

# SENATE BILL NO. 497

September 14, 2023, Introduced by Senator ALBERT and referred to the Committee on Labor.

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending sections 55, 58, 63, 63a, and 69 (MCL 38.55, 38.58, 38.63, 38.63a, and 38.69), section 55 as amended and section 63a as added by 2011 PA 264, sections 58 and 63 as added by 1996 PA 487, and section 69 as amended by 2002 PA 99.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

4 (a) Is first employed and entered ~~upon~~**on** the payroll of ~~his~~  
5 ~~or her~~**the individual's** employer ~~on or~~after March ~~31,~~**30**, 1997,  
6 and who before March 31, 1997 would have been eligible to be a  
7 member of Tier 1.

8 (b) Elects to terminate membership in Tier 1 and elects to  
9 participate in Tier 2 in the manner prescribed in section 50.

10 (c) Is an adjutant general or an assistant adjutant general  
11 under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851,  
12 and who is first employed as an adjutant general or assistant  
13 adjutant general ~~on or~~after ~~January 1, 2011.~~**December 31, 2010.**

14 (d) Was a member who did not make the election under section  
15 50a.

16 (e) Was a member who made the election under section 50a(1)  
17 and the designation under section 50a(2) and who has attained 30  
18 years of credited service or who has terminated employment and has  
19 been reemployed by this state.

20 (f) Was a member as described in section 50a(6), (7), or (8).

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

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

26 (5) "Tax-deferred account" means an account or accounts of  
27 existing deferred compensation plans or plans established by the  
28 retirement system, for which the retirement system has the  
29 authority to determine the membership, eligibility, terms,

1 conditions, and other administrative and operational features. Tax-  
 2 deferred account does not include a health reimbursement account  
 3 for purposes other than complying with the contribution limits  
 4 described in section 68b(12).

5 (6) Except as otherwise provided in this subsection, "year of  
 6 service" means each period during which a qualified participant is  
 7 employed by the employer and is credited with 2,080 hours of  
 8 service. The Tier 2 plan administrator and the plan document may  
 9 provide for a lesser number of annual hours and a maximum number of  
 10 hours per pay period for any classification of employees. ~~7~~  
 11 ~~provided that no~~ **However, a participant shall must not** receive  
 12 credit for more than 1 year of service for any 12-month period of  
 13 employment. Beginning January 1, 2003, full service credit ~~shall~~  
 14 **must** also be given to a participant for furlough hours, for  
 15 required 1-day layoffs, for required and designated temporary  
 16 layoffs, for a year in which a participant temporarily leaves  
 17 employment to enter active military duty and then dies during that  
 18 active military duty, and for participation in the banked leave  
 19 time program. ~~In the event~~ **If** a terminated participant is  
 20 reemployed, ~~such individual shall retain~~ **the participant retains**  
 21 credit for all full and partial years of service completed ~~prior to~~  
 22 ~~such~~ **before the** reemployment, for purposes of determining ~~his or~~  
 23 ~~her~~ **the participant's** vesting percentage in any employer  
 24 contributions made ~~pursuant to~~ **under** section 63(2), ~~and~~ (3), ~~and~~  
 25 **(5), as applicable,** after his or her reemployment.

26 Sec. 58. (1) Each qualified participant, former qualified  
 27 participant, and refund beneficiary shall direct the investment of  
 28 the individual's accumulated employer and employee contributions  
 29 and earnings to 1 or more investment choices within available

1 categories of investment provided by the ~~state treasurer.~~  
2 **investment board.** The limitations on the percentage of total assets  
3 for investments provided in Act No. 314 of the Public Acts of 1965,  
4 being sections 38.1132 to 38.1140i of the Michigan Compiled Laws,  
5 the public employee retirement system investment act, 1965 PA 314,  
6 MCL 38.1132 to 38.1141, do not apply to Tier 2.

7 (2) In addition to the categories of investments provided by  
8 the investment board under subsection (1), the retirement system  
9 shall offer access to 1 or more fixed annuity options and may offer  
10 access to 1 or more variable annuity options provided by an annuity  
11 provider selected under this subsection. While a qualified  
12 participant is employed by the employer, the annuity options  
13 offered under this subsection must allow a qualified participant  
14 the ability to purchase a fixed rate annuity and an annuity with a  
15 guaranteed lifetime income option and may allow a qualified  
16 participant the ability to purchase a variable rate annuity.  
17 Subject to subsections (4) and (6), the investment board shall  
18 select 2 or more annuity providers based on a competitive proposal  
19 process. Subject to subsections (4) and (6), the investment board  
20 shall contract with 2 or more annuity providers to provide the  
21 annuity options under this subsection. Subject to subsection (6),  
22 the investment board shall select and contract with an annuity  
23 provider that meets all of the following conditions, as determined  
24 by the investment board:

25 (a) The annuity provider and its subsidiaries and affiliates  
26 have the appropriate financial strength and stability. In  
27 determining the financial strength and stability under this  
28 subdivision, the investment board shall obtain written  
29 representation from the annuity provider of all of the following:

1 (i) That the annuity provider is an authorized insurer as that  
2 term is defined in section 108 of the insurance code of 1956, 1956  
3 PA 218, MCL 500.108.

