

SENATE BILL No. 389

March 29, 2007, Introduced by Senators GLEASON, CLARKE, CLARK-COLEMAN, BASHAM, OLSHOVE, BRATER, PRUSI, CHERRY, SCOTT, HUNTER, WHITMER, BARCIA and THOMAS and referred to the Committee on Appropriations.

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending sections 1i, 13, and 55 (MCL 38.1i, 38.13, and 38.55), sections 1i and 55 as amended by 2004 PA 33 and section 13 as amended by 2002 PA 743, and by adding section 61a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1i. (1) "Service" means service rendered to this state by
2 an elected or appointed state official or employee of this state.
3 Credit for service shall be determined by appropriate rules and
4 regulations of the retirement board, but not more than 1 year of
5 service shall be creditable for all service in 1 calendar year. The
6 retirement board shall not allow credit for service for any period
7 of more than 1 month in any 1 calendar year during which the
8 employee was absent without pay. However, full service credit shall

1 be given for a period during which an employee is on leave of
2 absence and is receiving worker's compensation benefits as the
3 result of a duty-incurred disability. Full service credit shall
4 also be given to an employee for required 1-day layoffs, for
5 voluntary or involuntary participation in pay reduction plan A, pay
6 reduction plan B, or both, in effect during the fiscal years ending
7 on and after September 30, 1981, for required and designated
8 temporary layoffs, and, beginning October 1, 2003, for furlough
9 hours, and for participation in the banked leave time program.

10 (2) "State treasurer" means the treasurer of this state.

11 (3) "Tier 1" means the retirement plan available to a member
12 under this act who **MEETS 1 OF THE FOLLOWING REQUIREMENTS:**

13 **(A) THE MEMBER** was first employed and entered upon the payroll
14 before March 31, 1997 and ~~who~~**HE OR SHE** does not elect to become a
15 qualified participant of Tier 2.

16 **(B) THE MEMBER WAS FIRST EMPLOYED AND ENTERED UPON THE PAYROLL**
17 **ON OR AFTER MARCH 31, 1997 AND HE OR SHE ELECTS TO BECOME A MEMBER**
18 **OF TIER 1 UNDER SECTION 61A.**

19 (4) "Tier 2" means the retirement plan established pursuant to
20 section 401(k) of the internal revenue code that is available to
21 qualified participants under sections 50 to 69.

22 Sec. 13. (1) Except as otherwise provided in this act,
23 membership in the retirement system consists of state employees
24 occupying permanent positions in the state civil service. All state
25 employees except those specifically excluded by law and those who
26 are members or eligible to be members of other statutory retirement
27 systems in this state, shall become members of the retirement

1 system. The employees may use service previously performed as an
2 employee of this state in meeting the service requirements for the
3 retirement allowances and death benefits provided by the retirement
4 system. However, the prior service shall not be used in computing
5 the amount of a retirement allowance to be paid by the retirement
6 system unless the employee pays to the retirement system the amount
7 the employee's contributions would have been had the employee
8 become a member immediately upon employment by the state with
9 interest compounded annually at the regular rate from a date 1 year
10 after the date of employment by this state to the date of payment.
11 A person who draws compensation as a state employee of a political
12 subdivision of this state is eligible for the benefits provided by
13 this act to the extent of the person's compensation paid by this
14 state. An individual who meets the requirements of section 44a is a
15 member of the retirement system.

16 (2) Elected or appointed state officials may elect not to
17 become or continue as members of the retirement system by filing
18 written notice with the retirement board. An appointed state
19 official who is a member of a state board, commission, or council
20 and who receives a per diem rate in his or her capacity as a member
21 of the board, commission, or council is excluded from membership in
22 the retirement system for the service rendered in his or her
23 capacity as a member of the board, commission, or council. Service
24 performed by an elected or appointed official during the time the
25 official elects not to participate shall not be used in meeting the
26 service requirement or in computing the amount of retirement
27 allowance to be paid by the retirement system. A member who elects

1 not to participate shall be refunded all contributions made before
2 the election.

3 (3) Membership in the retirement system does not include any
4 of the following:

5 (a) A person who is a contributing member in the public school
6 employees' retirement system provided for in the public school
7 employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to
8 38.1408.

