

(ii) If a member retires at or after age 55 but before age 62, the actuarially reduced amount of the limitation prescribed in subparagraph (i) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph. However, the limitation in this subparagraph shall not be actuarially reduced below \$75,000.00.

(iii) If a member retires before age 55, the actuarially reduced amount of the limitation prescribed in subparagraph (ii) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph.

(b) 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code.

(4) Section 415(d) of the internal revenue code requires the secretary of the treasury or his or her delegate to annually adjust the \$10,000.00 limitation described in subsection (2) and the \$90,000.00 limitation described in subsection (3)(a)(i) for increases in cost of living, beginning in 1988. This section shall be administered using the limitations applicable to each calendar year as adjusted by the secretary of the treasury or his or her delegate under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.

(5) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, deferred members, retirants, and retirement allowance beneficiaries.

(6) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(7) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(8) If the retirement system is terminated, the interest of the members, deferred members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and the related internal revenue service regulations applicable to governmental plans.

(9) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(10) For purposes of determining actuarial equivalent retirement allowances under sections 45 and 85(1)(b), (1)(c), (1)(d), and (2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(11) Notwithstanding any other provision of this section, the retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code and revenue service regulations under that section that are applicable to governmental plans. If there is a conflict between this section and another section of this or any other act of this state, this section prevails.

(12) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(13) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code. This subsection applies to all qualified military service on or after December 12, 1994.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5108 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: House Bill No. 5108, referred to in enacting section 1, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 100, Imd. Eff. Mar. 27, 2002.

[No. 95]

(HB 5112)

AN ACT to amend 1992 PA 234, entitled "An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to prescribe penalties and provide remedies; and to repeal certain acts and parts of acts," by amending the title and sections 105, 213, 214, 216, 217, 304, 305, 308, 401a, 405, 506, 508, 604, 714, and 720 (MCL 38.2105, 38.2213, 38.2214, 38.2216, 38.2217, 38.2304, 38.2305, 38.2308, 38.2401a, 38.2405, 38.2506, 38.2508, 38.2604, 38.2664, and 38.2670), sections 105 and 604 as amended by 1995 PA 193, section 214 as amended and section 720 as added by 1996 PA 523, section 217 as amended by 1998 PA 99, and sections 401a, 506, 508, and 714 as amended by 1999 PA 215.

The People of the State of Michigan enact:

TITLE

An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to provide for certain disqualifications; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

38.2105 Definitions; E, F.

Sec. 105. (1) Beginning January 1, 2002, except as otherwise provided in this subsection, “eligible retirement plan” means an individual retirement account described in section 408(a) of the internal revenue code, an individual retirement annuity described in section 408(b) of the internal revenue code, an annuity plan described in section 403(a) of the internal revenue code, a qualified trust described in section 401(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code, or an eligible plan under section 457(b) of the internal revenue code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and that separately accounts for amounts transferred into such eligible plan under section 457(b) of the internal revenue code from this retirement system, that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse on or before December 31, 2001, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(2) Beginning January 1, 2002, “eligible rollover distribution” means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

(a) A distribution made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee’s designated beneficiary.

(b) A distribution for a specified period of 10 years or more.

(c) A distribution to the extent that the distribution is required under section 401(a)(9) of the internal revenue code.

(d) The portion of any distribution that is not includable in federal gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities, except to the extent that such portion is paid to either of the following:

(i) An individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

(ii) A qualified defined contribution plan described in section 401(a) or 403(a) of the internal revenue code that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of such distribution that is not includable in gross income.

(3) “Executive secretary” means the executive secretary of the retirement system as provided in section 205.

(4) Except as otherwise provided in this subsection, “final compensation” means the annual rate of compensation for the calendar year of retirement. For a member who retires on January 1, final compensation means the annual rate of compensation for the calendar year immediately preceding the date of retirement. Final compensation does not include an amount that exceeds the maximum salary set forth for that particular member or vested former member in the revised judicature act, if applicable. For a member who is a judge and who performs judicial duties for a limited period or a specific assignment as authorized by the supreme court pursuant to section 23 of article VI of the state constitution of 1963, final compensation means the annual rate of compensation the member was being paid at the termination of his or her tenure in office as an elected judge.

(5) “Former elected official” means a member who held a state elective office before membership in this retirement system, the former judges retirement system, or the former probate judges retirement system.

(6) “Former judges retirement system” means the state of Michigan judges’ retirement system created by former 1951 PA 198.

(7) “Former probate judges retirement system” means the state of Michigan probate judges retirement system created by former 1954 PA 165.

38.2213 Reserve for investment income.

Sec. 213. (1) The reserve for investment income is created. The state treasurer shall credit to the reserve for investment income all interest, dividends, and other income from the investment of retirement system assets except for those of the reserve for health benefits created under section 214. The retirement system shall credit to the reserve for investment income all gifts and bequests to the retirement system; all forfeited contributions received pursuant to section 210; a surplus in any reserve created by this act except for those of the reserve for health benefits created under section 214; and all other money for which there is no specific disposition provided.

(2) Except as otherwise provided in this subsection, the retirement system shall annually credit interest on the preceding year balances in the reserve for member contributions, reserve for employer contributions, and the reserve for retirement benefits. However, the retirement system shall begin to calculate interest on member contributions made within a calendar year on the first day of the calendar year following the contribution and shall credit the interest on member contributions at the end of the calendar year. The retirement system shall charge the reserve for investment income the interest credited to the reserves under this subsection.

(3) The retirement system shall pay the expenses for the administration of the retirement system, exclusive of amounts payable as retirement allowances and other benefits provided in this act, from the reserve for investment income.

38.2214 Reserve for health benefits.

Sec. 214. The reserve for health benefits is created. The retirement system shall deposit into the reserve for health benefits the member contributions for health benefits required by section 305(1)(a), amounts transferred pursuant to section 217(1), and accumulated earnings on these amounts and contributions. The retirement system shall disburse from the reserve for health benefits the premiums for hospital and medical-surgical and sick care benefits as required by sections 509 and 719.

38.2216 Compliance with reciprocal retirement act.

Sec. 216. The retirement system shall comply with the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, if a resolution electing to come under the provisions of the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, is in effect.

38.2217 Court fee fund; applicability of section.

Sec. 217. (1) A court fee fund is created in the state treasury. The state treasurer shall deposit into the court fee fund all money received from the executive secretary pursuant to section 304(4). The state treasurer shall, if funds remain in the court fee fund after the transfer described in subsection (3), transmit a portion of the money in the court fee fund, not exceeding \$2,200,000.00 in any fiscal year, to the court equity fund created by section 151b of the revised judicature act of 1961, 1961 PA 236, MCL 600.151b. If the court fee fund exceeds \$2,200,000.00 in any fiscal year and \$2,200,000.00 is transmitted to the court equity

fund, an amount may be appropriated from the court fee fund for operational expenses of trial courts. Operational expenses may include the payment of salaries of trial court judges other than judges of the district court. Any money remaining in the court fee fund at the end of the fiscal year shall remain in the court fee fund and shall not revert to the general fund.

(2) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund described in section 6 of the public employee retirement benefit preservation act, the benefits that are required to be paid from that fund shall, to the extent permitted by applicable law, be paid from a portion of the money in the court fee fund and any earnings on those amounts or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that shall be allocated to that fund and deposit that amount in that fund.

(3) The state treasurer shall, if funds remain in the court fee fund after the transfer described in subsection (2), transmit a portion of the money in the court fee fund and any earnings on those amounts to the reserve for health benefits created by section 214 to pay expected health care costs for the subsequent fiscal year that are not covered as a result of employee contributions under sections 305(1) and 714(6), and to pay, in an amount not to exceed \$100,000.00 in each fiscal year, any health care costs not paid from the reserve for health benefits since fiscal year 1996-1997.

(4) This section applies unless the department receives notification from the United States internal revenue service that this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code.

38.2304 Deposit of court fees, late fees, and interest payments.

Sec. 304. (1) Except as provided in subsection (4), the retirement system shall transmit all court fees received by the executive secretary and all late fees and interest payments received under this section to the state treasurer for deposit in the reserve for employer contributions where these assets and earnings on these assets shall be treated as pension assets.

(2) The retirement board may periodically establish a late fee and interest rate for all court fees that are not submitted to the executive secretary as prescribed in subsection (3). The retirement board shall establish a late fee of \$50.00 or more and an interest rate of 12% or more per year for a late transmittal of court fees.

(3) If the county treasurer, clerk of the circuit court, or clerk of the district court fails to transmit to the executive secretary all court fees by the twentieth day of the month following the month in which they are collected under the revised judicature act, the retirement system shall assess a late fee for each late transmittal and an interest payment for each day the transmittal is late. Upon written notice from the executive secretary to the director of the supreme court finance office, the state treasurer shall withhold payment of the amount due under this section for late court fees, late fees, and interest payments from the salary standardization payment payable to a county or district control unit that fails to make timely court fee transmittals as required by this section.

(4) When the retirement system determines that the amount of court fees deposited into the reserve for employer contributions under subsection (1) equals the amount needed in addition to other publicly financed contributions to sustain the required level of publicly financed contributions, based upon the most recent actuarial valuation available at the beginning of the applicable fiscal year, the executive secretary shall transmit to the state treasurer the remainder of the court fees received during the fiscal year for deposit into the court fee fund created by section 217 where these assets and any earnings on

these assets shall not be treated as pension assets for any purpose. This subsection applies unless the department receives notification from the United States internal revenue service that this subsection will cause the retirement system to be disqualified for tax purposes under the internal revenue code.

38.2305 Contributions; plan member classification; manner of payment; withholding payment to county or district control unit for contributions not received within 60 days.

Sec. 305. (1) Each member, upon taking office and so long as he or she remains in office, shall make contributions to the retirement system according to the applicable plan member classification as follows:

(a) A plan 1 member or a plan 2 member shall contribute 5% of the member's compensation. From this contribution, the retirement system shall deposit an amount equal to 2.0% of the member's compensation into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 509.

(b) A plan 3a member, a plan 3b member, or a plan 5 member shall contribute 3.5% of the member's compensation.

(c) A plan 3c member, a plan 4 member, a plan 6 member, or a plan 7 member shall contribute 7% of the member's compensation. However, a plan 6 member shall not contribute more than \$980.00 annually.

(2) The retirement board shall determine the manner in which member contributions are paid. Except as otherwise provided in this section, the retirement system shall credit member contributions when received to the reserve for member contributions.

(3) Upon written notice from the executive secretary to the state court administrator, the state treasurer shall withhold payment of the amount due from the salary standardization payment payable to a county or district control unit for member contributions that are not received by the retirement system within 60 days after the due date.

38.2308 Offsetting benefits against amounts owed; forfeiture of service credit for transfer to federal agency; rights subject to public employee retirement benefit protection act.

Sec. 308. (1) The retirement system may offset retirement benefits or refunds payable under this act against amounts owed to the retirement system by a member, vested former member, retirant, retirement allowance beneficiary, or refund beneficiary.

(2) If the retirement system is required by the federal government pursuant to a court order to transmit a part of a member's accumulated contributions to a federal agency, the service credit that is covered by the payment shall be forfeited in the same manner as if the employee had requested and been paid a refund of the member's most recent contributions.

(3) The right of a person to a retirement allowance, to the return of accumulated contributions, to an optional benefit, to any other right accrued or accruing to a member or beneficiary under this act, and to the money belonging to the retirement system is subject to the public employee retirement benefit protection act.

38.2401a Exclusion from Tier 1; eligibility as qualified participant in Tier 2.

Sec. 401a. (1) Notwithstanding section 401, an individual described in this subsection is not a member of the Tier 1 retirement plan:

(a) An individual who first becomes a judge or state official on or after March 31, 1997.

(b) An individual who elects to terminate membership under section 701 or 701a and who, but for that election, would otherwise be eligible for membership in Tier 1 pursuant to section 401.