4 (ii) That all of the following apply to the annuity provider,  
5 at the time of selection and for each of the preceding 7 years:

6 (A) The annuity provider operates under a certificate of  
7 authority from the insurance commissioner of its domiciliary state  
8 that has not been revoked or suspended.

9 (B) The annuity provider has filed audited financial  
10 statements in accordance with the laws of its domiciliary state  
11 under applicable statutory accounting principles.

12 (C) The annuity provider maintains and has maintained reserves  
13 that satisfy the statutory requirements of each state where the  
14 annuity provider does business.

15 (D) The annuity provider is not operating under an order of  
16 rehabilitation or liquidation.

17 (iii) That the annuity provider undergoes, at least every 5  
18 years, a financial examination, within the meaning of the law of  
19 its domiciliary state, by the insurance commissioner of the  
20 domiciliary state or representative, designee, or other party  
21 approved by the insurance commissioner of the domiciliary state.

22 (iv) That the annuity provider will notify the retirement  
23 system of any change in circumstances occurring after the  
24 representations made in subparagraphs (i), (ii), and (iii) that would  
25 preclude the annuity provider from making the representations at  
26 the time the annuity provider issues the annuity.

27 (v) That the annuity provider meets at least 2 of the  
28 following conditions:

29 (A) The annuity provider has a claims-paying ability rating of

1 no less than "A2" insurer financial strength rating from Moody's  
2 rating services.

3 (B) The annuity provider has a claims-paying ability rating of  
4 no less than "A" insurer financial strength rating from Standard &  
5 Poor's rating services.

6 (C) The annuity provider has a claims-paying ability rating of  
7 no less than "A" insurer financial strength rating from Fitch  
8 Ratings.

9 (D) The annuity provider has a claims-paying ability rating of  
10 no less than "A" insurer financial strength rating from AM Best  
11 rating services.

12 (b) The annuity provider is able to provide contracted rights  
13 and benefits to a qualified participant.

14 (c) The annuity provider is experienced in paying lifetime  
15 retirement income through annuities offered to public employee  
16 defined contribution retirement plans.

17 (d) The annuity provider offers annuity options that meet all  
18 of the following conditions:

19 (i) The annuity options are suitable for qualified  
20 participants, former qualified participants, and refund  
21 beneficiaries.

22 (ii) The contract terms and income benefits are clearly stated,  
23 based on reasonable assumptions.

24 (iii) The annuity options offer a range of lifetime income  
25 options.

26 (iv) If the annuity is a variable annuity, the annuity offers a  
27 fixed account option along with its variable options.

28 (v) The costs, including fees and commissions, of the annuity  
29 options in relation to the benefits and product features of the

1 annuity option are reasonable.

2 (vi) The administrative services to be provided under the  
3 annuity option are appropriate. At a minimum, the administrative  
4 services must include periodic reports to the investment board  
5 about all of the following:

6 (A) The number of annuitants.

7 (B) The types of annuities provided.

8 (C) Any other information that the investment board may  
9 require.

10 (e) The annuity provider is able to offer objective and  
11 participant-specific education and tools that help participants  
12 understand the appropriate use of annuities as a long-term  
13 retirement savings vehicle.

14 (3) The office of retirement services shall verify the  
15 information in a report submitted under subsection (2)(d). A report  
16 submitted under subsection (2)(d) must be published on the office  
17 of retirement services' website.

18 (4) After the competitive proposal process under subsection  
19 (2) is complete, the investment board may select and contract with  
20 only 1 annuity provider to provide annuity options to qualified  
21 participants under subsection (2) if either of the following  
22 applies:

23 (a) The investment board determines that selecting more than 1  
24 annuity provider is not in the interests of qualified participants.

25 (b) Only 1 annuity provider meets the conditions under  
26 subsection (2).

27 (5) If the investment board selects only 1 annuity provider to  
28 provide annuity options under subsection (2) as provided in  
29 subsection (4), the investment board shall notify the speaker of

1 the house of representatives, the minority leader of the house of  
2 representatives, the senate majority leader, and the senate  
3 minority leader within 30 days after selecting and contracting with  
4 an annuity provider of the reasons for selecting only 1 annuity  
5 provider.

6 (6) If, after the competitive proposal process under  
7 subsection (2) is complete, the investment board determines that no  
8 annuity provider meets the conditions under subsection (2), both of  
9 the following apply:

10 (a) The investment board shall not select an annuity provider  
11 under subsection (2).

12 (b) The office of retirement services shall issue a new  
13 competitive proposal process under subsection (2) within 60 days  
14 after the investment board makes its determination described in  
15 this subsection.

16 (7) As used in this section, "investment board" means the  
17 state of Michigan investment board within the department of  
18 treasury created under Executive Reorganization Order No. 2018-5,  
19 MCL 38.1176.