9 (b) A person who is a contributing member in the Michigan
10 judges retirement system provided for in the judges retirement act
11 of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

12 (c) A person who comes within the Michigan state police
13 retirement system provided for in the state police retirement act
14 of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

15 (d) An individual who is first employed and entered upon the
16 payroll on or after March 31, 1997 for employment for which the
17 individual would have been eligible for membership under this
18 section before March 31, 1997 **UNLESS THAT INDIVIDUAL ELECTS TO**
19 **BECOMES A MEMBER OF TIER 1 UNDER SECTION 61A.** An individual
20 described in this subdivision **WHO DOES NOT MAKE THE ELECTION TO**
21 **BECOME A MEMBER OF TIER 1** is eligible to be a qualified participant
22 in Tier 2 subject to sections 50 to 69.

23 (e) Except as provided in section 19g, an individual who
24 elects to terminate membership under section 50 and who, but for
25 that election, would otherwise be eligible for membership in Tier 1
26 under this section.

27 (f) A retirant who again becomes employed by the state and is

1 entered upon the payroll on or after December 1, 2002, for
2 employment for which the retirant would have been eligible for
3 membership under this section before December 1, 2002. A retirant
4 described in this subdivision shall be a qualified participant in
5 Tier 2 subject to sections 50 to 69.

6 (4) A person who is hired in state classified or unclassified
7 service after June 30, 1974, who is first employed and entered upon
8 the payroll before March 31, 1997, and who possesses a Michigan
9 teaching certificate shall be a member of this retirement system.
10 After June 30, 1974, but before March 31, 1997, a person who
11 returns to state employment in the classified or unclassified
12 service who previously was a contributing member of the Michigan
13 public school employees' retirement system shall have the person's
14 accumulated contributions and service transferred to this
15 retirement system, or having withdrawn the contributions, may pay
16 into the retirement system the amount withdrawn together with
17 regular interest and have credit restored as provided for in
18 section 16. On and after March 31, 1997, an individual described in
19 this subsection who returns to state service shall make an
20 irrevocable election to remain in Tier 1 or to become a qualified
21 participant of Tier 2 in the manner prescribed in section 50.

22 (5) A person, not regularly employed by this state, who is
23 employed through participation in 1 or more of the following
24 programs, shall not be a member of the retirement system and shall
25 not receive service credit for the employment:

26 (a) A program authorized, undertaken, and financed pursuant to
27 the comprehensive employment and training act of 1973, former

1 Public Law 93-203, 87 Stat. 839.

2 (b) A summer youth employment program established pursuant to
3 the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229.

4 (c) A program established pursuant to the job training
5 partnership act, Public Law 97-300, 96 Stat. 1322.

6 (d) A program established pursuant to the Michigan opportunity
7 and skills training program, first established under sections 12 to
8 23 of 1983 PA 259.

9 (e) A program established pursuant to the Michigan community
10 service corps program, first established under sections 25 to 35 of
11 1983 PA 259.

12 (6) A person, not regularly employed by this state, who is
13 employed to administer a program described in subsection (5) shall
14 not be a member of the retirement system and shall not receive
15 service credit for the employment.

16 (7) If a person described in subsection (5)(a) later becomes a
17 member of this retirement system within 12 months after the date of
18 termination as a participant in a transitional public employment
19 program, service credit shall be given for employment which is
20 excluded in subsection (5) for purposes of determining a retirement
21 allowance upon the payment by the person's employer under
22 subsection (5) from funds provided under the comprehensive
23 employment and training act of 1973, former Public Law 93-203, 87
24 Stat. 839, as funds permit, to the retirement system of the
25 contributions, plus regular interest, the employer would have paid
26 had the employment been rendered in a position covered by this act.
27 During the person's employment in the transitional public

1 employment program, the person's employer shall place in reserve a
2 reasonable but not necessarily an actuarially determined amount
3 equal to the contributions that the employer would have paid to the
4 retirement system for those employees in the transitional public
5 employment program as if they were members under this act, but only
6 for that number of employees that the employer determined would
7 move from the transitional public employment program into positions
8 covered by this act. If the funds provided under the comprehensive
9 employment and training act of 1973, former Public Law 93-203, 87
10 Stat. 839, are insufficient, the remainder of the employer
11 contributions shall be paid by the person's current employer.

12 (8) For purposes of section 19g, a former member shall be
13 considered a member and shall be considered to have satisfied the
14 requirements of section 19g(1)(c) and (2)(c) if the former member
15 was employed by the department formerly known as the department of
16 mental health on January 1, 1996 and went on layoff status before
17 January 1, 1997.

