

# **Economic Vitality Incentive Program (EVIP) / County Incentive Program (CIP)**

## **Category 3: Employee Compensation**

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### *Frequently Asked Questions (FAQs)*

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# **EVIP/CIP – Employee Compensation FAQs**

## **1) Employee Compensation Plan - General**

**Q1-1. For EVIP/CIP compliance, does the law require us to complete both an employee compensation plan and comply with the requirements of 2011 Public Act 152, the Publicly Funded Health Insurance Contribution Act?**

A1-1. No, for EVIP/CIP compliance, the law for FY 2013 requires that the eligible local unit or county comply with either the employee compensation plan requirements or the requirements of 2011 Public Act 152. However, all public employers must comply with 2011 Public Act 152.

**Q1-2. What is the deadline to receive full funding under EVIP/CIP Category 3: Employee Compensation?**

A1-2. Treasury must receive the eligible local unit's or county's certification form and employee compensation plan or 2011 Public Act 152 compliance documentation by June 1<sup>st</sup> for the eligible local unit or county to receive full funding for Category 3.

**Q1-3. What is meant by "compensation plan" under Criteria #3, a whole pay system?**

A1-3. A "compensation plan" is a plan (or report) indicating how the local unit or county intends to move toward having all employees meet the requirements under Criteria #1 - 4.

At this point, "compensation plan" refers to the four items specified in the third category of EVIP/CIP (cap on retirement plans for new hires, caps on multipliers for pension plans, final average compensation computation limits, and health care cap for new hires). It does NOT include pay plans, rather it is a "plan of your intent" to move toward these four requirements.

**Q1-4. Do the employee compensation plan requirements only apply to new hires?**

A1-4. No, the requirements of the employee compensation plan do not apply only to new hires.

Criteria #1 & 4 apply to new hires. These two sections pertain to caps on annual employer contributions to retirement plans and set the cost limits for health care premium costs.

Criteria #2 & 3 apply to all employees. These two sections pertain to multipliers for defined benefit pension plans and final average compensation calculation conditions.

**Q1-5. Does this act include people who are already retired?**

A1-5. No.

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**Q1-6. If contract negotiations are not scheduled until next year and—a person retires prior to ratification of the new contract, what pension amount would they receive, the one under the current contract or under the EVIP/CIP requirements?**

A1-6. Their pension amount would be the amount according to their current contract, if the contract is still in effect the date they retire.

**Q1-7. Does the EVIP/CIP legislation give the cities a legal right to force unions to comply with the employee compensation items (i.e. they must agree to the multipliers, FAC etc...)?**

A1-7. Treasury is not in a position to answer this question.

**Q1-8. The statute indicates that there must be a certification by the category deadline that a municipality has developed a plan that it intends to implement with any "new, modified or extended contract or employment agreements for employees not covered under contract or employment agreement". Does this mean that the "Act" applies to both collectively bargained employees and non-collectively bargained employees (i.e. salaried employees)? If so, it seems that it should apply as of the category deadline?**

A1-8. Yes, the conditions that the employee compensation plan must include apply to ALL employees, both collectively bargained employees and non-collectively bargained employees.

The interpretation is that all employees fall under some form of agreement (either written or oral). The act does not stipulate what date the conditions of the plan need to be effective, but the interpretation is that the conditions apply to all new or modified plans on or after the category deadline.

**Q1-9. If an employment agreement, for example, is an "evergreen" contract that automatically renews, do the EVIP/CIP requirements apply to it at the first time that it renews after the category deadline?**

A1-9. The law does not specify the implementation date for a local unit's or county's employee compensation plan. However, the interpretation is that any new or modified contracts or employee agreements on or after the category deadline would adhere to the conditions. The local unit or county must submit a plan they intend to implement. The conditions would apply to a contract that automatically renews based on the local unit's or county's employee compensation plan. To meet the EVIP/CIP requirements for an employee compensation plan, a local unit or county does not have to have the conditions implemented by the category deadline, but must submit a plan on how and when it will implement the plan. The local unit or county must certify by the category deadline that it has developed and publicized the plan.

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**Q1-10. Do either EVIP/CIP or 2011 Public Act 152 apply to the Municipal Owned Electric Utility i.e. “component unit”? Or would the Municipal Owned Electric Company benefits be part of the city calculations for EVIP/CIP or 2011 Public Act 152?**

A1-10. If it does not receive funding from the local unit or county and the employees are not deemed employees of the city, village, township, or county, then EVIP/CIP does not apply.