20 Sec. 63. (1) This section is subject to the vesting  
21 requirements of section 64.

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

25 (3) A qualified participant may periodically elect to  
26 contribute up to 3% of ~~his or her~~ **the qualified participant's**  
27 compensation to ~~his or her~~ **the qualified participant's** Tier 2  
28 account. The qualified participant's employer shall make an  
29 additional contribution to the qualified participant's Tier 2



1 account in an amount equal to the contribution made by the  
2 qualified participant under this subsection. **This subsection does**  
3 **not apply to an eligible position qualified participant,**  
4 **conservation officer qualified participant, or state police**  
5 **qualified participant.**

6 (4) A qualified participant may make contributions in addition  
7 to contributions made under subsection (3) **or (5), as applicable,**  
8 to ~~his or her~~ **the qualified participant's** Tier 2 account as  
9 permitted by the state treasurer and the internal revenue code. The  
10 qualified participant's employer shall not match contributions made  
11 by the qualified participant under this subsection.

12 (5) **For an eligible position qualified participant,**  
13 **conservation officer qualified participant, or state police**  
14 **qualified participant, the qualified participant may elect to**  
15 **contribute to the qualified participant's Tier 2 account as**  
16 **follows:**

17 (a) If the qualified participant has less than 3 years of  
18 service, up to 6% of the qualified participant's compensation. The  
19 qualified participant's employer shall make an additional  
20 contribution to the qualified participant's Tier 2 account in an  
21 amount equal to the contribution made by the qualified participant  
22 under this subdivision.

23 (b) If the qualified participant has 3 years or more but less  
24 than 5 years of service, up to 8% of the qualified participant's  
25 compensation. The qualified participant's employer shall make an  
26 additional contribution to the qualified participant's Tier 2  
27 account in an amount equal to the contribution made by the  
28 qualified participant under this subdivision.

29 (c) If the qualified participant has 5 years or more of

1 service, up to 10% of the qualified participant's compensation. The  
 2 qualified participant's employer shall make an additional  
 3 contribution to the qualified participant's Tier 2 account in an  
 4 amount equal to the contribution made by the qualified participant  
 5 under this subdivision.

6 (6) As used in this section:

7 (a) "Conservation officer" means that term as defined in  
 8 section 1b.

9 (b) "Conservation officer qualified participant" means a  
 10 qualified participant who is a conservation officer, other than a  
 11 conservation officer described in section 48.

12 (c) "Eligible position" means a position in the classified  
 13 civil service with a classification of any of the following:

14 (i) A position described in section 45(a) (i) or (iv).

15 (ii) Corrections resident representative.

16 (iii) Corrections transportation officer.

17 (iv) Special alternative incarceration officer.

18 (d) "Eligible position qualified participant" means a  
 19 qualified participant who is employed in an eligible position.

20 (e) "State police qualified participant" means a qualified  
 21 participant who is a state police motor carrier or Michigan state  
 22 police properties securities officer.

23 Sec. 63a. Tier 2 and tax-deferred accounts are subject to the  
 24 following terms and conditions:

25 (a) ~~On or before April 1, 2012, the~~ **The** retirement system  
 26 shall design an automatic enrollment feature that provides that  
 27 unless a qualified participant who makes contributions under  
 28 section 63(3) **or (5), as applicable,** or who is described in section  
 29 68b(2) elects to contribute a lesser amount, the qualified

1 participant shall contribute the amount required to qualify for all  
2 eligible matching contributions under this act. The retirement  
3 system shall implement this automatic enrollment feature ~~on or~~  
4 ~~after April 1, 2012,~~ as determined by the retirement system.

5 (b) In addition to elective employee contributions to Tier 2  
6 or a tax-deferred account, ~~the~~**this** state may use elective employee  
7 contributions to the state 457 deferred compensation plan as a  
8 basis for making employer matching contributions to Tier 2 or a  
9 tax-deferred account.

10 (c) Employer matching contributions do not have to be made to  
11 the same plan or account to which the elective employee  
12 contributions were contributed as the basis for the matching  
13 contributions.

14 (d) Elective employee contributions ~~shall~~**must** not be used as  
15 the basis for more than an equivalent amount of employer matching  
16 contributions.

17 (e) The retirement system shall design and implement a method  
18 to determine the proper allocation of employer matching  
19 contributions based on elective employee contributions as provided  
20 in this section.

21 Sec. 69. (1) Distributions from employer contributions made  
22 ~~pursuant to~~**under** section 63(2), ~~and (3), and (5), as applicable,~~  
23 and earnings on those employer contributions, and distributions  
24 from employee contributions made pursuant to section 63(3) **and (5),**  
25 **as applicable,** and earnings on those employee contributions, are  
26 exempt from any state, county, municipal, or other local tax.  
27 Distributions from employer contributions made ~~pursuant to~~**under**  
28 section 63(2), ~~and (3), and (5), as applicable,~~ and earnings on  
29 those employer contributions and distributions from employee

1 contributions made ~~pursuant to~~**under** section 63(3) **and (5), as**  
2 **applicable**, and earnings on those employee contributions are  
3 subject to the public employee retirement benefit protection act,  
4 **2002 PA 100, MCL 38.1681 to 38.1689.**

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

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