

Act No. 95
Public Acts of 2002
Approved by the Governor
March 27, 2002
Filed with the Secretary of State
March 27, 2002
EFFECTIVE DATE: March 27, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Reps. Lipsey, Adamini, Rich Brown, Kolb, Patterson, McConico, Howell, LaSata, Faunce, Dennis, Murphy, Bernero, Richner, Spade, Middaugh, Mead, Kuipers, Drolet, George, Schauer, Gosselin and Lemmons

ENROLLED HOUSE BILL No. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

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.

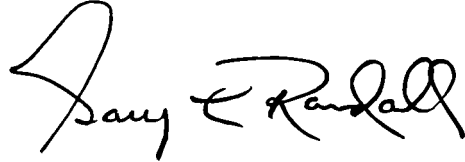
Sec. 720. (1) Distributions from employer contributions made pursuant to section 714(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 714(3) and earnings on those employee contributions, are exempt from any state, county,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

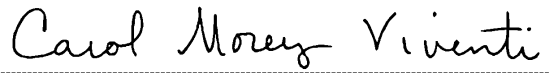
(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

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.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.