18 Sec. 55. (1) "Plan document" means the document that contains
19 the provisions and procedures of Tier 2 in conformity with this act
20 and the internal revenue code.

21 (2) "Qualified participant" means an individual who is a
22 participant of Tier 2 and who meets 1 of the following
23 requirements:

24 (a) An individual who is first employed and entered upon the
25 payroll of his or her employer on or after March 31, 1997, and who
26 ~~before March 31, 1997 would have been eligible to be a member of~~
27 ~~Tier 1~~ **DOES NOT ELECT TO BECOME A MEMBER OF TIER 1 UNDER SECTION**

1 61A.

2 (b) An individual who elects to terminate membership in Tier 1
3 and who elects to participate in Tier 2 in the manner prescribed in
4 section 50.

5 (3) "Refund beneficiary" means an individual nominated by a
6 qualified participant or a former qualified participant under
7 section 66 to receive a distribution of the participant's
8 accumulated balance in the manner prescribed in section 67.

9 (4) "State treasurer" means the treasurer of this state.

10 (5) Except as otherwise provided in this subsection, "year of
11 service" means each period during which a qualified participant is
12 employed by the employer and is credited with 2,080 hours of
13 service. The Tier 2 plan administrator and the plan document may
14 provide for a lesser number of annual hours and a maximum number of
15 hours per pay period for any classification of employees, provided
16 that no participant shall receive credit for more than 1 year of
17 service for any 12-month period of employment. Beginning January 1,
18 2003, full service credit shall also be given to a participant for
19 furlough hours, for required 1-day layoffs, for required and
20 designated temporary layoffs, for a year in which a participant
21 temporarily leaves employment to enter active military duty and
22 then dies during that active military duty, and for participation
23 in the banked leave time program. In the event a terminated
24 participant is reemployed, such individual shall retain credit for
25 all full and partial years of service completed prior to such
26 reemployment, for purposes of determining his or her vesting
27 percentage in any employer contributions made pursuant to section

1 63(2) and (3) after his or her reemployment.

2 SEC. 61A. (1) AN INDIVIDUAL WHO IS FIRST EMPLOYED AND ENTERED
3 UPON THE PAYROLL OF HIS OR HER EMPLOYER ON OR AFTER THE EFFECTIVE
4 DATE OF THIS SECTION SHALL ELECT IN WRITING TO BECOME A MEMBER OF
5 TIER 1 OR TO BECOME A QUALIFIED PARTICIPANT IN TIER 2 WITHIN 30
6 DAYS AFTER HIS OR HER EMPLOYMENT. AN ELECTION MADE BY AN INDIVIDUAL
7 UNDER THIS SUBSECTION IS IRREVOCABLE. AN INDIVIDUAL WHO DOES NOT
8 MAKE A WRITTEN ELECTION OR WHO DOES NOT FILE THE ELECTION DURING
9 THE PERIOD SPECIFIED IN THIS SUBSECTION IS CONSIDERED TO HAVE
10 ELECTED TO BECOME A QUALIFIED PARTICIPANT OF TIER 2.

11 (2) THE RETIREMENT SYSTEM SHALL PROVIDE AN OPPORTUNITY FOR
12 EACH QUALIFIED PARTICIPANT WHO IS A QUALIFIED PARTICIPANT ON THE
13 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION TO
14 ELECT IN WRITING TO TERMINATE PARTICIPATION IN TIER 2 AND ELECT TO
15 BECOME A MEMBER IN TIER 1. AN ELECTION MADE BY A QUALIFIED
16 PARTICIPANT UNDER THIS SUBSECTION IS IRREVOCABLE. THE RETIREMENT
17 SYSTEM SHALL ACCEPT WRITTEN ELECTIONS UNDER THIS SUBSECTION FROM
18 QUALIFIED PARTICIPANTS DURING THE PERIOD BEGINNING ON THE EFFECTIVE
19 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND ENDING UPON
20 THE EXPIRATION OF 60 DAYS AFTER THE EFFECTIVE DATE OF THE
21 AMENDATORY ACT THAT ADDED THIS SECTION. A QUALIFIED PARTICIPANT WHO
22 DOES NOT MAKE A WRITTEN ELECTION OR WHO DOES NOT FILE THE ELECTION
23 DURING THE PERIOD SPECIFIED IN THIS SUBSECTION CONTINUES TO BE A
24 QUALIFIED PARTICIPANT OF TIER 2. A QUALIFIED PARTICIPANT WHO MAKES
25 AND FILES A WRITTEN ELECTION UNDER THIS SUBSECTION ELECTS TO DO ALL
26 OF THE FOLLOWING:

