

Act No. 97
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. Thomas, Vander Roest, Richardville, Patterson, Birkholz, DeWeese, Caul, Woronchak, Bovin, Stewart, Cameron Brown, Kolb, Minore, Voorhees, Dennis, Jelinek, Pestka, Jacobs, Switalski, Bernero, Clark, Kuipers, Neumann, Murphy, Meyer, Rich Brown, Tabor, Wojno, Bogardus, Ruth Johnson, Shackleton, Allen, Vander Veen, Hansen, Rivet, Pappageorge, Spade, Mead, George, Whitmer, Phillips, Daniels, Schauer and Richner

ENROLLED HOUSE BILL No. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

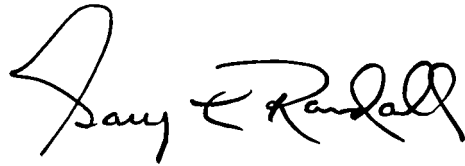
Sec. 80. (1) Distributions from employer contributions made pursuant to section 74(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 74(3) and earnings on those employee contributions, are exempt from any state, county, municipal, 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.

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.