2011 Public Act 152 applies to the electric utility. Section 2(d) of 2011 Public Act 152 (MCL 15.562(d)) specifically defines a “local unit of government” to include “a municipal electric utility system”.

**Q1-11. Previously, employees presented a proposal to the eligible local unit’s or county’s governing body that in lieu of receiving a 4% scheduled annual pay increase, the employees would accept a 2% pay increase and increase the employee contribution rate from 0.53% of covered wages to 4.53% of covered wages, if the governing body would agree to adopt a change from the MERS B-3 (2.25 multiplier) Defined Benefit Plan to the MERS B-4 (2.5 multiplier) Retirement Plan. The governing body agreed and adopted the change for all employees who agreed to the change. The Police and Fire Division did not agree to the change and received the 4% pay increase and remain covered by the B-3 Retirement Plan. Employees have asked if this constitutes a contract under the statute. If not determined to be a contract and a benefit reduction is required to meet statutory requirements, employees have indicated they will seek the forgone 2% of wages compounded over the past 12 years.**

A1-11. Treasury is not in a position to answer this question.

**Q1-12. If a new hire comes to the employ after the category deadline as a collectively bargained employee and will be subject to a preexisting collective bargaining agreement (CBA), do the EVIP/CIP requirements not apply to that employee until the applicable CBA expires or renews?**

A1-12. A new employee would fall under the current collectively bargained agreement.

**Q1-13. What does "intend" mean?**

A1-13. Intend means to have in mind as something to be done or brought about; plan.

**Q1-14. If our new contract gets negotiated and ratified before the category deadline, does it need to comply with the requirements of EVIP/CIP to receive EVIP/CIP payments in the future?**

A1-14. No, the local unit or county needs to have a plan developed by the category deadline.

## **EVIP/CIP – Employee Compensation FAQs**

**Q1-15. What if the EVIP/CIP requirements change with the next budget year? Will we be required to meet those changes, if we have already complied with the current requirements?**

A1-15. Yes. If an eligible local unit or county would like to qualify for EVIP/CIP payments in the future, they would have to comply with any future requirements imposed.

# EVIP/CIP – Employee Compensation FAQs

## 2) Employee Compensation Plan - Criteria #1

**LAW:** “New hires that are eligible for retirement plans are placed on retirement plans that cap annual employer contributions at 10% of base salary for employees that are eligible for social security benefits. For employees that are not eligible for social security benefits, the annual employer contribution is capped at 16.2% of base salary.”

**Q2-1. Does the first requirement, related to a cap on retirement plans for new hires, include retiree health care?**

A2-1. No, criteria #1 places a cap on annual employer contributions to retirement plans only (not health care). The cap applies only to the cost of the retirement plan to provide retirement income, like a 401(k) or 457 contribution or match, etc.

**Q2-2. Are 457 Deferred Compensation Plans considered retirement plans under the provision that would require an annual cap on employer contributions for new hires i.e. the 10% and 16.2%?**

A2-2. Yes.

**Q2-3. Does this provision limiting contributions to 10% or 16.2% of base salary for new hires apply for both Defined Benefit and Defined Contribution retirement plans?**

A2-3. This provision applies to any new hire for which an annual employer contribution is made to any retirement plans to provide retirement income.

**Q2-4. Criteria #1 indicates that there is a limitation of 10% of base salary on employer contributions. Is this intended to mean that all new hires that are eligible for retirement benefits must be placed in defined contribution plans (such as a 401(a) money purchase plan or 457 plan, and not defined benefit pension plans) and that Criteria #1 is completely separate from the defined benefit pension plan requirements in Criteria #2 & #3?**

A2-4. The interpretation is that Criteria #1 requires new hires that are eligible for retirement plans and that are placed on retirement plans to be placed in a defined contribution plan. This section applies to any retirement plan an employer is making a contribution to. This section is separate from Criteria #2 and Criteria #3; however a local unit or county must be in compliance with all of these subsections.

If a new hire is subject to a current bargaining agreement then they could have a defined benefit plan until the end of the contract, but otherwise the new hire would have a defined contribution plan or no retirement plan.

