

Act No. 99
Public Acts of 1990
Approved by the Governor
June 7, 1990
Filed with the Secretary of State
June 7, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Niederstadt and O'Neill

ENROLLED HOUSE BILL No. 5684

AN ACT to amend sections 2b, 4, and 32 of Act No. 427 of the Public Acts of 1984, entitled as amended "An act to provide for a retirement system for municipal and judicial employees; to create a retirement board and to prescribe its powers and duties; to prescribe the powers and duties of certain other state officers and agencies; and to repeal certain acts and parts of acts," section 2b as amended by Act No. 51 of the Public Acts of 1989 and sections 4 and 32 as amended by Act No. 500 of the Public Acts of 1988, being sections 38.1502b, 38.1504, and 38.1532 of the Michigan Compiled Laws; and to add sections 10a, 16b, 23a, and 56.

The People of the State of Michigan enact:

Section 1. Sections 2b, 4, and 32 of Act No. 427 of the Public Acts of 1984, section 2b as amended by Act No. 51 of the Public Acts of 1989 and sections 4 and 32 as amended by Act No. 500 of the Public Acts of 1988, being sections 38.1502b, 38.1504, and 38.1532 of the Michigan Compiled Laws, are amended and sections 10a, 16b, 23a, and 56 are added to read as follows:

Sec. 2b. (1) "Member" means a municipal employee or judicial employee who is included in the membership of the retirement system.

(2) "Membership service" means personal service rendered a participating municipality or participating court while a member of the retirement system.

(3) "Municipal employee" means an individual who is paid compensation for personal services rendered for a participating municipality. Payment of compensation by a hospital, board, commission, public corporation, or instrumentality created by a municipality is considered payment by the municipality. Municipal employee does not include any of the following:

(a) The mayor, village president, or a member of the governing body of a participating municipality, unless the individual makes written application for membership. Written application must be filed with the retirement system within 60 days from the more recent of the date the individual last qualified for the position and the date the municipality becomes a participating municipality.

(b) An individual who is employed on a basis that exempts the participating municipality from the withholding provisions of the internal revenue code.

(c) An individual, except a county elected official, who is wholly paid on a fee basis.

(d) An individual who is an active member of the state of Michigan probate judges retirement system created by the probate judges retirement act, Act No. 165 of the Public Acts of 1954, being sections 38.901 to 38.933 of the Michigan Compiled Laws.

(e) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the job training partnership act, Public Law 97-300, 96 Stat. 1322. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of the retirement system.

(f) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the Michigan opportunity and skills training program first provided for under sections 12 to 23 of Act No. 259 of the Public Acts of 1983. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of this retirement system.

(g) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the Michigan community service corps program first provided for under sections 25 to 35 of Act No. 259 of the Public Acts of 1983 and sections 148 to 160 of Act No. 246 of the Public Acts of 1984. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of this retirement system.

(h) A person, not regularly employed by the participating municipality, who is employed by the municipality to administer a program described in subdivision (e), (f), or (g) shall not be a member of this retirement system.

(i) An individual who is, on the effective date of the municipality's or court's participation under this act, a member of another retirement system that is sponsored by the participating municipality or participating court if that individual remains as a member of the other retirement system.

(4) "Municipality" means a county, county road commission, city, village, township, or a combination of these units; a lawful public corporation or instrumentality established by 1 or more counties, cities, villages, townships, or a combination of these units; or a public corporation or instrumentality charged by law with the performance of a governmental function and whose jurisdiction is coextensive with 1 or more counties, cities, villages, townships, or a combination of these units.

Sec. 4. (1) Prior service and membership service to which a member is entitled shall be credited to the member's individual service account. Service shall be credited in years and twelfths of a year. Not more than 1 year of credited service shall be credited a member on account of all service rendered to a participating municipality or participating court in any period of 12 consecutive months. Not more than 1/12 of a year of credited service shall be credited a member on account of all service rendered to a participating municipality or participating court in a calendar month. Credited service shall not be credited for any calendar month during which a member acquires less than 10 days of work, as defined by the member's participating municipality or participating court pursuant to section 3(1).

(2) All or a portion of an individual's credited service shall be forfeited under the following conditions:

(a) All credited service shall be forfeited if the individual incurs a break in membership of more than 60 consecutive months and is not a vested former member pursuant to section 12.