(2) An individual who first becomes a judge or state official on or after March 31, 1997 is eligible to be a qualified participant in Tier 2 subject to article VII.

38.2405 Accumulated contributions; payment to person ceasing to be member; payment to refund beneficiary before retirement allowance is payable; payment to refund beneficiary if retirant and option A beneficiary, option B beneficiary, or spouse dies; nomination of refund beneficiary.

Sec. 405. (1) Except as otherwise provided in this act, if a person ceases to be a member before satisfying the age and service requirements for a retirement allowance under section 501 or 501b, the retirement system shall pay to the person his or her accumulated contributions upon request.

(2) If a member dies and a retirement allowance is not or will not become payable on account of the member's death, the retirement system shall pay the deceased member's accumulated contributions at the time of death to the refund beneficiary. If a refund beneficiary is not nominated or the refund beneficiary fails to survive the deceased member, the retirement system shall pay the deceased member's accumulated contributions to the deceased member's estate or legal representative.

(3) If a retirant and his or her option A beneficiary, option B beneficiary, or spouse, if applicable, dies before an aggregate amount of retirement allowance equal to the deceased retirant's accumulated contributions at the time of retirement has been paid, the retirement system shall pay the difference between the deceased retirant's accumulated contributions and the aggregate amount of retirement allowance paid to the deceased retirant's refund beneficiary. If a refund beneficiary is not nominated or the refund beneficiary fails to survive the retirant and his or her option A beneficiary, option B beneficiary, or spouse, the retirement system shall pay the difference to the estate or legal representative of the last to die of the retirant or his or her option A beneficiary, option B beneficiary, or spouse.

(4) A judge or state official who becomes a member under section 401(1)(a) may nominate a refund beneficiary in the membership form under section 401 or a member, vested former member, or retirant may nominate a refund beneficiary in a nominating form furnished by the retirement system. A member, vested former member, or retirant shall file the nominating form with the retirement system, which form is not valid until received by the retirement system. The member or retirant may nominate a different refund beneficiary by delivering a new nominating form to the retirement system. The retirement system shall disregard the nomination of a refund beneficiary in the membership form and all nominating forms previously filed by a member or retirant upon receipt of a more recent nominating form under this subsection.

38.2506 Election of straight life retirement allowance or optional retirement allowance.

Sec. 506. (1) Upon application for retirement under this act, a member or vested former member who meets the requirements of section 501 may elect to receive a retirement allowance as a straight life retirement allowance or as an optional retirement allowance under 1 of the payment options provided in this section. The member or vested former member shall file a written election with the retirement system before the effective date of the retirement allowance. If a member or vested former member fails to

file a written election under this subsection, the member or vested former member is considered to have elected the straight life retirement allowance under section 503. The member or vested former member shall designate in the written election a retirement allowance beneficiary that shall be either the spouse, brother, sister, parent, or child, including an adopted child, of the member or vested former member. The amount of retirement allowance under options A and B are the actuarial equivalent of the amount of the straight life retirement allowance calculated under section 503. The options are as follows:

(a) Option A. The retirement system shall pay an optional retirement allowance to the retirant for life with the provision that upon the retirant's death, payment of the optional retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or vested former member designated in writing and filed with the retirement system at the time of election of the option.

(b) Option B. The retirement system shall pay an optional retirement allowance for life to the retirant with the provision that upon the retirant's death, payment of 1/2 of the optional retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or vested former member designated in writing and filed with the retirement system at the time of election of the option.

(2) Except as otherwise provided in this section, a retirant shall not change the election of a payment option or the designation of a retirement allowance beneficiary under subsection (1) after the retirement allowance effective date. If a retirant who elected a payment option under subsection (1)(a) or (b) dies, the retirement system shall pay the optional retirement allowance to the option A beneficiary or option B beneficiary effective the first day of the month following the retirant's death. If the option A or option B beneficiary designated under this section is the surviving spouse of the deceased retirant, the surviving spouse may elect to receive a retirement allowance as provided in section 508 in lieu of the survivor portion of the optional form of payment elected by the retirant under this section.

(3) If the option A beneficiary or option B beneficiary predeceases the retirant, the retirant's benefit reverts to a straight life retirement allowance and the retirement system shall begin payment of the straight life retirement allowance to the retirant effective the first day of the month following the option A or option B beneficiary's death.

(4) The retirement system shall provide each member or vested former member who applies for retirement a written explanation of the optional forms of payment under this section before the member or vested former member retires.

(5) If a retirant receiving an optional retirement allowance under this section is divorced from the spouse who had been designated the option A or option B beneficiary, the retirement system shall consider the election of the optional form of payment option under this section void if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in the public employee retirement benefit protection act and dated after June 27, 1991 provides that the election of the optional form of payment option under this section is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of an optional form of payment under this section is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a straight life retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement allowance shall revert to a straight life retirement allowance under this subsection

effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(6) A member who continues active employment on or after the date he or she acquires 8 years of credited service or who becomes eligible for a retirement allowance as a vested former member under section 501, whichever occurs first, may file a written election with the retirement system to elect option A as provided in subsection (1)(a). The member or vested former member shall nominate a retirement allowance beneficiary in the written election in the same manner as if the member or vested former member were then retiring from service. If the beneficiary's death or divorce from the member or vested former member occurs before the effective date of the member's or vested former member's retirement, the member's or vested former member's election of option A and nomination of retirement allowance beneficiary is automatically revoked and the member or vested former member may again elect option A and nominate a retirement allowance beneficiary at any time before the effective date of retirement. If a member or vested former member who has made an election and nominated a retirement allowance beneficiary as provided in this subsection dies before the effective date of his or her retirement, then the retirement allowance beneficiary shall receive the retirement allowance that he or she would have been entitled to receive under option A if the member or vested former member had been retired on the date of the member's or vested former member's death. Except as otherwise provided by subsection (7), if a member or vested former member who has made an election under this subsection subsequently retires under this act, his or her election of option A takes effect at the time of retirement. The member or vested former member, before the effective date of retirement, but not after the effective date of retirement, may revoke his or her previous election of option A and elect to receive his or her retirement allowance as a straight life retirement allowance or under option B as provided for in subsection (1). This subsection does not apply on and after the date the settlement agreement in the case of Michigan judges assn v Treasurer of the State of Michigan, case no. 98-DT-72771-CV (Ed Mi), becomes of no further force or effect, is rendered null and void, or is otherwise terminated.

(7) If a member, vested former member, retiring member, or retiring vested former member is married on the effective date of the retirement allowance, an election under this section, other than an election of a payment option under subsection (1) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse. However, this requirement may be waived by the retirement board if the signature of a spouse cannot be obtained because of extenuating circumstances. As used in this subsection, "spouse" means the person to whom the member, vested former member, retiring member, or retiring vested former member is married on the effective date of the retirement allowance.

38.2508 Death of member with 8 or more years of credited service or of vested former member before retirement; payment of retirement allowance.

Sec. 508. (1) If a member who has 8 or more years of credited service dies while in office or if a vested former member dies before retirement, the retirement system shall pay the following retirement allowance as applicable:

(a) If a member with 8 or more years of credited service dies while in office, or if a vested former member dies before retirement, and the member has an election of option A

in force as provided in section 506(6), then the retirement allowance beneficiary shall receive the retirement allowance that he or she would have been entitled to receive under option A if the member or vested former member had been retired on the date of the member's or vested former member's death.

(b) If a member with 8 or more years of credited service dies while in office, or if a vested former member dies before retirement, and the member or vested former member does not have an election of option A in force as provided in section 506(6), and leaves a surviving spouse, the spouse shall receive a retirement allowance computed in the same manner as if the member had retired effective the day before the date of his or her death, elected option A, and nominated the spouse as retirement allowance beneficiary.

(2) If the deceased vested former member had met the service requirements of section 501(1)(d), the surviving spouse may elect to receive a permanently reduced retirement allowance equal to the amount the deceased vested former member would have received as reduced by section 501(1)(d).

(3) If a retirant dies, the retirement system shall pay the following retirement allowance as applicable:

(a) If the retirant elected a straight life retirement allowance under section 506, the surviving spouse shall receive 1/2 the amount of the retirement allowance computed under section 503, based upon the deceased member's final compensation and credited service.

(b) If the retirant elected an optional retirement allowance under section 506, the retirement allowance beneficiary shall receive a retirement allowance as provided under section 506(1)(a) or (b).

(4) If the deceased member, vested former member, or retirant does not leave a surviving spouse or if the surviving spouse dies after the member's, vested former member's, or retirant's death, the retirement system shall pay to each of the member's, vested former member's, or retirant's unmarried children under the age of 19 years a retirement allowance equal to an equal share of the amount of the retirement allowance payable to a surviving spouse under subsection (1)(b) or subsection (3)(a).

(5) The retirement system shall begin payment of a retirement allowance under this section to a surviving beneficiary of a deceased member or retirant under this section on the first day of the month following the month in which the member or retirant dies. The retirement system shall begin payment of a retirement allowance to a surviving beneficiary of a deceased vested former member on the first day of the month following the month in which the vested former member otherwise would have been eligible to begin receiving benefits under section 501. The retirement system shall terminate payment of a retirement allowance to a surviving beneficiary upon the surviving beneficiary's death.

(6) The retirement system shall begin payment of a retirement allowance to a child of a deceased member or retirant under this section on the first day of the month following the month in which the member or retirant dies without a surviving spouse or the first day of the month following the month in which the surviving spouse dies, whichever is later. The retirement system shall begin payment of a retirement allowance to a child of a deceased vested former member under this section on the first day of the month following the month in which the vested former member dies, the first day of the month following the month in which the vested former member could have retired under section 501 if there is no surviving spouse, or the first day of the month following the month in which the surviving spouse of the vested former member dies, whichever is later. The retirement system shall terminate payment of a retirement allowance to a child upon his or her adoption, marriage, becoming 19 years old, or death, whichever occurs first.

However, the retirement system shall continue payment of a retirement allowance to a child who is attending school full-time during the period of full-time school attendance, but in no case beyond the child becoming 25 years old. Upon termination of a child's retirement allowance under this subsection, the retirement system shall divide that portion of the retirement allowance into equal shares and add it to the retirement allowance being paid to the remaining eligible children, if any, effective the first day of the month following termination of payment to the ineligible child.

(7) The retirement system shall not pay a retirement allowance under this section if an optional retirement allowance is being paid or will become payable to an option A beneficiary or option B beneficiary under section 506 or if a refund of accumulated contributions is paid under section 405.

(8) The surviving spouse of a deceased member may elect a refund of accumulated contributions in lieu of a retirement allowance under this section. The surviving spouse of a deceased retirant may elect to be paid a retirement allowance under this section in lieu of the survivor portion of the optional form of payment elected by the retirant under section 506.

38.2604 Intent of act; employer-financed benefits; limitations; use of assets; returning post tax member contributions; beginning date of distributions; termination of retirement system; election to roll-over to retirement plan; interest rate; compliance with section 415 of internal revenue code and regulations; qualified military service.

Sec. 604. (1) This section is enacted pursuant to section 401(a) of the internal revenue code that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) Except as otherwise provided in this section, employer-financed benefits provided by the retirement system under this act shall not exceed the lesser of \$90,000.00 or 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code for retirement occurring at age 62 or older.

(3) The limitation on employer financed benefits provided by the retirement system under subsection (2) applies unless application of subsections (4) and (5) produces a higher limitation, in which case the higher limitation applies.

(4) If a member retires before age 62, the amount of \$90,000.00 in subsection (2) is actuarially reduced to reflect payment before age 62. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subsection. If this subsection produces a limitation of less than \$75,000.00 at age 55, the limitation at age 55 is \$75,000.00 and the limitations for ages under age 55 shall be calculated from a limitation of \$75,000.00 at age 55.

(5) Section 415(d) of the internal revenue code requires the commissioner of internal revenue to adjust the \$90,000.00 limitation in subsection (2) to reflect cost of living increases, beginning with calendar year 1988. This subsection shall be administered using the limitations applicable to each calendar year as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.