**Q2-5. Does the language "eligible for social security benefits" mean eligible now or eligible at the time the employee would be 65 (or otherwise be eligible under social security law)?**

A2-5. Eligible for social security benefits means eligible (as of current employment) for them when the employee would be 65 or otherwise eligible under social security law.

## **EVIP/CIP – Employee Compensation FAQs**

**Q2-6. BACKGROUND:**

An eligible local unit or county implemented a Municipal Employees Retirement System (MERS) defined contribution retirement plan in the 1990's for all new hires with an employee contribution rate of 3%; employer 8% of all wages earned. The eligible local unit or county has certain departments which require an employee from the department to work overtime on weekends to run certain tests and monitor controls which operate 24/7/365; this requires scheduled overtime every weekend. If base salary means that the eligible local unit or county should not include overtime pay in calculation of retirement contribution, there will be a push from both union and non-union employees to increase the eligible local unit's or county's contribution rate to the statutory 10% maximum. To increase to 10% contribution rate from the eligible local unit's or county's current 8% would increase the eligible local unit's or county's overall cost of retirement contributions since a majority of employees are salaried, most are not eligible for overtime pay.

**What is the definition of base salary? Does base salary mean only a 40 hour work week? Does base salary include scheduled overtime? All overtime? No overtime at all?**

A2-6. Base salary is based on the employee's normal work schedule (i.e. if overtime is included or required as a part of the employee's normal work schedule, then it is included in the base salary).

**Q2-7. To help attract and retain employees to our municipal jobs, are there any restrictions to the employer contributing to the 457 or HCSP programs?**

A2-7. Yes, you must meet the requirements of Criteria #1 in order to qualify for EVIP/CIP.

# EVIP/CIP – Employee Compensation FAQs

## 3) Employee Compensation Plan - Criteria #2

**LAW:** “For defined benefit pension plans, a maximum multiplier of 1.5% for all employees who are eligible for social security benefits, except, where postemployment health care is not provided, the maximum multiplier shall be 2.25%. For all employees who are not eligible for social security benefits, a maximum multiplier of 2.25%, except, where postemployment health care is not provided, the maximum multiplier shall be 3.0%.”

**Q3-1. The multiplier caps vary depending on whether the employee has retiree health care. How do defined contribution style retiree health savings plans figure in?**

A3-1. Post-employment health care is defined as any expenses or payments (in any amount) made by an employer on behalf of an employee with the intention that it be used for medical care for the employee or their dependants after the employee’s retirement.

A defined contribution style postemployment health savings program, where the employer contributes and/or matches employee contributions, is considered postemployment health care for this section.

**Q3-2. What is considered “retiree health care” when determining the allowable multiplier for a defined benefit pension plan?**

A3-2. Retiree health care is defined as any expenses or payments (in any amount) made by an employer on behalf of an employee with the intention that it be used for medical care for the employee or their dependants after the employee’s retirement. A defined contribution style postemployment health savings program, where the employer contributes and/or matches employee contributions, is considered postemployment health care for this section.

**Q3-3. Are employees who will receive \$100 a month toward insurance at retirement considered to have retiree health care?**

A3-3. Yes.

**Q3-4. Are employees who won’t receive any money from the employer at retirement, but will have the option to join the employer’s health plan and pay the entire amount considered to have retiree health care?**

A3-4. No, to be considered retiree health care the employer must have, in some way, provided payments for health care.

**Q3-5. If an employee group self-funds a buy-up to a higher multiplier (i.e. our department heads have been paying the difference between MERS B3(2.25) and B4 (2.5) for over 10 years), will their multiplier still have to be reduced going forward from the implementation date?**

A3-5. Yes, to qualify for the EVIP/CIP payments you must follow the current guidelines.

## **EVIP/CIP – Employee Compensation FAQs**

**Q3-6. Eligible for social security – exactly what does the word “eligible” mean – a person can collect social security at age 62 at a reduced rate, but they are still eligible and may not want to collect their social security. So, does that mean that their retirement benefit goes to the 1.5% at age 62?**

A3-6. Eligible for Social Security benefits means eligible (as of current employment) for them when the employee would be 65 or otherwise eligible under Social Security law.

