSTANTIAL CONTROL OF THE TRUST AND HAVING THE POWER TO AMEND OR TERMINATE THE TRUST AND APPOINT THE TRUSTEES OF THE TRUST;

(f) THE STATE ALLOWING EACH STATE EMPLOYEE WHO PARTICIPATES IN THE TRUST TO DETERMINE HOW HIS OR HER MONEY WILL BE INVESTED;

(g) THE STATE ALLOWING ALL MONEYS IN THE TRUST TO GROW WITHOUT BEING SUBJECT TO STATE OR FEDERAL INCOME TAXES;

(h) THE STATE ALLOWING PARTICIPATING STATE EMPLOYEES TO MAKE WITHDRAWALS ON A TAX-FREE BASIS AFTER REACHING A CERTAIN AGE, SO LONG AS THE MONEYS ARE USED FOR QUALIFIED MEDICAL EXPENSES; AND

(i) THE STATE ALLOWING AN EMPLOYEE'S SPOUSE, DEPENDANTS, OR OTHER BENEFICIARIES TO USE ANY ASSETS THAT REMAIN IN A PARTICIPATING EMPLOYEE'S ACCOUNT AT THE TIME OF THE EMPLOYEE'S DEATH FOR QUALIFIED MEDICAL EXPENSES.

(3) THE STATE PERSONNEL DIRECTOR, IN INVESTIGATING THE FEASIBILITY OF ESTABLISHING A RETIREMENT HEALTH SAVINGS TRUST, SHALL INVESTIGATE THE BENEFITS AND DRAWBACKS TO THE STATE AND TO STATE EMPLOYEES OF ALLOWING THE STATE AS AN EMPLOYER AND STATE EMPLOYEES THE OPTION TO MAKE THE FOLLOWING CONTRIBUTIONS TO THE TRUST:

(a) PRETAX CONTRIBUTIONS, INCLUDING A PORTION OF UNUSED EMPLOYEE ANNUAL AND SICK LEAVE, BY THE STATE TO AN EMPLOYEE'S ACCOUNT ON BEHALF OF THE

EMPLOYEE;

(b) VOLUNTARY AFTER-TAX CONTRIBUTIONS BY THE STATE TO AN EMPLOYEE'S ACCOUNT ON BEHALF OF THE EMPLOYEE;

(c) VOLUNTARY AFTER-TAX CONTRIBUTIONS BY THE EMPLOYEE INTO THE EMPLOYEE'S ACCOUNT; AND

(d) VOLUNTARY PRETAX CONTRIBUTIONS BY THE EMPLOYEE TO THE EMPLOYEE'S ACCOUNT BASED ON A ONE-TIME IRREVOCABLE ELECTION TO MAKE SUCH CONTRIBUTIONS.

(4) THE STATE PERSONNEL DIRECTOR SHALL INVESTIGATE THE BENEFITS AND DRAWBACKS TO THE STATE AND TO STATE EMPLOYEES OF VARIOUS POTENTIAL TERMS OF A RETIREMENT HEALTH SAVINGS TRUST, INCLUDING, BUT NOT LIMITED TO:

(a) THE DESIGN, ADOPTION, AND SCHEDULE FOR IMPLEMENTATION OF THE TRUST;

(b) THE NATURE AND AMOUNT OF THE CONTRIBUTIONS THAT THE STATE MAY MAKE TO THE TRUST ON BEHALF OF A PARTICIPATING STATE EMPLOYEE;

(c) THE NATURE OF THE INVESTMENTS THAT A STATE EMPLOYEE MAY CHOOSE TO MAKE WITH THE MONEYS CONTRIBUTED TO THE TRUST;

(d) THE TERMS OF ELIGIBILITY FOR PARTICIPATING IN THE TRUST AND FOR WITHDRAWING THE MONEYS CONTRIBUTED TO THE TRUST;

(e) THE NATURE OF THE EXPENSES THAT QUALIFY AS MEDICAL EXPENSES FOR PURPOSES OF TAX-FREE WITHDRAWAL OF MONEYS FROM THE TRUST; AND

(f) THE NEGOTIATION AND PAYMENT OF ANY ADMINISTRATIVE EXPENSES TO BE PAID BY THE STATE OR BY EACH EMPLOYEE WHO CHOOSES TO PARTICIPATE IN THE TRUST.

(5) ON OR BEFORE DECEMBER 1, 2004, THE STATE PERSONNEL DIRECTOR SHALL SUBMIT A WRITTEN REPORT TO THE MEMBERS OF THE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEE AND THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND TO THE MEMBERS OF THE JOINT BUDGET COMMITTEE. THE REPORT SHALL REVIEW THE DIRECTOR'S FINDINGS AND SHALL MAKE A RECOMMENDATION REGARDING THE ESTABLISHMENT OF A RETIREMENT HEALTH SAVINGS TRUST FOR THE BENEFIT OF STATE EMPLOYEES.

**SECTION 2. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine

die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 21, 2004