(6) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(7) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(8) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(9) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and related internal revenue service regulations applicable to governmental plans.

(10) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(11) For purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(12) Notwithstanding any other provision of this section, the retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code and revenue service regulations under that section that are applicable to governmental plans. If there is a conflict between this section and another section of this or any other act of this state, this section prevails.

(13) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(14) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code. This subsection applies to all qualified military service on or after December 12, 1994.

38.2664 Contributions by employer and participant.

Sec. 714. (1) This section is subject to the vesting requirements of section 715.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's salary.

(3) A qualified participant may periodically elect to contribute up to 3% of his or her salary to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to his or her Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

(5) A qualified participant who makes a written election under section 701a may elect to contribute up to 6% of his or her salary to his or her Tier 2 account. In lieu of employer contributions under subsection (3), the qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection. This subsection applies for a period as determined by the department that equals the time in which a Tier 1 member was not able to make contributions to the Tier 2 plan because of the temporary restraining order issued in the case of Michigan judges assn v Treasurer of the State of Michigan, case no. 98-DT-72771-CV (Ed Mi).

(6) Beginning January 1, 2002, each qualified participant who is a plan 1 member or a plan 2 member, upon taking office and so long as he or she remains in office, shall contribute 2.0% of the qualified participant's compensation to the retirement system. The retirement system shall deposit the contribution under this subsection into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 719.

38.2670 Distributions; exemption from tax; right of setoff to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors.

Sec. 720. (1) Distributions from employer contributions made pursuant to section 714(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 714(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax.

(2) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5108 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 96]**(HB 5113)**

AN ACT to amend 1986 PA 182, entitled “An act to provide for the Michigan department of state police retirement system; to create certain reserves and certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of state police, the department of management and budget, and certain state officers; and to repeal certain acts and parts of acts,” by amending section 43 (MCL 38.1643), as amended by 1991 PA 53.

The People of the State of Michigan enact:

38.1643 Right of member, retirant, or beneficiary to retirement allowance or other benefit.

Sec. 43. The right of a member, retirant, or beneficiary to a retirement allowance, deferred retirement allowance, accumulated contributions, or other benefit under this act is subject to the public employee retirement benefit protection act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5108 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: House Bill No. 5108, referred to in enacting section 1, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 100, Imd. Eff. Mar. 27, 2002.

[No. 97]**(HB 5114)**

AN ACT to amend 1957 PA 261, entitled “An act for the creation, maintenance, and administration of a legislative members’ and presiding officers’ retirement system within the legislature; to provide retirement allowances to the participants of the retirement system, and survivors’ allowances and other benefits to their beneficiaries upon death; to exempt those allowances and benefits from certain taxes and legal processes; to authorize and make appropriations for the retirement system; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; and to prescribe penalties and provide remedies,” by amending the title and sections 8a, 9, 13a, 14, 20, 22a, 22c, 23, 23d, 26, 30, 57, 59a, 61, 62, 63, and 80 (MCL 38.1008a, 38.1009, 38.1013a, 38.1014, 38.1020, 38.1022a, 38.1022c, 38.1023, 38.1023d, 38.1026, 38.1030, 38.1057, 38.1059a, 38.1061, 38.1062, 38.1063, and 38.1080), the title as amended and sections 61, 63, and 80 as added by 1996 PA 486, sections 8a and 59a as added by 1995 PA 175, sections 9, 22c, 23, 23d, and 26 as amended by 1998 PA 501, section 13a as amended by 1998 PA 78, sections 14 and 20 as amended by 1981 PA 123, sections 22a and 30 as amended by 1994 PA 359, section 57 as amended by 1995 PA 258, and section 62 as amended by 1998 PA 305.

The People of the State of Michigan enact:

TITLE

An act for the creation, maintenance, and administration of a legislative members' and presiding officers' retirement system within the legislature; to provide retirement allowances to the participants of the retirement system, and survivors' allowances and other benefits to their beneficiaries upon death; to exempt those allowances and benefits from certain taxes and legal processes; to establish certain funds in connection with the retirement system; to authorize and make appropriations for the retirement system; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; and to prescribe penalties and provide remedies.

38.1008a "Eligible retirement plan," "eligible rollover distribution," and "internal revenue code" defined.

Sec. 8a. (1) Beginning January 1, 2002, except as otherwise provided in this subsection, "eligible retirement plan" means an individual retirement account described in section 408(a) of the internal revenue code, an individual retirement annuity described in section 408(b) of the internal revenue code, an annuity plan described in section 403(a) of the internal revenue code, or a qualified trust described in section 401(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code, or an eligible plan under section 457(b) of the internal revenue code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and that agrees to separately account for amounts transferred into the eligible plan under section 457(b) of the internal revenue code from this retirement system, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse on or before December 31, 2001, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(2) Beginning January 1, 2002, "eligible rollover distribution" means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

(a) A distribution made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary.

(b) A distribution for a specified period of 10 years or more.

(c) A distribution to the extent that the distribution is required under section 401(a)(9) of the internal revenue code.

(d) The portion of any distribution that is not includable in federal gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities, except to the extent that the portion of the distribution that is not includable in federal gross income is paid to either of the following:

(i) An individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

(ii) A qualified defined contribution plan as described in section 401(a) or 403(a) of the internal revenue code that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of such distribution which is not so includable.

(3) "Internal revenue code" means the United States internal revenue code of 1986.

38.1009 “Salary” defined.

Sec. 9. (1) “Salary” means the compensation, common to all legislators, exclusive of travel allowance, paid by the state for 1 year of service as a legislator. A member shall contribute to the retirement system based on the percentage applied to that salary.

(2) For purposes of section 23, salary also includes an additional 2% through December 30, 1986, and 4% beginning December 31, 1986, compounded annually and added for each year or portion of a year that expires after the member terminates service and before the member retires, of the member’s greatest salary determined pursuant to subsection (1) received in 1 calendar year. This subsection only applies to a member who first becomes a member on or before January 1, 1995, and whose service terminates on or after December 1, 1978.

(3) For purposes of section 23, for a member who left service before December 1, 1978, salary also includes an additional 2% for each year beginning January 1, 1979 through December 30, 1986 and 4% beginning December 31, 1986, compounded annually and added for each year or portion of a year that expires after the member terminates service and before the member retires, of the member’s greatest salary determined pursuant to subsection (1) received in 1 calendar year.

(4) For purposes of section 23, salary also includes an amount equal to the greatest amount of additional compensation received in 1 calendar year as a result of being in a leadership position, divided by 5, and then multiplied by the number of years or portion of a year, not to exceed 8, in which the member was in a leadership position and received additional compensation. Before a member who first becomes a member on or before January 1, 1995, may have the additional compensation included in salary under this subsection, the member shall pay to the retirement system a sum equal to 9% of the total additional compensation received. Before a member who first becomes a member after January 1, 1995, may have the additional compensation included in salary under this subsection, the member shall pay to the retirement system a sum equal to 7% of the total additional compensation received.

38.1013a “Survivor,” “eligible child,” and “surviving spouse” defined.

Sec. 13a. (1) “Survivor” means the eligible surviving spouse or eligible child or children of a member, deferred vested member, or retiree.

(2) “Eligible child” means an unmarried child of a member, deferred vested member, or retiree who is:

(a) Under 18 years of age.

(b) Over 18 years of age with a mental or physical disability that precludes engaging in any gainful occupation.

(c) Over 18 years of age and regularly attending high school or an accredited institution of higher learning until becoming 25 years of age or no longer regularly attending school, whichever first occurs.

(3) “Surviving spouse” means the person to whom a member, deferred vested member, or retiree is legally married at the time of his or her death.

38.1014 “Refund beneficiary” defined.

Sec. 14. “Refund beneficiary” means the 1 or more persons named by a member, deferred vested member, or retiree in writing and filed in the office of the retirement system to receive any refund of a member, deferred vested member, or retiree’s contributions upon his or her death if a survivor’s retirement allowance is not payable

under this act. In the absence of a valid beneficiary designation, refund payment shall be made to the executor or personal representative of the deceased for the benefit of the estate.

38.1020 Members' retirement fund; creation; purpose; computing retirement reserves for retirement allowances; financing; state's appropriations for current service, accrued service, and retirement allowances; allocation of employer contributions.

Sec. 20. (1) The members' retirement fund is created. The fund shall accumulate reserves for the payment of retirement allowances to retired members and deferred vested members as provided in this act. Upon the basis of mortality and other experience tables, and the prescribed rate of interest, as the board shall adopt, the actuary shall compute annually the amount of retirement reserves for retirement allowances being paid to retirants and covering service rendered and to be rendered by members. It is the intention of this act that the retirement reserves shall be financed by other revenues to the fund and that annual appropriations shall be determined pursuant to subsections (2), (3), and (4).

(2) The state's appropriation for current service shall be an amount that, if paid annually during the future service of members, will be sufficient to provide the reserves at the time of the members' retirement, after allowing for the net contributions to the members' savings fund to be made by the members, for the future service portions of the retirement allowances to which the members might become entitled.

(3) The state's appropriation for members' accrued service shall be an amount that if paid annually over a period of years determined by the board, but not to exceed 50 years, will amortize at the prescribed rate of interest the unfunded reserves for the accrued service portions of the retirement allowances to which the members may become entitled.

(4) The state's appropriation for retirement allowances being paid from the members' retirement fund shall be an amount that if paid annually over a period of years determined by the board, but not to exceed 50 years, will amortize at the prescribed rate of interest the unfunded reserves for the retirement allowances.

(5) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit preservation act, the benefits that are required to be paid from that fund shall be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that shall be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

38.1022a Income fund; creation; purpose; interest, dividends, and other income; expenses.

Sec. 22a. (1) An income fund is created in the retirement system. The retirement system shall credit to the income fund all interest, dividends, and other income from the investment of retirement system assets and all other money for which there is no specific disposition provided in this act.

(2) The retirement board annually shall credit regular interest on the preceding year balances in the members' retirement fund, members' savings fund, survivors' retirement fund, grants and insurance revolving fund, and the health insurance fund. The retirement

board shall charge to the income fund the interest credited to the funds under this subsection.

(3) The retirement system shall pay the expenses for the administration of the retirement system, exclusive of amounts payable as retirement allowances and other benefits provided in this act, from the income fund.

38.1022c Health insurance fund; creation; disposition; disbursement; contributions; payroll deductions; nonrefundable.

Sec. 22c. (1) The health insurance fund is created in the retirement system. The retirement system shall deposit into the health insurance fund the member contributions for health benefits required by this section, subscriber co-payments, payments under section 79, regular interest from the income fund, and state appropriations. The retirement system shall disburse from the health insurance fund the premiums or portion of the premiums for dental, hospital, and medical coverage insurance as required by sections 50b and 79.

(2) Except as otherwise provided in this subsection, a member shall make contributions to the health insurance fund of 1% of each payment of salary received that is attributable to service performed on and after January 1, 1995. Beginning on the effective date of section 36a, a member who first became a member of Tier 1 on or before January 1, 1995 shall make contributions to the health insurance fund of 9% of each payment of salary received by the member for service as a member. Beginning on the effective date of section 36a, a member who first became a member of Tier 1 after January 1, 1995 shall make contributions to the health insurance fund of 7% of each payment of salary received by the member for service as a member. The increased contributions required under this subsection by the amendatory act that added section 36a will continue unless suspended by the board under section 36a. The contributions shall be made by payroll deductions and each member is considered to consent to the deductions as a condition of membership in the retirement system.

(3) Except as otherwise provided by this act, membership contributions to the health insurance fund are not refundable.

38.1023 Requirements for entitlement to retirement allowance; right to allowance; amount; recalculation of retirement allowance; election to defer receipt of retirement allowance; computation of retirement allowance; longevity allowance.