(b) Credited service for which the individual has made member contributions shall be forfeited if the individual's accumulated contributions are paid to the individual, the individual's designated beneficiary, or the individual's legal representative.

(3) Credited service forfeited because of a break in membership of more than 60 consecutive months shall be reinstated in the member's service account if each of the following conditions is satisfied:

(a) The break in membership was for less than 180 consecutive months.

(b) The member has been credited with at least 60 consecutive months of service subsequent to the break in service that caused the forfeiture.

(c) The governing body of the participating municipality or the chief judge of the participating court with which the member is employed approves the reinstatement. The participating municipality shall by resolution of its governing body or the participating court shall by administrative order of its chief judge establish a written policy to implement the provisions of this subdivision in order to provide uniform application of this subdivision to all members of the retirement system.

(d) The forfeited credited service was acquired while the member was in the employ of the same participating municipality or participating court.

(e) The member pays to the retirement system all accumulated contributions previously paid to the member plus compound interest from the date of payment to the member to the date of repayment to the retirement system. Payment shall be made within 1 year after the earliest date on which the member meets the requirement prescribed in subdivision (b).

(4) Credited service forfeited for a reason other than a break in membership of more than 60 consecutive months shall be reinstated in the member's service account if each of the following conditions is satisfied:

(a) The forfeited credited service was acquired while the member was in the employ of the same participating municipality or participating court.

(b) The member pays to the retirement system all accumulated contributions previously paid to the member plus compound interest from the date of payment to the member to the date of repayment to the retirement system. Payment shall be made within 5 years after the date the member reacquires membership in the retirement system on account of employment with the same participating municipality or participating court.

(5) The rates of compound interest applicable to repayment of accumulated contributions shall be as determined by the retirement board.

(6) Forfeited credited service acquired while a member was in the employ of another participating municipality or participating court shall not be reinstated under this section but shall be creditable subject to the requirements of section 6.

Sec. 10a. (1) Subject to sections 43 and 43a, a participating municipality may by resolution of its governing body or a participating court may by administrative order of its chief judge adopt for a temporary period any of the following benefit programs or any legitimate combination of the following benefit programs:

- (a) Benefit program E-2 under section 22.
- (b) Benefit program FAC-3 under section 2a(5)(b).
- (c) Benefit program F50 under section 10(4).
- (d) Benefit program F55 under section 10(4).
- (e) Benefit program B-1 under section 15.
- (f) Benefit program B-2 under section 16.
- (g) Benefit program B-3 under section 16a.
- (h) Benefit program B-4 under section 16b.
- (i) Benefit program C, new under section 17(1).
- (j) Benefit program C-1, new under section 18(1).
- (k) Benefit program C-2 under section 19.
- (l) Benefit program RS50% under section 23a.

(2) The resolution or administrative order shall contain all of the following that are applicable:

- (a) The benefit program or combination of benefit programs adopted under subsection (1).
- (b) The beginning and ending dates of the temporary period selected under subsection (1). The temporary period selected shall be for not less than 60 days and not more than 180 days.

(c) The classification of members covered by the benefit program or combination of benefit programs for the temporary period under subsection (1).

(d) If benefit program F50 or F55 is adopted for a temporary period under subsection (1), the required period of credited service applicable to the benefit program.

(3) A member who is in the classification of members covered under the benefit program or combination of benefit programs for the temporary period under this section and who retires under section 10 during the temporary period shall receive a retirement allowance computed pursuant to the benefit program or combination of benefit programs adopted for the temporary period.

(4) A participating municipality or a participating court shall not adopt a temporary period under this section for the same classification of members on more than 2 occasions in any period of 5 consecutive calendar years.

Sec. 16b. (1) The amount of a retirement allowance under benefit program B-4 shall be 2.5% of the member's final average compensation multiplied by the member's credited service, subject to the maximum stated in subsection (2).

(2) The amount of retirement allowance under benefit program B-4 shall not exceed 80% of the member's final average compensation, or the amount of retirement allowance the member would have been entitled to had the member continued to be covered by the benefit program in effect immediately before coverage by benefit program B-4, whichever is greater.

(3) For purposes of this section, "member" includes vested former member.