**Q3-7. Would an eligible local unit or county with a 2.4% maximum multiplier meet the requirements of the EVIP/CIP if they are requiring the employee to pay 5% toward their retirement?**

A3-7. No, the multiplier would need to be in compliance with the current EVIP/CIP legislation.

**Q3-8. The EVIP/CIP language states "where postemployment health care is not provided". The eligible local unit or county is offering a choice to employees, retiree health care is still being provided by the eligible local unit or county to those that opt for it. What multiplier should the eligible local unit or county apply?**

A3-8. To qualify, those employees receiving health care could receive up to a 1.5% multiplier or up to a 2.25% if not eligible for social security benefits, and those that choose to opt out of health care could receive a multiplier up to 2.25% or up to 3.0% if not eligible for social security.

**Q3-9. If an employer continues to allow retirees to remain covered under the employer’s health insurance plan with the entire cost of the premium paid by the retiree (no employer cost at all) would this be considered “providing retiree health care” and therefore result in having to adopt the lower defined benefit multiplier of 1.5%?**

A3-9. No. There must be a contribution to the health care plan by the employer for it to meet the definition of retiree health care.

**Q3-10. Are retiree health savings programs categorized as postemployment health care for determining retirement multipliers for covered employees?**

A3-10. If employer contributes to the plans, yes; otherwise, no.

**Q3-11. What if a municipality puts for a 1.5 multiplier, but the union doesn’t accept it and the issue goes to arbitration? What if the arbitrator panel rules in favor of the union and the municipality doesn’t get the 1.5 multiplier? Then are they disqualified for the incentive payment even though they had no say in the arbitrators decision?**

A3-11. For FY 13, a City, Village, Township, or County must submit an employee compensation plan they INTEND to implement to be considered in compliance for this category. The current legislation (FY13) does not penalize for plans not completed.

## **EVIP/CIP – Employee Compensation FAQs**

**Q3-12. Criteria #2 & #3 apply to the defined benefit pension plans. Would these criterion apply as soon as either a non-collective bargaining agreement (CBA) employee is hired after the deadline, so that the pension plan would need to be amended for those types of employees (but the old formula would stay operational for other employees until their contracts or agreements come up for renewal, and maybe forever if a non-CBA employee has an employment agreement with no expiration date?)?**

A3-12. It would apply to any non-CBA employee hired on or after the category deadline. It would apply to other employees when their employee agreement expires. If there are employment agreements with no expiration date, then the employee is considered “At Will” and their contract can be modified at any time.

**Q3-13. Could you help us determine what is considered providing postemployment health care? The local units and counties are trying to determine what is considered postemployment health care.**

A3-13. Retiree health care is defined as any expenses or payments (in any amount) made by an employer on behalf of an employee with the intention that it be used for medical care for the employee or their dependants after the employee’s retirement. A defined contribution style postemployment health savings program, where the employer contributes and/or matches employee contributions, is considered postemployment health care for Criteria #2 of the employee compensation plan.

**Q3-14. A local unit or county contributes a small amount into an employee’s health saving account during employment. They can use the health savings account after they retire. The amount is small and wouldn’t cover the cost of health care. Does this qualify for postemployment health care?**

A3-14. Yes, the employer is contributing to the account.

**Q3-15. A local unit or county provides their retirees with a small payment based on the number of years of service (approximately \$300 per month). The payment is intended for health care. The payment goes directly to the employee without anyone checking to see that it is used for health care. Does this qualify for postemployment health care?**

A3-15. Yes, the employer’s contribution is intended for the purchase of health care.

**Q3-16. We currently offer health care to our retirees and we have a 2.5% multiplier. If we stopped offering retiree health care, reduce the multiplier to 2.25% and offered a E-2 Cost-of-Living Adjustment (COLA) would this be considered a benefit improvement?**

A3-16. According to the EVIP/CIP legislation, if there is no retiree health care and the employee is eligible for Social Security benefits, the multiplier can be a maximum 2.25%. COLA is not addressed in the EVIP/CIP legislation.

## **EVIP/CIP – Employee Compensation FAQs**

**Q3-17. We currently pay a stipend for health care to our retirees and this doesn't seem to comply with EVIP/CIP. Could we use a Health Care Savings Program (HCSP) and provide an active employee benefit instead of a retiree benefit in order to comply with EVIP/CIP?**

A3-17. A HCSP, to which an employer contributes any amount, is considered employer provided health care. Retirees are not affected by the EVIP/CIP requirements.