Sec. 23. (1) A member or deferred vested member who meets the following requirements shall be entitled to a retirement allowance:

(a) The member or deferred vested member qualifies under 1 of the following:

(i) Has not less than 8 years of service.

(ii) Has not less than 6 years of service, and has been elected, qualified, and seated not less than 4 times for full or partial terms if a member of the house or not less than 2 times if a member of the senate elected after November 7, 1966, or has not less than 6 years of service and has been elected, qualified, and seated not less than 2 times for full or partial terms as a member of the house and not less than 1 time as a member of the senate elected after November 7, 1966.

(iii) Effective January 1, 1987, has not less than 5 years of service and has been elected, qualified, and seated for a full or partial term not less than 3 times if a member of the house or not less than 2 times if a member of the senate, or not less than 1 time as a member of the house and not less than 1 time as a member of the senate.

(b) The member or deferred vested member has attained 55 years of age.

(c) The member or deferred vested member has filed with the board a written application for a retirement allowance that states the years of service, the highest salary received during the member's or deferred vested member's service before application, and the date the member or deferred vested member desires to be retired, which date shall be not more than 90 days after the execution and filing of the application.

(2) A member shall not be entitled to receive a retirement allowance provided for in this section or section 23d while serving as a legislator or lieutenant governor. Each person receiving benefits under this act consents and agrees as a condition of receiving the benefits that benefits of any nature shall not be paid while the person is a legislator or lieutenant governor.

(3) A deferred vested member who left service after December 31, 1974, and before January 1, 1979, and who becomes a retirant shall be entitled to an annual retirement allowance of 30% of the salary stated in the application for the first 8 years of service plus 3.75% for each of the next 8 years of service. A fraction of a year of service in excess of 8 years shall be prorated. If the retirant has less than 8 years of service but qualifies by the election method, the retirement allowance shall be that proportion of 30% that his or her years of service and fraction of a year of service bears to 8 years. Years of service listed in the application need not be consecutive but shall have been rendered before payment of the retirement allowance. Except as provided in section 23c, a retirement allowance shall not exceed 60% of the salary stated in the application.

(4) A member who retired after December 31, 1978 and before January 1, 1987, or a deferred vested member who left service after December 31, 1978 and before January 1, 1987, and becomes a retirant, shall be entitled to an annual retirement allowance of 32% of the salary stated in his or her application for the first 8 years of service plus 4% for each of the next 8 years of service. A fraction of a year of service in excess of 8 years shall be prorated. If the member or deferred vested member has less than 8 years of service but qualifies by the election method, the retirement allowance shall be that proportion of 32% that his or her years of service and fraction of a year of service bears to 8 years. Years of service listed in the application need not be consecutive, but shall have been rendered before payment of the retirement allowance. Except as provided in section 23c, a retirement allowance shall not exceed 64% of the salary stated in the application.

(5) A member who first becomes a member on or before January 1, 1995 and who retires after December 31, 1986, or a deferred vested member who first becomes a member on or before January 1, 1995, who leaves service after December 31, 1986, and who becomes a retirant, shall be entitled to an annual retirement allowance of 20% of the salary stated in his or her application for the first 5 years of service plus 4% for each of the next 11 years of service. A fraction of a year of service in excess of 5 years shall be prorated. Years of service listed in the application need not be consecutive, but shall have been rendered before payment of the retirement allowance. Except as provided in this subsection and section 23c, a retirement allowance shall not exceed 64% of the salary stated in the application. Effective January 1, 1987, however, a member who first becomes a member on or before January 1, 1995 and who has 16 or more years of service shall also be entitled to a longevity allowance of 1.0% of the member's salary for each year of service beyond 16 years but, except as otherwise provided in this subsection, not to exceed 20 years. Except as provided in this subsection and section 23c, the retirement allowance of a member entitled to a longevity allowance under this subsection shall not exceed 68% of the salary stated in the application. Beginning January 1, 1989, a member who first becomes a member on or before January 1, 1995, who has 20 or more years of service, and who meets the age and service requirements or service requirements to be eligible to

receive a retirement allowance under this act shall be entitled to a longevity allowance of 1.0% of the member's salary for each year of service beyond 20 years.

(6) A member who first becomes a member on or after January 2, 1995 and who becomes a retirant under this act is entitled to an annual retirement allowance equal to the product of the following:

- (a) The salary stated in his or her application.
- (b) Years and fraction of a year of service.
- (c) Three percent.

(7) A retirant who elects to purchase military service credit pursuant to section 11(2) shall have his or her retirement allowance recalculated to include the military service credit purchased pursuant to that section. The first payment of the recalculated retirement allowance shall be made effective with the first check after the recalculation is made.

(8) The retirement allowance of a retirant who, on January 1, 1987, satisfied the conditions required by section 9(3) shall have his or her retirement allowance recalculated to reflect the increase in salary for those years permitted by section 9(3) before the member became a retirant.

(9) Within 30 days after becoming 55 years of age, a deferred vested member may elect to defer receipt of the retirement allowance to which the member is entitled under this act to a date certain, not to exceed 70-1/2 years of age. Except as otherwise provided in this subsection, at the date the member designates to begin receipt of his or her retirement allowance, the member's retirement allowance shall be actuarially recomputed to reflect the member's age and life expectancy at initial receipt of the deferred retirement allowance. Upon request of the deferred vested member who elects to begin receiving his or her retirement allowance, the retirement board may pay to the member a lump sum payment of an amount equal to the sum of the retirement allowance that was deferred pursuant to this subsection. The retirement board shall not actuarially recompute the member's retirement allowance upon payment of a lump sum under this subsection. If a deferred vested member has elected to defer receipt of his or her retirement allowance under section 23(9)(a) and subsequently dies before retirement, 100% of his or her deferred benefit shall be paid in accordance with a beneficiary designation that the member shall have filed with the board.

(10) Notwithstanding subsection (1), a member or deferred vested member may retire with a retirement allowance computed according to the applicable provisions of this section if all of the following apply:

(a) The member or deferred vested member files a written application with the retirement board stating a date, not less than 30 nor more than 90 days after the execution and filing of the application, on which the member or deferred vested member desires to retire.

(b) On the last day of the month immediately preceding the retirement allowance effective date stated in the application, the member's or deferred vested member's combined age and length of credited service is equal to or greater than 70 years and the member or deferred vested member is 50 years of age or older.

(11) A member who retires before January 1, 1987 or a deferred vested member who leaves service before January 1, 1987 and becomes a retirant shall, in addition to the retirement allowance calculated under subsection (3) or (4), be entitled to a longevity allowance if the retirant or deferred vested member has more than 16 years of service. The longevity allowance is 1.0% of the former member's salary stated in the application for each year of service beyond 16 years but, except as otherwise provided in this

subsection, not to exceed 20. A member who retires before January 1, 1987 or a deferred vested member who leaves service before January 1, 1987 and becomes a retirant shall, in addition to the retirement allowance calculated under subsection (3) or (4), be entitled to a longevity allowance of 1.0% of the former member's salary stated in the application for each year of service beyond 20 years that was served after the member met the age and service requirements or service requirements to be eligible to receive a retirement allowance under this act. The retirement allowance of a retirant who satisfies the conditions under this subsection shall have his or her retirement allowance recalculated to reflect the longevity allowance for those years permitted by this subsection effective January 1, 1987 or the date of retirement, whichever is later. The application of the longevity allowance to the retirant's retirement allowance under this subsection shall be applied before the provisions of section 23c are applied to that retirement allowance. Except as provided in this subsection and section 23c, a retirement allowance shall not exceed 68% of the salary stated in the application.

38.1023d Disabled member; retirement allowance; annual examination.

Sec. 23d. (1) A member who meets the service requirements of section 23(1)(a) but not the age requirements of section 23(1)(b), a member who does not meet the requirements of section 23(10)(b), or a deferred vested member may receive a retirement allowance if the board has received a certification by not less than 2 licensed physicians appointed by the board stating that the member or deferred vested member is disabled from engaging in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, or can be expected to last for a continuous period of 12 months or more.

(2) A member or deferred vested member who is determined eligible to receive a retirement allowance under subsection (1) shall receive the retirement allowance applicable to that member or deferred vested member provided for in section 23(4), (5), or (6).

(3) A member who is currently receiving compensation as a legislator or lieutenant governor shall not receive a retirement allowance under this section.

(4) The board may provide for the examination by 1 or more licensed physicians designated by the board at least once a year of a person who is receiving a retirement allowance under this section during the continuance of the disability. The board shall not provide for an examination after the member attains 55 years of age.

38.1026 Retirement system; board of trustees; membership; eligibility and terms; oath of office.

Sec. 26. (1) Beginning January 1, 1999, the retirement system shall be administered by a board of trustees, consisting of 11 persons as follows:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed in the same manner as members of standing committees of the senate are appointed.

(c) Two retirants appointed by the speaker of the house of representatives and 2 retirants appointed by the senate majority leader.

(d) One deferred vested member appointed by the speaker of the house of representatives and 1 deferred vested member appointed by the senate majority leader. If a deferred vested member serving on the board becomes a retirant during his or her term of office, he or she shall be entitled to serve the remainder of his or her term of office.

(e) One participant of Tier 2 who was a former member of Tier 1 appointed in 1999 by the senate majority leader and beginning in 2001 appointed alternately by the speaker of the house of representatives and the senate majority leader. However, if there is no participant of Tier 2 who meets the former member requirement of this subdivision, then 1 additional deferred vested member appointed in the manner prescribed in this subdivision.

(2) Only members of the retirement system are eligible to serve as members on the board of trustees except for the retirants and Tier 2 participant authorized under subsection (1). Board members appointed under subsection (1)(a) and (b) are appointed for 2-year terms. Board members appointed under subsection (1)(c) are appointed for 4-year terms. Board members appointed for terms beginning in 1999 under subsection (1)(d) are appointed for 2-year terms. Board members appointed for terms beginning in 2001 under subsection (1)(d) are appointed for 4-year terms. A board member appointed for a term beginning in 1999 under subsection (1)(e) is appointed for a 2-year term. Beginning in 2001, a board member appointed under subsection (1)(e) is appointed for a 4-year term. For terms beginning on or after January 1, 1999, board members appointed under subsection (1)(c), (d), or (e) shall not serve as a board member under those subdivisions for a combined total of more than 8 years.

(3) Each person, whether appointed as a trustee or becoming a trustee ex officio, shall take an oath of office before the secretary of state, clerk of the house, or secretary of the senate, and, upon taking the oath, qualifies as a trustee. The oath of office shall be as prescribed under section 1 of article XI of the state constitution of 1963.

38.1030 Board of trustees; quorum, proxy.

Sec. 30. Each trustee is entitled to 1 vote on any action of the board and at least 6 concurring votes are necessary for any action by the board at a meeting. A decision or action shall not become effective, unless presented and so approved by the action of the board. A trustee shall not vote by proxy, but shall be present at the meeting in order to have his or her vote recorded.

38.1057 Retirement allowances, benefits, and credits not subject to taxation and public employee retirement benefit protection act.

Sec. 57. (1) All retirement allowances and other benefits payable under this act and all accumulated credits of members, deferred vested members, and retirants in this retirement system are not subject to taxation by this state or any political subdivisions of this state.

(2) All retirement allowances and other benefits payable under this act and all accumulated contributions of members, deferred vested members, and retirants in this retirement system are subject to the public employee retirement benefit protection act.

38.1059a Retirement system as qualified pension plan; administrative requirements and benefit limitations; qualified military service.

Sec. 59a. (1) This section is enacted pursuant to section 401(a) of the internal revenue code that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The board of trustees shall administer the retirement system to fulfill this intent.

(2) Except as otherwise provided in this section, employer-financed benefits provided by the retirement system under this act shall not exceed the lesser of \$90,000.00 or 100% of

the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code for retirement occurring at age 62 or older.

(3) The limitation on employer financed benefits provided by the retirement system under subsection (2) applies unless application of subsections (4) and (5) produces a higher limitation, in which case the higher limitation applies.