27 (A) CEASE TO BE A MEMBER OF TIER 2 EFFECTIVE 12 MIDNIGHT ON

1 THE DAY BEFORE THE FIRST DAY OF THE PAYROLL PERIOD THAT FOLLOWS THE
2 EXPIRATION OF 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
3 ACT THAT ADDED THIS SECTION.

4 (B) BECOME A MEMBER OF TIER 1 EFFECTIVE 12:01 A.M. ON THE
5 FIRST DAY OF THE PAYROLL PERIOD DESCRIBED IN SUBDIVISION (A).

6 (C) WAIVE ALL OF HIS OR HER RIGHTS TO A BENEFIT UNDER TIER 2
7 ON THE DATE HE OR SHE BECOMES A MEMBER OF TIER 1.

8 (3) AFTER CONSULTATION WITH THE RETIREMENT SYSTEM'S ACTUARY
9 AND THE RETIREMENT BOARD, THE DEPARTMENT OF MANAGEMENT AND BUDGET
10 SHALL DETERMINE THE METHOD BY WHICH AN INDIVIDUAL SHALL MAKE A
11 WRITTEN ELECTION UNDER THIS SECTION. IF THE INDIVIDUAL IS MARRIED
12 AT THE TIME OF THE ELECTION, THE ELECTION IS NOT EFFECTIVE UNLESS
13 THE ELECTION IS SIGNED BY THE INDIVIDUAL'S SPOUSE. HOWEVER, THE
14 RETIREMENT BOARD MAY WAIVE THIS REQUIREMENT IF THE SPOUSE'S
15 SIGNATURE CANNOT BE OBTAINED BECAUSE OF EXTENUATING CIRCUMSTANCES.

16 (4) AN ELECTION UNDER THIS SECTION IS SUBJECT TO THE ELIGIBLE
17 DOMESTIC RELATIONS ORDER ACT, 1991 PA 46, MCL 38.1701 TO 38.1711.

18 (5) IF THE DEPARTMENT OF MANAGEMENT AND BUDGET RECEIVES
19 NOTIFICATION FROM THE UNITED STATES INTERNAL REVENUE SERVICE THAT
20 THIS SECTION OR ANY PORTION OF THIS SECTION WILL CAUSE THE
21 RETIREMENT SYSTEM TO BE DISQUALIFIED FOR TAX PURPOSES UNDER THE
22 INTERNAL REVENUE CODE, THEN THE PORTION THAT WILL CAUSE THE
23 DISQUALIFICATION DOES NOT APPLY.

24 (6) FOR A QUALIFIED PARTICIPANT WHO ELECTS TO TERMINATE
25 PARTICIPATION IN TIER 2 UNDER SUBSECTION (2), THE RETIREMENT SYSTEM
26 SHALL DIRECT THE STATE TREASURER TO TRANSFER THE QUALIFIED
27 PARTICIPANT'S ACCUMULATED BALANCE TO THE APPROPRIATE FUND CREATED

1 UNDER SECTION 11 ON OR BEFORE THE EXPIRATION OF 120 DAYS AFTER THE
2 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THE
3 RETIREMENT SYSTEM SHALL CALCULATE THE AMOUNT TO BE TRANSFERRED,
4 WHICH SHALL BE EQUAL TO THE SUM OF THE FOLLOWING:

5 (A) THE PORTION OF THE PARTICIPANT'S ACCUMULATED BALANCE
6 ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS AND EARNINGS ON THOSE
7 CONTRIBUTIONS, IF ANY, AS OF THE DATE OF TRANSFER, TO THE
8 EMPLOYEE'S SAVINGS FUND.

9 (B) THE PORTION OF THE PARTICIPANT'S ACCUMULATED BALANCE
10 ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS AND EARNINGS ON THOSE
11 CONTRIBUTIONS, IF ANY, AS OF THE DATE OF TRANSFER, TO THE
12 EMPLOYER'S ACCUMULATION FUND.