## EVIP/CIP – Employee Compensation FAQs

### 4) Employee Compensation Plan - Criteria #3

**LAW:** “For defined benefit pension plans, final average compensation for all employees is calculated using a minimum of 3 years of compensation and shall not include more than a total of 240 hours of paid leave. Overtime hours shall not be used in computing the final average compensation for an employee.”

**Q4-1.** In computing final average compensation (FAC), are the 240 hours of paid leave the cash out of all leave banks upon retirement or does it include annual payouts during the 3 or 5 years when computing FAC?

A4-1. 240 hours of leave paid at termination of employment.

**Q4-2.** If an employee retires after this selection is implemented, and has their highest consecutive 3 or 5 years before the date of implementation, is overtime allowed in the final average compensation (FAC) computation? And if not, what are the logistics of removing those amounts reported to MERS during those past years?

A4-2. No, inclusion of overtime in FAC does not meet EVIP/CIP requirements. Contact MERS regarding the logistics of removing amounts reported to MERS.

**Q4-3** Does “more than 240 hours of paid leave” mean 240 hours of paid leave paid at termination of employment or does it mean 240 hours of paid leave over the 3 years the final average compensation (FAC) is calculated?

A4-3. 240 hours of leave paid at termination of employment.

**Q4-4.** Employee contributions have been made in the past on wages paid for overtime hours, which would not have been required if overtime hours are not to be included in the calculation of the final average compensation (FAC) or retirement benefit. Do we have to refund to future retirees all contributions made on overtime wages over possibly the past 30+ years (if records are available)?

A4-4. Treasury is not in a position to answer this question.

**Q4-5.** Criteria #2 & 3 applies to defined benefit pension plans - would this apply as soon as either a non-collective bargaining agreement (CBA) employee is hired after the category deadline, so that the pension plan would need to be amended for those types of employees (but the old formula would stay operational for other employees until their contracts or agreements come up for renewal, and maybe forever if a non-CBA employee has an employment agreement with no expiration date)?

A4-5. It would apply to any non-CBA employee hired on or after the category deadline. It would apply to other employees when their employee agreement expires. If there are employment agreements with no expiration date, then the employee is considered “At Will” and their contract can be modified at any time.

## **EVIP/CIP – Employee Compensation FAQs**

**Q4-6. We switched from a defined benefit plan to a Hybrid plan a few years ago, how can we comply with the compensation requirement of no overtime in the final average compensation (FAC)?**

A4-6. To comply with EVIP/CIP requirements, you would not include any overtime in an employee's FAC.

**Q4-7. Employees have required member contributions. The contributions made were based on includible wages including overtime. The municipality makes changes to the pension plan to comply with EVIP/CIP. Will the employees get a refund of contributions that were based on overtime?**

A4-7. Treasury is not in a position to answer this question.

**Q4-8. I assume the 240 hours includes vacation, sick and holiday time. If an employee gets 25 vacation days, 12 sick days and 6 holidays per year that's 344 hours. Any idea what other eligible local units or counties are doing about this requirement and can our MERS plan be re-written to follow this EVIP/CIP requirement?**

A4-8. Treasury is not sure what other eligible local units or counties are doing. The 240 hour limit is for leave paid at termination of employment.

## **EVIP/CIP – Employee Compensation FAQs**

### **5) Employee Compensation Plan - Criteria #4**

**LAW: “Health care premium costs for new hires shall include a minimum employee share of 20%; or, an employer’s share of the local health care plan costs shall be cost competitive with the new state preferred provider organization health plan, on a per employee basis.”**

**Q5-1 What does “the employer’s share shall be cost competitive with the new state preferred provider organization health plan on a per-employee basis” mean?**

**A5-1. The definition of “cost competitive” means equal to or less than.**

**Q5-2. An eligible local unit’s or county’s employee benefit package is cost competitive with the State’s benefits, and cost competitive with most other municipalities in Michigan. The EVIP/CIP requires employer contributions to retirement plans be capped at 10%. The eligible local unit’s or county’s cap is below the 10%.**