(4) If a member retires before age 62, the amount of \$90,000.00 in subsection (2) is actuarially reduced to reflect payment before age 62. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subsection. If this subsection produces a limitation of less than \$75,000.00 at age 55, the limitation at age 55 is \$75,000.00 and the limitations for ages under age 55 shall be calculated from a limitation of \$75,000.00 at age 55.

(5) Section 415(d) of the internal revenue code requires the commissioner of internal revenue to adjust the \$90,000.00 limitation in subsection (2) to reflect cost of living increases, beginning with calendar year 1988. This subsection shall be administered using the limitations applicable to each calendar year as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.

(6) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(7) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(8) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(9) If the retirement system is terminated, the interest of the members, deferred vested members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and related internal revenue service regulations applicable to governmental plans.

(10) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(11) For purposes of determining actuarial equivalent retirement allowances under this act, the actuarially assumed interest rate shall be 7% with utilization of the 1971 group annuity and mortality table.

(12) Notwithstanding any other provision of this section, the retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code and revenue service regulations under this section that are applicable to governmental

plans. If there is a conflict between this section and another section of this or any other act of this state, this section prevails.

(13) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(14) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code. This subsection applies to all qualified military service on or after December 12, 1994.

38.1061 Election to terminate membership in Tier 1 and become qualified participant in Tier 2; election by deferred vested member or former nonvested member; election as irrevocable; rights and duties; method of election; signature of spouse; waiver; election subject to eligible domestic relations order; notice of disqualification for tax purposes.

Sec. 61. (1) The retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on April 30, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight May 31, 1998.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m., June 1, 1998.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under this act effective 12 midnight May 31, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 79.

(2) If an individual who was a deferred vested member on March 30, 1997, or an individual who was a former nonvested member on March 30, 1997 becomes a legislator or lieutenant governor and is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a deferred vested member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a deferred vested member or a former nonvested member during the period beginning on the date of the individual's eligibility for membership and ending upon the expiration of 60 days after the date of that eligibility. A deferred vested member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A deferred vested member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of

Tier 1. A deferred vested member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m. on the first day of the payroll period immediately following the date of the election.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election. This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 79.

(3) After consultation with the retirement system's actuary, the retirement board shall determine the method by which a member, deferred vested member, or former nonvested member shall make a written election under this section. If the member, deferred vested member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(4) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(5) If the board receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

38.1062 Election to terminate membership in retirement system under § 38.1061(1) and (2); transfer of lump sum amount; recomputation; calculation; basis; utilization of actuarial valuation report; notification of disqualification for tax purposes.

Sec. 62. (1) For a member who elects to terminate membership in Tier 1 under section 61(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before September 30, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions and applicable interest, if any, from the member's savings fund as of 12 midnight May 31, 1998.

(b) For a member who is vested under section 23(1)(a) as of 12 midnight on May 31, 1998, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the member's retirement fund. Except as provided in subsection (5), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final salary as of 12 midnight on May 31, 1998. The actuarial present value shall be computed as of 12 midnight May 31, 1998 and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight May 31, 1998. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight May 31, 1998:

(A) Age 55.

(B) The member's age, if the member is at least 50 years old and the sum of his or her age and estimated credited service equals or exceeds 70.

(c) Interest on any amounts determined in subdivisions (a) and (b), from June 1, 1998 to the date of the transfer, based upon 8% annual interest, compounded annually.

(2) For each member who elects to terminate membership in the retirement system under section 61(1), the retirement system shall recompute the amount transferred under subsection (1) not later than November 30, 1998 based upon the member's actual credited service and actual final salary as of 12 midnight May 31, 1998. If the recomputed amount differs from the amount transferred under subsection (1) by \$10.00 or more, not later than December 15, 1998, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the members' retirement fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight May 31, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the members' retirement fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a deferred vested member who elects to terminate membership in this retirement system under section 61(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The deferred vested member's accumulated contributions and applicable interest, if any, from the members' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) The excess, if any, of the actuarial present value of the deferred vested member's accumulated benefit obligation, over the amount specified in subdivision (a), from the members' retirement fund. Except as provided in subsection (5), for the purposes of this subsection, the present value of the deferred vested member's accumulated benefit obligation is based upon the deferred vested member's estimated credited service and estimated final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent annual actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the last day of the payroll period that includes the date of the election. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the last day of the payroll period that includes the date of the election:

(A) Age 55.

(B) The deferred member's age, if the deferred member is at least 50 years old and the sum of his or her age and estimated credited service equals or exceeds 70.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(4) For each deferred vested member who elects to terminate membership in Tier 1 under section 61(2), the retirement system shall recompute the amount transferred under subsection (3) not later than the expiration of 90 days after the transfer occurs under subsection (3) based upon the deferred vested member's actual credited service and actual final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. If the recomputed amount differs from the amount transferred under subsection (3) by \$10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the members' retirement fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the members' retirement fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

(5) For the purposes of subsections (1) to (4), the calculation of estimated and actual present value of the member's or deferred vested member's accumulated benefit obligation shall be based upon methods adopted by the retirement system's actuary in consultation with the retirement board. The retirement system shall utilize the same actuarial valuation report used to calculate the amount transferred under subsection (1) or (3) when making the recomputation required under subsection (2) or (4). Estimated and actual final salary shall be determined as provided in section 9 as of 12 midnight on the date the member or deferred member ceases to be a member of Tier 1 under section 61.

(6) For a former nonvested member who elects to terminate membership in Tier 1 under section 61(2) and who has accumulated contributions standing to his or her credit in the members' savings fund, the retirement system shall direct the state treasurer to transfer a lump sum amount from the members' savings fund to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The former nonvested member's accumulated contributions and applicable interest, if any, from the members' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Interest on any amounts determined in subdivision (a), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(7) If the board receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

38.1063 Calculation of accrued cost savings; submission of total amount in executive budget to legislature; appropriation; expenditure.

Sec. 63. After consulting the retirement system's actuary, the board shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of the amendatory act that added this section over the costs that would have been incurred by this state to fund this retirement system had the amendatory act that added this section not been implemented. The total amount of the cost savings shall be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year to the health insurance fund created by section 22c. Any amount appropriated pursuant to this section and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 50b is 100% funded.

38.1080 Distributions; exemption from tax; subject to public employee retirement benefit protection act; right of setoff to recover overpayment and satisfy claims; correction of errors in records and actions.

Sec. 80. (1) Distributions from employer contributions made pursuant to section 74(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 74(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax and are subject to the public employee retirement benefit protection act.

(2) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5108 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: House Bill No. 5108, referred to in enacting section 1, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 100, Imd. Eff. Mar. 27, 2002.

[No. 98]

(HB 5111)

AN ACT to amend 1937 PA 345, entitled "An act to provide for the establishment, maintenance, and administration of a system of pensions and retirements for the benefit of the personnel of fire and police departments employed by cities, villages, or municipalities having full paid members in the departments, and for the spouses and children of the

members; to provide for the creation of a board of trustees to manage and operate the system; to authorize appropriations and deductions from salaries; to prescribe penalties and provide remedies; and to repeal all acts and parts of acts inconsistent therewith,” by amending sections 6 and 9 (MCL 38.556 and 38.559), as amended by 1991 PA 54.

The People of the State of Michigan enact:

38.556 Age and service retirement benefits.

Sec. 6. (1) Age and service retirement benefits payable under this act are as follows:

(a) A member who is 55 years of age or older and who has 25 or more years of service as a police officer or fire fighter in the employ of the municipality affected by this act may retire from service upon written application to the retirement board stating a date, not less than 30 days or more than 90 days after the execution and filing of the application, on which the member desires to be retired. The retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement. Upon the approval of the legislative body or the electors of a municipality under this act, a member under 50 years of age who has 25 or more years of service, or without the necessity for approval, a member 50 years of age or more who has 25 or more years of service, may leave service and receive the full retirement benefits payable throughout the member's life as provided in subdivision (e).

(b) A member who is 60 years of age or older shall be retired by the retirement board upon the written application of the legislative body, or board or official provided in the charter of the municipality as head of the department in which the member is employed. Upon retirement, the retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement.

(c) A member who is 65 years of age shall be retired by the retirement board on the first day of the month following attainment of 65 years of age.

(d) A member who has 10 or more years of service shall have vested retirement benefits that are not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in subdivision (a) for any reason except the member's retirement or death, the member is entitled to a pension that shall begin the first day of the calendar month immediately after the month in which the member's written application for the pension is filed with the retirement board that is on or after the date the member would have been eligible to retire had the member continued in employment. The retirement board shall grant the member the benefits to which the member is entitled under this act, unless the member resumes service. If the member resumes service, the member's pension shall be further deferred with service years of credit until the member actually retires.

(e) Upon retirement from service as provided in this subsection, a member shall receive a regular retirement pension payable throughout the member's life of 2% of the member's average final compensation multiplied by the first 25 years of service credited to the member, plus 1% of the member's average final compensation multiplied by the number of years, and fraction of a year, of service rendered by the member in excess of 25 years. A municipality under this act, upon approval of the legislative body or the electors of the municipality, may increase the percentage of the payment from 2% up to a maximum of 2.5%. If an increase is approved, the increase shall not be reduced for

members under the system at the time of the increase. The legislative body may also increase the percentage of employee contributions. If a retired member dies before the total of regular pension payments received by the member equals the total of the member's contributions made to the retirement system, the difference between the member's total contributions and the total of the member's regular retirement pension payments received shall be paid in a single sum to the person or persons the member nominates by written designation duly executed and filed with the retirement board. If there is not a person or persons surviving the retired member, the difference, if any, shall be paid to the retired member's legal representative or estate.

(f) As used in this section, "average final compensation" means the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within the member's 10 years of service immediately preceding the member's retirement or leaving service. However, if so provided in a collective bargaining agreement entered into between a municipality under this act and the appropriate recognized bargaining agent, average final compensation may mean the average of the 3 years of highest annual compensation received by a member during the member's 10 years of service immediately preceding the member's retirement or leaving service. If the member has less than 5 years of service, average final compensation means the annual average compensation received by the member during his or her total years of service.

(g) A member shall be given service credit for time spent in the military, naval, marine, or other armed service of the United States government during time of war, or other national emergency recognized by the board, if the member was employed by the municipality at the time of entry into the armed service, and is or was reemployed by the municipality as a police officer or fire fighter within 6 months after the date of termination of his or her required enlistment or assignment in the armed service. A municipality by a 3/5 vote of its governing body or by a majority vote of the qualified electors may provide service credit for not more than 6 years of active military service to the United States government to a member who is employed subsequent to this military service upon payment to the retirement system of 5% of the member's full-time or equated full-time compensation for the fiscal year in which payment is made multiplied by the years of service that the member elects to purchase up to the maximum. Service is not creditable if it is or would be creditable under any other federal, state, or local publicly supported retirement system. However, this restriction does not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve. A member shall be given service credit for the time the member is absent from active service without full pay on account of sickness or injury. If the absence from active service is due to nonservice connected sickness or injury, not more than 60 days of the absence shall be credited as service in any 1 calendar year, as determined by the retirement board.

(h) Before the effective date of the member's retirement as provided in this subsection, but not after the effective date of the member's retirement, a member may elect to receive his or her benefit in a pension payable throughout the member's life, called a regular retirement pension, or the member may elect to receive the actuarial equivalent, computed as of the effective date of retirement, of the member's regular retirement pension in a reduced retirement pension payable throughout the member's life, and nominate a survivor beneficiary, under an option provided in this subdivision. Upon the death of a retiree who retires on or after July 1, 1975, and who is receiving a regular retirement pension, his or her spouse, if living, shall receive a pension equal to 60% of the regular retirement pension the deceased retiree was receiving. Benefits shall not be paid under this subdivision on account of the death of a retiree if the member elected to

receive his or her pension under an option provided in this subdivision. As used in this subsection, “spouse” means the person to whom the retirant was legally married on both the effective date of retirement and the date of death. Except as otherwise provided in this act, if a member fails to elect an option before the effective date of retirement, then the pension shall be paid as a regular retirement pension. A member may elect 1 of the following options:

(i) Option I. Upon the death of a retired member, his or her reduced retirement pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retired member’s life, that the member nominated by written designation executed and filed with the retirement board before the effective date of the member’s retirement.