Sec. 23a. (1) A participating municipality may by resolution of its governing body or a participating court may by administrative order of its chief judge adopt benefit program RS50%. The resolution or administrative order shall specify the effective date of the change in coverage.

(2) Under benefit program RS50%, a surviving spouse of a deceased retirant shall be paid a retirement allowance for life if both of the following conditions are met:

(a) The deceased retirant's retirement allowance effective date was on or after the effective date of the change in coverage.

(b) All payments of the deceased retirant's retirement allowance were made pursuant to form of payment SL as prescribed in section 23(2)(a).

(3) The amount of the retirement allowance payable to a surviving spouse under benefit program RS50% is 50% of the retirement allowance payable to the deceased retirant at the time of his or her death.

(4) As used in this section, "surviving spouse" means a person who meets both of the following requirements:

(a) He or she was married to the deceased retirant during the period beginning 1 year before the deceased retirant's retirement allowance effective date and ending on the retirement allowance effective date.

(b) He or she was married to the deceased retirant on the date of the deceased retirant's death.

Sec. 32. (1) A member shall contribute the percentage of compensation selected by the participating municipality or participating court from the available contribution programs. The contribution programs available for selection are any percentage of compensation from 0% to 10% in increments of 0.1%.

(2) Contribution programs selected before January 2, 1985 under former Act No. 135 of the Public Acts of 1945 shall continue to be applicable until a different contribution program is selected.

(3) A participating municipality or participating court may select contribution program P as provided in section 33 in conjunction with any of the above contribution programs except the 0% contribution program and contribution programs continued under subsection (2).

Sec. 56. The provisions of this section are enacted pursuant to federal law which imposes certain administrative requirements and benefit limitations for qualified governmental retirement plans. The state intends the retirement system to be a qualified pension plan under section 401 of the internal revenue code, as amended, and that the trust be an exempt organization under section 501 of the internal revenue code. The retirement system shall be administered so as to fulfill this intent.

(a) Except as provided in the remainder of this subsection, employer financed benefits provided by the retirement system shall not exceed \$50,000 per year for police, fire or public-safety members with 15 or more years of credited service or \$10,000 per year for all other members.

(b) The limitations provided in subsection (a) shall apply unless application of subsections (c), (d) or (e) produces a higher limitation, in which case such higher limitation shall apply.

(c) For retirements occurring at age 62 or older, the upper limit is the lesser of \$90,000 or 100% of the member's 3-year highest average earnings.

(d) For retirements occurring prior to age 62 the amount of \$90,000 in subsection (c) is actuarially reduced to reflect payment prior to age 62. In calculating the actuarial reduction, the interest rate shall be 5% per annum, compounded annually. If this subsection produces a limitation of less than \$75,000 at age 55, the limitation at age 55 shall be \$75,000 and the limitations for ages under age 55 shall be calculated from a limitation of \$75,000 at age 55.

(e) Section 415(d) of the internal revenue code provides that the \$50,000 limitation in subsection (a) and the \$90,000 limitation in subsection (c) are to be adjusted by the commissioner of internal revenue to reflect cost-of-living increases, commencing with calendar year 1988. The provisions of this subsection shall be administered using the adjusted limitations applicable to each calendar year and benefits affected by the limitation shall be adjusted each year to conform to the adjusted limitation.

(f) The provisions of this subsection notwithstanding, the retirement system shall at all times be administered in compliance with the provisions of section 415 of the internal revenue code applicable to public employee retirement plans.

(g) All assets of the retirement system shall be held and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall be used for no other purpose. No part of the assets shall be used for or diverted to purposes other than for the exclusive benefit of members, vested former members, retirants and beneficiaries prior to satisfaction of all retirement system liabilities.

(h) Post tax member contributions received by the system, upon retirement shall be returned to members for tax purposes in accordance with I.R.S. regulations and approved I.R.S. exclusion ratio tables.

(i) In the event a participating municipality or participating court shall discontinue municipal employees retirement system participation, or in the event of discontinuance of the retirement system, all members and retirees interest in the plan shall be nonforfeitable to the extent funded, as described in IRC section 411(d)(3) and related IRC regulations applicable to governmental plans.

(j) The provisions of this section shall prevail in the event of conflicts between this section, other sections of this act, or, other state statutes.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.