**The eligible local unit or county does not have a defined benefit pension plan or any postemployment health care.**

**The eligible local unit or county is complying with P.A. 152 on health insurance and implemented the hard cap, dental and optical coverage not included. The eligible local unit or county has been trying to keep employee benefit costs low for years, but the health insurance premiums are still higher than the new state preferred provider organization health plan. The single person coverage is lower than the state cost, but the 2-person and family premiums are higher, 19% higher in the case of the 2-person plan.**

**It would end up costing the eligible local unit or county more if the pension contribution increased, dental & vision were added back, and the health care changed to an 80/20 split or the premiums lowered to the state’s PPO rates. Would the eligible local unit or county be considered compliant with this portion of EVIP/CIP, given that the pension is half the required limit, there is no retiree health care, and there is no dental or vision coverage?**

**A5-2. In order to qualify for a payment under the Employee Compensation Plan option of Category 3, an eligible local unit’s or county’s employee compensation plan must include the intent to limit health care costs for new hires to 80% Employer/20% Employee or (on a per employee basis) be cost competitive with the state’s preferred provider organization health plan.**

**In FY 2013, an eligible local unit or county can qualify under Category 3 by choosing the 2011 Public Act 152 option.**

## **EVIP/CIP – Employee Compensation FAQs**

**Q5-3. Why does the state use a hard cap amount for 2011 Public Act 152, the Publicly Funded Health Insurance Contribution Act (MCL 15.561 to 15.569), and then refer to the “state’s preferred provider organization health plan” amounts for EVIP/CIP compliance. Why not just use the same hard cap? Also, what does “health care costs should be cost competitive with” even *mean* under this provision of EVIP/CIP? Are we supposed to be under the values you gave?**

A5-3. The law must be applied as passed by the Legislature. “Cost competitive” as it pertains to this statute means less than or equal to.

**Q5-4. Under the employee compensation plan for EVIP/CIP, the last criteria appears to be required for new hires only, is this correct? Yet 2011 Public Act 152 compliance is required for all employees. Why are the two inconsistent?**

A5-4. Yes, Criteria #4 is for new hires only, while 2011 Public Act 152 is for all employees. The law must be applied as passed by the Legislature.

**Q5-5. How will we be able to show Treasury that the provisions of the retirement programs for both new hires and current active members are complying with the requirements of EVIP/CIP?**

A5-5. Eligible local units and counties are required to certify that they are in compliance with EVIP/CIP standards and guidelines, and submit their employee compensation plan. No further documents are required to prove compliance.

**Q5-6. Our contract is up during this fiscal year (10/1/11 – 9/30/12). We intend to comply with EVIP/CIP. The new contract gets settled for both new hires and current active members. However the new contract was ratified after our previous contract expired. What would the effective date of the new contract be? If an employee was hired during the negotiations, would that employee be in the new hire plan or the current active plan if they were different?**

A5-6. This is not for Treasury to decide. This would be the eligible local unit’s or county’s decision.

**Q5-7. We have a general division that provides the retirement for both union and non-union employees. The union contract does not expire until March next year. We have an employee agreement for non-union employees that has the same expiration date as the union employees. Will we comply with EVIP/CIP if we intend to meet the compensation requirements for both union and non-union at the same time? If not, will we have to carve out the non-union employees?**

A5-7. Yes, EVIP/CIP applies to contracts or employment agreements for both union and non-union employees.

## **EVIP/CIP – Employee Compensation FAQs**

**Q5-8. We have a general division that provides the retirement for both union and non-union employees. The union contract does not expire until next year. We don't have an employment agreement for non-union members. Do we need to meet the requirements of EVIP/CIP for the non-union employees by the category deadline? If so, do we need to carve out the non-union employees into their own division?**

A5-8. Yes, the non-union employees that do not have an employment agreement must meet the requirements of EVIP/CIP by the category deadline. Treasury is unable to answer your question regarding carving out the non-union employees into their own division.

## **EVIP/CIP – Employee Compensation FAQs**

### **6) 2011 Public Act 152: The Publicly Funded Health Insurance Contribution Act**

Click the link below to be directed to the 2011 Public Act 152 Frequently Asked Questions.

[http://www.michigan.gov/documents/treasury/Public\\_Act\\_152\\_of\\_2011\\_FAQs\\_377180\\_7.pdf](http://www.michigan.gov/documents/treasury/Public_Act_152_of_2011_FAQs_377180_7.pdf)