(ii) Option II. Upon the death of a retired member, 1/2 of his or her reduced retirement pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retired member’s life, that the member nominated by written designation executed and filed with the retirement board before the effective date of the member’s retirement.

(i) If a member continues in service on or after the date of acquiring 20 years of service credit, does not have an option I election provided for in subdivision (j) in force, and dies while in service of the municipality before the effective date of the member’s retirement, leaving a surviving spouse, the spouse shall receive a pension computed in the same manner as if the member had retired effective the day preceding the date of the member’s death, elected option I provided for in subdivision (h), and nominated the spouse as survivor beneficiary. Upon the death of the spouse the pension shall terminate. A pension shall not be paid under this subdivision on account of the death of a member if benefits are paid under subsection (2) on account of the member’s death.

(j) A member who continues in service on or after the date of acquiring 25 years of service credit may, at any time before the effective date of the member’s retirement, by written declaration executed and filed with the board in the manner and form prescribed by the board, elect option I provided for in subdivision (h) and nominate a survivor beneficiary whom the board finds to be dependent upon the member for at least 50% of the beneficiary’s support. If a member who has an option I election provided for in this subdivision in force dies while in service before the effective date of the member’s retirement, the member’s survivor beneficiary shall immediately receive the same pension that the survivor beneficiary would have been entitled to receive under option I if the member had retired pursuant to this act effective the day preceding the date of the member’s death, notwithstanding that the member may not have attained 55 years of age. If a member who has an option I election provided for in this subdivision in force subsequently retires pursuant to this act, the member, within 90 days immediately preceding the effective date of the member’s retirement, but not after the effective date of the member’s retirement, may elect an option provided for in subdivision (h). The option election is effective as of the effective date of the member’s retirement. A pension shall not be paid under this subdivision on account of the death of a member if benefits are paid under subsection (2) on account of the member’s death.

(k) If a retirant receiving a reduced retirement pension under subdivision (h)(i) or (ii) is divorced from the spouse who had been named the retirant’s survivor beneficiary under subdivision (h)(i) or (ii), the election of a reduced retirement pension payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in section 9 and dated after the effective date of the amendatory act that added this subdivision provides that the election of a reduced retirement pension payment option

under subdivision (h)(i) or (ii) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement pension payment option under subdivision (h)(i) or (ii) is considered void by the retirement system under this subsection, the retirant's retirement pension shall revert to a regular retirement pension, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement pension shall revert to a regular retirement pension under this subdivision effective the first day of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subdivision does not supersede a judgment of divorce or award or order of the court in effect on the effective date of the amendatory act that added this subdivision. This subdivision does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(2) Disability and service connected death benefits payable under this act are as follows:

(a) To a surviving spouse, a duty death pension of the same amount each week as that which has been paid the surviving spouse under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable on the termination of the payments to the surviving spouse by a municipality under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue for the surviving spouse's life or until his or her remarriage.

(b) If death results to a member in the line of duty, and the member leaves surviving children, the children shall be paid a pension of the same amount as that which has been paid to them as a weekly benefit under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable upon termination of the payments under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue to each surviving child until he or she attains 18 years of age, or until his or her marriage or death before attaining 18 years of age.

(c) If death results to a member in the line of duty and the member leaves other surviving dependents, the dependents shall receive a pension of the same amount as that which has been paid to them as a weekly benefit under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable upon termination of the payments under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue until the time the retirement board determines that the need for a pension no longer exists.

(d) Upon the application of a member or the member's department head, a member who becomes totally incapacitated for duty by reason of a personal injury or disease occurring as the natural and proximate result of causes arising out of and in the course of the member's employment by the municipality shall be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality; that the incapacity is likely to be permanent; and that the member should be retired. Upon retirement for disability as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension of 50% of the member's average final compensation, which

shall be determined according to subsection (1)(f), and shall be payable until the member becomes 55 years of age. Upon becoming 55 years of age, the disabled member shall receive a disability retirement pension computed according to subsection (1)(e). In computing the disability retirement pension, the member shall be given service credit for the period of receipt of a disability retirement pension before attainment of 55 years of age. If a member retired after attaining 55 years of age on account of disability, as provided in this subdivision, the member shall receive a disability retirement pension computed according to subsection (1)(e), notwithstanding that the member may not have 25 years of service credit. The disability retirement pension provided for in this subdivision is subject to subdivisions (f) and (g).

(e) Upon the application of a member or the member's department head, a member in service who has 5 or more years of service credit and who becomes totally and permanently incapacitated for duty by reason of a personal injury or disease occurring as the result of causes arising outside the course of the member's employment by the municipality may be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality, that the incapacity is likely to be permanent, and that the member should be retired. Upon retirement for disability, as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension until the member becomes 55 years of age, recovers, or dies, whichever occurs first, of 1.5% of the member's average final compensation multiplied by the number of years of service credited to the member. Upon becoming 55 years of age, the member's disability retirement pension shall be increased to 2% of the member's average final compensation multiplied by the number of years of service credited to the member at the time of his or her retirement. Upon retirement for disability as provided in this subdivision, a member who is 55 years of age or older shall receive a disability retirement pension computed according to subsection (1)(e). This subdivision is subject to subdivisions (f) and (g).

(f) At least once each year during the first 5 years after the retirement of a member with a disability retirement pension and at least once in every 3-year period after disability retirement, the retirement board may, and upon the retired member's application shall, require a retired member who has not attained 55 years of age to undergo a medical examination. The medical examination shall be given by or under the direction of a physician, designated by the retirement board, at the place of residence of the retired member or other place mutually agreed upon. If a retired member who has not attained 55 years of age refuses to submit to the medical examination in the period, the member's disability retirement pension may be discontinued by the retirement board. If the member's refusal continues for 1 year, all the member's rights to his or her disability retirement pension may be revoked by the retirement board. If upon a medical examination of the retired member the physician reports to the retirement board that the retired member is physically capable of resuming employment in the classification held by the member at the time of retirement, the member shall be restored to active service in the employ of the municipality and payment of the disability retirement pension shall cease if the report of the physician is concurred in by the retirement board. A retired member restored to active service shall again become a member of the retirement system from the date of return to service. The member shall contribute to the retirement system

after restoration to active service in the same manner as before the member's disability retirement. Service credited to the member at the time of disability retirement shall be restored to full effect. The member shall be given service credit for the period the member was receiving a duty disability retirement pension provided for in subdivision (d), but shall not be given service credit for the period the member was receiving a nonduty disability retirement pension provided for in subdivision (e). Amounts paid under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to a retired member shall be offset against and payable in place of benefits provided under this act. If the benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are less than the benefits payable under this act, the amount to be paid out of the funds of the retirement system shall be the difference between the benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and the benefits provided in this act. Upon the termination of benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the benefits shall be paid pursuant to this act.

(g) Within 60 days before a member becomes 55 years of age, or before retirement from service if retirement occurs after the member becomes 55 years of age, a disabled member who is retired as provided in subdivision (d) or (e) may elect to continue to receive a disability retirement pension as a benefit terminating at death, to be known as a regular disability pension, or may elect to receive the actuarial equivalent, at that time, of a regular disability pension in a reduced disability pension payable throughout life pursuant to an option provided in subsection (1)(h). If a disabled member fails to elect an option, as provided in this subdivision, before becoming 55 years of age or before retirement, the member's retirement pension shall be paid to the member as a regular disability pension terminating at death. If a disabled member who has not elected an option provided in subsection (1)(h) dies before the total of the member's regular disability pension payments received equals or exceeds the total of the member's contributions made to the retirement system, the remainder, if any, shall be paid in a single sum to the person or persons nominated by the member by written designation duly executed and filed with the board. If there is not a designated person or persons surviving, then the remainder, if any, shall be paid to the retired member's legal representative or estate.

38.559 Contributions of member; rate; deduction from salary; appropriations to maintain actuarially determined reserves; payment of deductions and appropriations into retirement system; prorating pensions and other benefits; expenses; pensions as obligations of retirement system.

Sec. 9. (1) The contributions of a member to the retirement system shall be 5% of the salary paid to the member by the municipality. The officer responsible for making up the payroll shall cause the contributions provided for in this subsection to be deducted from the salary of each member on each payroll for each payroll period so long as he or she remains an active member in the employ of the municipality. The amounts deducted shall be paid into the funds of the retirement system. The members' contributions provided for in this act shall be made notwithstanding that the minimum salary provided for by law is changed by the members' contributions. Every member shall be considered to consent and to agree to the deductions made and provided for in this act and shall receipt for his or her full salary and payment of his or her salary less the deduction, which is a full and complete discharge and acquittance of all claims and demands for the services rendered by the member during the period covered by the payment, except as to benefits provided by this retirement system.

(2) For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, the amount required by taxation to meet the appropriations to be made by municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963.

(3) If, at the beginning or during any fiscal year, it has been satisfactorily determined by the retirement board that the accumulated funds of the retirement system plus the municipality's contribution of 10% of the aggregate pay received during that fiscal year by members of the retirement system plus members' contributions of 5% of payroll, are insufficient to pay all pensions and other benefits due and payable in that year out of funds of the retirement system, then all pensions and other benefits payable shall be prorated for the remainder of the fiscal year by the retirement board.

(4) Any clerical, legal, actuarial, or medical expenses required by the retirement board, or any other necessary expense for the operation of the retirement system, shall be provided for by the municipality or shall be paid from the investment income of the retirement system, as determined by the governing body of the municipality. The retirement board shall submit expenses periodically to the governing body of the municipality. If use of investment income to pay these expenses causes an actuarial insufficiency in the assets of the retirement system used to pay pensions, the insufficiency shall be made up by the municipality.

(5) All pensions allowed and payable to retired members and beneficiaries under this act shall become obligations of and be payable from the funds of the retirement system.

(6) The right of a person to a pension, to the return of member contributions, to any optional benefits, or any other right accrued or accruing to a member or beneficiary under this act and the money belonging to the retirement system is subject to the public employee retirement benefit protection act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5108 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 99]**(HB 5109)**

AN ACT to amend 1943 PA 240, entitled “An act to provide for a state employees’ retirement system; to create a state employees’ retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; and to prescribe penalties and provide remedies,” by amending the title and sections 31, 40, and 69 (MCL 38.31, 38.40, and 38.69), the title as amended and section 69 as added by 1996 PA 487, section 31 as amended by 1998 PA 205, and section 40 as amended by 1991 PA 48, and by adding section 68a.

The People of the State of Michigan enact:

TITLE

An act to provide for a state employees’ retirement system; to create a state employees’ retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; to prescribe and make appropriations for the retirement system; and to prescribe penalties and provide remedies.

38.31 Election of regular retirement allowance or reduced retirement allowance; payment options; designation of beneficiary; effect of beneficiary’s death or divorce; request by nonduty disability retirant to change elections; death of member before effective date of retirement.

Sec. 31. (1) Except as provided in subsection (6), before the effective date of retirement, but not after the effective date of retirement, a member or deferred member who is eligible for retirement, as provided in this act, shall elect to receive his or her benefit in a retirement allowance payable throughout life, which shall be called a regular retirement allowance, or to receive the actuarial equivalent at that time of his or her regular retirement allowance in a reduced retirement allowance payable throughout the lives of the retirant and a retirement allowance beneficiary, pursuant to 1 of the following payment options:

(a) Option A. Upon the retirant’s death, his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(b) Option B. Upon the retirant’s death, 1/2 of his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(c) Option C. On and after January 1, 2000, upon the retirant's death, $\frac{3}{4}$ of his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(2) Except as provided in subsections (3) and (8), the election of a payment option under subsection (1) shall not be changed on or after the effective date of the retirement allowance. A retirement allowance beneficiary designated under this section shall not be changed on or after the effective date of the retirement allowance, and shall be either a spouse, brother, sister, parent, child, including an adopted child, or grandchild of the person making the designation. Payment to a retirement allowance beneficiary shall begin on the first day of the month following the death of the retirant or member.

(3) If the retirement allowance beneficiary named under a payment option under subsection (1) predeceases the retirant, the retirant's benefit shall revert to the regular retirement allowance, effective with the first day of the month following the retirement allowance beneficiary's death. For a retirant whose effective date of retirement was on or before June 28, 1976, this subsection shall apply, but the regular retirement allowance is not payable for any month beginning before the later of the retirement allowance beneficiary's death or January 1, 1986. A retirant who on January 1, 1986 is receiving a reduced retirement allowance because the retirant designated a retirement allowance beneficiary and the retirement allowance beneficiary predeceased the retirant is eligible to receive the regular retirement allowance beginning January 1, 1986, but the regular retirement allowance is not payable for any month beginning before January 1, 1986.

(4) A member who continues in the employ of this state on and after the date he or she acquires 10 years of service credit or becomes eligible for deferred retirement as provided by section 20(4) or (5), whichever occurs first, may by written declaration executed and filed with the retirement board elect option A, provided for in subsection (1)(a), and nominate a retirement allowance beneficiary in the same manner as if the member were then retiring from service, notwithstanding that the member may not have attained 60 years of age. If the beneficiary's death or divorce from the member occurs before the effective date of the member's retirement, the member's election of option A and nomination of retirement allowance beneficiary shall be automatically revoked and the member may again elect option A and nominate a retirement allowance beneficiary at any time before the effective date of retirement. If a member who has made an election and nominated a retirement allowance beneficiary as provided in this subsection dies before the effective date of his or her retirement, then the retirement allowance beneficiary shall immediately receive the retirement allowance that he or she would have been entitled to receive under option A if the member had been regularly retired on the date of the member's death. Except as otherwise provided by subsection (5), if a member who has made an election under this subsection subsequently retires under this act, his or her election of option A shall take effect at the time of retirement. Subject to the requirements of subsection (5), the member, before the effective date of retirement, but not after the effective date of retirement, may revoke his or her previous election of option A and elect to receive his or her retirement allowance as a regular retirement allowance or under option B or C as provided for in subsection (1). A retirement allowance shall not be paid under this subsection on account of the death of a member if any benefits are paid under section 27 on account of his or her death. If a deferred member who has an option A election in effect dies before the effective date of his or her retirement, the retirement allowance payable under option A shall be paid to the retirement allowance beneficiary at the time the deceased deferred member otherwise would have been eligible to begin receiving benefits.

(5) If a member, deferred member, retiring member, or retiring deferred member is married at the effective date of the retirement allowance, an election under this section, other than an election of a payment option under subsection (1) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse. However, this requirement may be waived by the retirement board if the signature of a spouse cannot be obtained because of extenuating circumstances. As used in this subsection, “spouse” means the person to whom the member, deferred member, retiring member, or retiring deferred member is married at the effective date of the retirement allowance.

(6) Until July 1, 1991, upon request in a form as determined by the retirement board, a nonduty disability retirant who retired under section 24 may change his or her election to receive a disability retirement allowance computed as a regular retirement allowance and elect to receive the actuarial equivalent at the time of the election pursuant to this subsection of his or her disability retirement allowance in a reduced retirement allowance payable to the retirant and the retirant’s spouse pursuant to the provisions of a payment option as provided in subsection (1), if the disability retirement allowance effective date was before November 12, 1985 and the retirant had 25 or more years of credited service on the disability retirement allowance effective date. The nonduty disability retirant shall begin to receive the reduced retirement allowance under this subsection effective the first day of the month following the month in which the retirant makes the election pursuant to this subsection. As used in this subsection, “spouse” means the person to whom the nonduty disability retirant was married on the effective date of his or her disability retirement allowance and on the date the retirant makes the election pursuant to this subsection.

(7) If a member who continues in the employ of this state on and after the date he or she acquires 10 years of service credit, or on and after the date he or she becomes eligible for deferred retirement as provided by section 20(4) or (5), whichever occurs first, and who does not have an election of option A in force as provided in subsection (4), dies before the effective date of retirement and leaves a surviving spouse, the spouse shall receive a retirement allowance computed in the same manner as if the member had retired effective the day before the date of his or her death, elected option A, and nominated the spouse as retirement allowance beneficiary. When the retirement allowance beneficiary dies, his or her retirement allowance shall terminate. If the aggregate amount of retirement allowance payments received by the beneficiary is less than the accumulated contributions credited to the member’s account in the employees’ savings fund at the time of the member’s death, the difference between the accumulated contributions and the aggregate amount of retirement allowance payments received by the beneficiary shall be transferred from the employer’s accumulation fund or pension reserve fund to the employees’ savings fund and paid pursuant to section 29. A retirement allowance shall not be paid under this subsection on account of the death of a member if benefits are paid under section 27 on account of his or her death. If the other requirements of this subsection are met but a surviving spouse does not exist, each of the deceased member’s surviving children less than 18 years of age shall receive an allowance of an equal share of the retirement allowance that would have been paid to the spouse if living at the time of the deceased member’s death. Payments under this subsection shall cease upon the surviving child’s marriage, adoption, or becoming 18 years of age, whichever occurs first.

(8) If a retirant receiving a reduced retirement allowance under a payment option under subsection (1) is divorced from the spouse who had been designated as the retirant’s retirement allowance beneficiary under the option, the election of the payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the

court, described in the public employee retirement benefit protection act and dated after June 27, 1991 provides that the election of the payment option under subsection (1) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a payment option under subsection (1) is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a regular retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement allowance shall revert to a regular retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

38.40 Allowances, benefits, and other rights; exemption from taxation; subject to public employee retirement benefit protection law.

Sec. 40. The right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this act, the various funds created by this act, and all money and investments and income of the funds, are exempt from any state, county, municipal, or other local tax. The right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this act, the various funds created by this act, and all money and investments and income of the funds is subject to the public employee retirement benefit protection act.

38.68a Appropriation amount; purpose; work project; estimated completion date.

Sec. 68a. In addition to the amount appropriated in part 1 of 2001 PA 83 for retirement services, there is appropriated for the fiscal year ending September 30, 2002, \$2,100,000.00 in pension trust funds to the department of management and budget, retirement services, for administration of the changes created by House Bill No. 5732 of the 91st Legislature. The unexpended portion of this appropriation is considered a work project appropriation. The project will be accomplished by the use of department personnel and contracting with private consultants with an estimated completion date of September 30, 2003.

38.69 Exemptions from taxation; subject to public employee retirement benefit protection law; right of setoff to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors in records and actions.

Sec. 69. (1) Distributions from employer contributions made pursuant to section 63(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 63(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax. Distributions from employer contributions made pursuant to section 63(2) and (3) and earnings on those employer contributions and distributions from employee contributions made pursuant to section 63(3) and earnings on those employee contributions are subject to the public employee retirement benefit protection act.

(2) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

- (a) House Bill No. 5108.
- (b) House Bill No. 5732.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: House Bill No. 5108, referred to in enacting section 1, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 100, Imd. Eff. Mar. 27, 2002.

House Bill No. 5732, also referred to in enacting section 1, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 93, Imd. Eff. Mar. 27, 2002.

[No. 100]

(HB 5108)

AN ACT 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.

The People of the State of Michigan enact:

38.1681 Short title.

Sec. 1. This act shall be known and may be cited as the “public employee retirement benefit protection act”.

38.1682 Definitions.

Sec. 2. As used in this act:

- (a) “Department” means the department of management and budget.
- (b) “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.
- (c) “Member” means a member, vested former member, deferred member, beneficiary, designated beneficiary, or refund beneficiary of a retirement system.
- (d) “Participating unit” means a retirement system that elects to come under the provisions of section 6.
- (e) “Retirant” means a person who has retired with a retirement benefit payable from a retirement system.

(f) “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.

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

(h) “State unit” means a retirement system established under the state employees’ retirement act, 1943 PA 204, MCL 38.1 to 38.69, the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1467, the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648, and the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

38.1683 Rights not subject to process of law or assignment.

Sec. 3. The right of a member or retirant of a retirement system to a retirement benefit shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

38.1684 Rights subject to forfeiture and domestic relations orders.

Sec. 4. (1) The right of a member or retirant to a retirement benefit described in section 3 is subject to forfeiture under the public employee retirement benefits forfeiture act, 1994 PA 350, MCL 38.2701 to 38.2705.

(2) The right of a member or retirant to a retirement benefit described in section 3 is subject to an award by a court under section 18 of 1846 RS 84, MCL 552.18, an eligible domestic relations order under the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711, and to any other domestic relations order of a court pertaining to alimony or child support.

38.1685 Award or order requiring withholding payments; limitations.

Sec. 5. If an award or order described in section 4 requires a retirement system to withhold payment of a retirement benefit or requires the retirement system to make payment or requires the individual to request that the retirement system make payment of a retirement benefit for the purposes of meeting the member’s or retirant’s obligations to a spouse, former spouse, or child, the withholding or payment provisions of the award or order are effective only against amounts that become payable to the member or retirant, unless otherwise provided in an eligible domestic relations order under the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711. The limitations contained in this section do not apply to the accumulated contributions of a person who terminates employment before acquiring a vested member status.

38.1686 Benefit payments; establishment of arrangement and fund.

Sec. 6. (1) A retirement system may elect by a majority vote of its governing body to establish and administer an arrangement and fund to pay accrued benefits of its members to its members to the extent that the accrued benefits paid out of the fund would not otherwise be payable under limitations in section 415 of the internal revenue code. An arrangement and fund established under this section shall be kept separate from the pension assets of participating units.

(2) If an arrangement and fund is established by a retirement system under subsection (1), the arrangement and fund shall be established and administered in accordance with section 415(m) of the internal revenue code. The governing board of the participating unit or the department on behalf of a state unit may establish and adopt policies and procedures for the arrangement and fund.

(3) If an arrangement and fund is established under subsection (1), the benefits that are paid from the fund shall be paid out of employer contributions or other eligible assets. The governing board shall determine the amount of the employer contribution that shall be allocated to the arrangement and fund. Employer contributions and other eligible assets that are contributed to the arrangement and fund shall be deposited in the arrangement and fund before deposits are made to the pension system of the participating unit.

(4) Nothing in this section is intended to limit the amount of employer contributions that are contributed to a retirement fund of a participating unit for the accrued benefits that are allowed to be paid under section 415 of the internal revenue code.

38.1687 Retirement system and benefits subject to §§ 800.401 to 800.406.

Sec. 7. The retirement system and retirement benefits shall be subject to claims made under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

38.1688 Loan eligibility; correcting records and recovering overpayments.

Sec. 8. (1) This act is not intended to prohibit a member or retirant from receiving a loan from the retirement system if the retirement system concludes that the member or retirant is otherwise eligible for a loan.

(2) Nothing in this act shall prevent a retirement system administrator from correcting records and seeking to recover overpayments that the retirement system made to a retirant or member.

38.1689 Notification of disqualification from U.S. internal revenue service.

Sec. 9. If the department receives notification from the United States internal revenue service that this act or any portion of this act will cause any state unit to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

Conditional effective date.

Enacting section 1. This act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

- (a) House Bill No. 5109.
- (b) House Bill No. 5110.
- (c) House Bill No. 5111.
- (d) House Bill No. 5112.
- (e) House Bill No. 5113.
- (f) House Bill No. 5114.
- (g) House Bill No. 5732.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

House Bill No. 5109 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 99, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5110 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 94, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5111 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 98, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5112 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 95, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5113 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 96, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5114 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 97, Imd. Eff. Mar. 27, 2002.
 House Bill No. 5732 was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 93, Imd. Eff. Mar. 27, 2002.

[No. 101]**(HB 5125)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” (MCL 750.1 to 750.568) by adding section 360a.

The People of the State of Michigan enact:

750.360a Electronic or magnetic theft detection; shielding merchandise prohibited; violation as crime.

Sec. 360a. (1) A person shall not do any of the following:

(a) Possess a laminated or coated bag or device that is intended to shield merchandise from detection by an electronic or magnetic theft detection device with the intent to commit or attempt to commit larceny.

(b) Manufacture, sell, offer for sale, or distribute, or attempt to manufacture, sell, offer for sale, or distribute, a laminated or coated bag or device that is intended to shield merchandise from detection by an electronic or magnetic theft detection device knowing or reasonably believing that the bag or device will be used to commit or attempt to commit larceny.

(c) Possess a tool or device designed to allow the deactivation or removal of a theft detection device from any merchandise with the intent to use the tool or device to deactivate a theft detection device on, or to remove a theft detection device from, any merchandise without the permission of the merchant or person owning or lawfully holding that merchandise with the intent to commit or attempt to commit larceny.

(d) Manufacture, sell, offer for sale, or distribute a tool or device designed to allow the deactivation or removal of a theft detection device from any merchandise without the permission of the merchant or person owning or lawfully holding that merchandise knowing or reasonably believing that the tool or device will be used to commit or attempt to commit larceny.

(e) Deactivate a theft detection device or remove a theft detection device from any merchandise in a retail establishment prior to purchasing the merchandise with the intent to commit or attempt to commit a larceny.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the person has a prior conviction for violating subsection (1), a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

Effective date.

Enacting section 1. This amendatory act takes effect July 1, 2002.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 102]**(HB 5126)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 16r of chapter XVII (MCL 777.16r), as amended by 2000 PA 279.

The People of the State of Michigan enact:

CHAPTER XVII

777.16r §§ 750.356 to 750.374; felonies to which chapter applicable.

Sec. 16r. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.356(2)	Property	D	Larceny involving \$20,000 or more or with prior convictions	10
750.356(3)	Property	E	Larceny involving \$1,000 to \$20,000 or with prior convictions	5
750.356a(1)	Property	G	Larceny from a motor vehicle	5
750.356a(2)(c)	Property	E	Breaking and entering a vehicle to steal \$1,000 to \$20,000 or with prior convictions	5
750.356a(2)(d)	Property	D	Breaking and entering a vehicle to steal \$20,000 or more or with prior convictions	10
750.356a(3)	Property	G	Breaking and entering a vehicle to steal causing damage	5
750.356b	Property	G	Breaking and entering a coin telephone	4

750.356c	Property	E	Retail fraud — first degree	5
750.357	Person	D	Larceny from the person	10
750.357a	Property	G	Larceny of livestock	4
750.357b	Property	E	Larceny — stealing firearms of another	5
750.358	Property	G	Larceny from burning building	5
750.360	Property	G	Larceny in a building	4
750.360a(2)(b)	Property	F	Theft detection device offense with prior conviction	4
750.361	Property	H	Trains — stealing/maliciously removing parts	2
750.362	Property	E	Larceny by conversion involving \$1,000 to \$20,000 or with prior convictions	5
	Property	D	Larceny by conversion involving \$20,000 or more or with prior convictions	10
750.362a(2)	Property	D	Larceny of rental property involving \$20,000 or more or with prior convictions	10
750.362a(3)	Property	E	Larceny of rental property involving \$1,000 to \$20,000 or with prior convictions	5
750.363	Property	E	Larceny by false personation involving \$1,000 to \$20,000 or with prior convictions	5
	Property	D	Larceny by false personation involving \$20,000 or more	10
750.365	Person	D	Larceny from car or persons detained or injured by accident	20
750.366	Property	G	Larceny of railroad tickets	4
750.367	Property	E	Larceny of trees or shrubs involving \$1,000 to \$20,000 or with prior convictions	5
	Property	D	Larceny of a tree or shrub involving \$20,000 or more or with prior convictions	10
750.367b	Property	E	Airplanes — taking possession	5
750.368(5)	Pub ord	G	Preparing, serving, or executing unauthorized process — third or subsequent offense	4
750.372	Pub ord	H	Running or allowing lottery	2
750.373	Pub ord	H	Selling or possessing lottery tickets	2
750.374	Pub ord	H	Lottery violations — subsequent offense	4

Effective date.

Enacting section 1. This amendatory act takes effect July 1, 2002.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5125 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

Compiler's note: House Bill No. 5125, referred to in enacting section 2, was filed with the Secretary of State March 27, 2002, and became P.A. 2002, No. 101, Eff. July 1, 2002.

[No. 103]**(SB 887)**

AN ACT to amend 1937 PA 329, entitled "An act providing for compensation to certain peace officers injured in active duty, and payment to surviving spouses and dependents in case of death arising from active duty; and to make an appropriation therefor," by amending section 3 (MCL 419.103).

The People of the State of Michigan enact:

419.103 Payment; appropriated funds; review of claims.

Sec. 3. The amount provided for in this act shall be paid from the general fund of the state treasury, from money appropriated from said general fund for the fiscal year ending June 30, 1938, and every fiscal year thereafter, a sufficient sum to carry out the provisions of this act. The attorney general shall review all claims under this act and satisfy himself or herself of the merits of the claim before authorizing payment.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 104]**(SB 889)**

AN ACT to amend 1933 PA 89, entitled "An act to prevent fraud, deception and imposition in the solicitation within the state of Michigan of the deposit of bonds, notes, debentures and other evidences of indebtedness under, and/or the consent of the holders or owners of such securities, to a protective committee agreement, and to prevent fraud, deception and imposition in the operations and activities of protective committees organized within the state of Michigan to act for and in behalf of the holders or owners of such securities, and for such purposes to create a commission to regulate and supervise the establishment and the operations of protective committees, depositories under protective committee agreements, and solicitors for protective committee agreements; to authorize said commission to have supervision over defaulted bonds, notes, debentures, certificates of participation and similar evidences of indebtedness; to prescribe the powers and duties of such commission; to license members of protective committees, depositories

under protective committee agreements and solicitors for protective committee agreements; to regulate and supervise and control the solicitation by anyone of bonds, notes, debentures and all other similar evidences of indebtedness, issued by the maker of any security for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness; to authorize such commission to act as custodian or receiver and appoint custodians, agents and managers of defaulted mortgage property under orders of court or otherwise; to prescribe penalties for violation of this act; and to repeal Act No. 37 of the Public Acts of the first extra session of 1932,” by amending section 13 (MCL 451.313).

The People of the State of Michigan enact:

451.313 Public trust commission; investigations; costs; audits and appraisals.

Sec. 13. Any person interested in any security in connection with which a protective committee is organized may request the commission to make an investigation, audit, or appraisal and report with respect to the property or business to which the security pertains. However, before any investigation, audit, or appraisal and report is made by the commission upon such a request, the person so requesting shall, if required by the commission, deposit with the commission the sum of money that the commission considers necessary to meet the cost of the investigation, audit, or appraisal and report. If the deposit is insufficient to defray the cost of the investigation, audit, or appraisal and report, the commission may request further deposits as a condition of the continuance by it of its investigation, audit, or appraisal and report. All money so deposited shall be deposited by the commission in the state treasury in a special fund and disbursements from that fund shall be upon the warrant drawn on the state treasurer, and any disbursements shall be for the purposes for which the money is paid. Any excess over and above the cost of the requested investigation, audit, or appraisal and report shall be returned to the person who made the deposit.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 105]

(SB 892)

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident

fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 204 and 208 (MCL 500.204 and 500.208).

The People of the State of Michigan enact:

500.204 Insurance commissioner; salary; oath; bond.

Sec. 204. The commissioner shall receive an annual salary as the legislature shall appropriate, payable as other state officers are paid under the accounting laws of the state. Within 15 days from the time of notice of his or her appointment, the commissioner shall take and subscribe the constitutional oath of office and file the oath in the office of the secretary of state, and shall also within the same period give to the people of the state of Michigan a bond in the penal sum of \$50,000.00, with sureties to be approved by the state treasurer, conditioned for the faithful discharge of the duties of his or her office.

500.208 Office of financial and insurance services; offices; expense; audit.

Sec. 208. The department of management and budget shall assign to the office of financial and insurance services at Lansing suitable rooms for conducting the business of the division, the necessary expense of which shall be audited by the department of management and budget.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 106]**(SB 896)**

AN ACT to amend 1881 PA 181, entitled “An act to provide for the payment of interest on the educational funds, and to repeal section 10 of chapter 131 of the Compiled Laws of 1871, being compiler’s section 3477,” by amending section 1 (MCL 21.201).

The People of the State of Michigan enact:

21.201 Interest on educational funds; computation; payment.

Sec. 1. That upon all sums paid into the state treasury upon account of the principal of any of the educational funds, except where the provision is or shall be made by law, the state treasurer shall compute interest from the time of the payment, or from the time of the last computation of interest on the payment, to the first Monday of April in each year, and shall give credit on the interest to each fund, as the case may be; and the interest shall be paid out of the specific taxes.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.

[No. 107]**(HB 5145)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 9307 (MCL 324.9307), as amended by 1998 PA 463.

The People of the State of Michigan enact:

324.9307 Directors; appointment; terms; chairperson; annual meeting; election; notice; vacancies; quorum; expenses; employees; legal services; delegation of powers and duties; copies of documents; duties of directors; removal of director; designation and function of legislative representative.

Sec. 9307. (1) A conservation district board shall consist of 5 directors, elected or appointed as provided in this part. The directors shall designate a chairperson annually.

(2) The term of office of each director shall be 4 years. All directors shall be elected at an annual meeting by residents of the district. The election shall be nonpartisan and the directors shall be elected by the residents of the district at large. At least 60 days prior to the annual meeting, a candidate for conservation district director must file at the conservation district office a petition signed by 5 residents of the district. A candidate

must be a resident of the district. The annual meeting shall be held at a date determined by the board of directors of the district. Notice of the annual meeting shall be published in the official newspaper of record for the area in which the district is located at least 45 days prior to the date of the annual meeting. This notice shall include the date, time, and location of the annual meeting, an agenda of items to be considered at the meeting, and a list of all candidates for directors of the conservation district. A resident of a district who is unable to attend the annual meeting may vote for the directors of the conservation district by absentee ballot at the conservation district office, during regular business hours of the conservation district office, at any time after publication of the notice and prior to the annual meeting. Director elections shall be certified by the department. A director shall hold office until a successor has been elected and qualified. Vacancies shall be filled by appointment by the board until the next annual meeting.

(3) A majority of the directors constitutes a quorum, and the concurrence of a majority in any matter within their duties is required for its determination. A director is entitled to expenses, including traveling expenses necessarily incurred in the discharge of his or her duties. A director may be paid a per diem for time spent undertaking his or her duties as a director in an amount not to exceed the per diem paid to a member of the commission of agriculture.

(4) The directors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The directors may call upon the attorney general of the state for legal services as they may require. The directors may delegate to their chairperson, to 1 or more directors, or to 1 or more agents or employees any powers and duties that they consider proper. The directors shall furnish to the department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that they adopt or employ, and any other information concerning their activities that the department may require in the performance of its duties under this part.

(5) The directors shall do all of the following:

(a) Provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property.

(b) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

(c) Determine the fiscal year of the district.

(d) Provide for an annual audit of the accounts of receipts and disbursements.

(e) Maintain accurate financial records of receipts and disbursements of state funds, which records shall be made available to the department.

(6) Any director may be removed by the department upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(7) The directors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

This act is ordered to take immediate effect.

Approved March 27, 2002.

Filed with Secretary of State March 27, 2002.