

Act No. 93  
Public Acts of 1988  
Approved by the Governor  
April 6, 1988  
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**STATE OF MICHIGAN  
84TH LEGISLATURE  
REGULAR SESSION OF 1988**

Introduced by Reps. Barns, Bartnik, Dobronski, Gire, Leland, DeMars, Gubow, Brown, Stabenow and Ciaramitaro

# **ENROLLED HOUSE BILL No. 4751**

AN ACT to amend section 12a of Act No. 156 of the Public Acts of 1851, entitled as amended "An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act," as amended by Act No. 395 of the Public Acts of 1984, being section 46.12a of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 12a of Act No. 156 of the Public Acts of 1851, as amended by Act No. 395 of the Public Acts of 1984, being section 46.12a of the Michigan Compiled Laws, is amended to read as follows:

Sec. 12a. (1) A county board of commissioners at a lawfully held meeting may:

(a) Provide group life, health, and accident and hospitalization insurance for a county employee, retired employee, or an employee of an office, board, or department of the county, including the board of county road commissioners, and a dependent of an employee, either with or without cost participation by the employee, and appropriate the necessary funds for the insurance.

(b) Adopt and establish a plan by which the county shall purchase or participate in the cost of an endowment policy or retirement annuity for a county employee or an employee of an office, board, or department of the county, including the board of county road commissioners, to provide monthly pension or retirement benefits for each employee 60 years of age or older in an amount not to exceed \$150.00 per month or 2% of the average monthly earnings of the employee for 5 years immediately preceding retirement times the years of service of the employee, whichever is the lesser sum. As an option, a county board of commissioners may adopt and establish a plan by which the county shall pay pension or retirement benefits to a county employee or an employee of an office, board, or department of the county, including the board of county road commissioners, who has been employed for not less than 25 years or who is 60 years of age or older, and has been employed for not less than 5 years, to the extent of monthly payments equal to 2% of the employee's highest average monthly compensation or earnings received from the county or county road fund for 5 years of service times the total number of years of service of the employee, including a fraction of a year, not to exceed 3/4 of the average final compensation of the employee. A plan may also pay early retirement benefits at 55 years of age or older to the extent of actuarially equivalent benefits not increasing the costs of the plan. Endowment policies, retirement benefits, pensions, or annuity retirement benefits in excess of the amounts stipulated in this subdivision may be provided for by a plan of employee participation to cover the cost of the excess. If the employment or the pension or retirement benefits of an employee who participated in the cost of pension or retirement benefits are terminated before the employee received pension or retirement benefits equal to the total amount of the employee's participation, the balance of the total participation shall be refunded to the employee at the time of termination, if living, or if deceased, to the employee's heir, legal representative, or designated beneficiary as

provided in the plan adopted and established by the county board of commissioners. If a terminated employee is subsequently rehired by the county, the employee may repay the amount of participation refunded to the employee upon the employee's termination, together with compound interest from the date of refund to the dates of repayment at the rates provided in the plan. As conditions for repayment, the plan may require return to employment for a period not to exceed 3 years and may require that repayment be completed within a period of not less than 1 year following return to employment. A plan adopted for the payment of retirement benefits or a pension shall grant benefits to an employee eligible for pension or retirement benefits according to a uniform scale for all persons in the same general class or classification. An employee shall not be denied benefits by termination of his or her employment after the employee becomes eligible for benefits under the plan and this section. An endowment policy or annuity purchased pursuant to this section shall be purchased from a legal reserve company authorized to write endowment policies or annuities in this state.

(2) In a plan adopted under this section, at least 60% of the total pension or retirement benefit granted to an employee from county funds shall consist of a percentage not to exceed 2% of the employee's average final compensation times the employee's years of service and shall be granted to each employee eligible for retirement under the plan uniformly and without restriction or limitation other than those prescribed in this section. "Average final compensation" as used in this section means the annual average of the highest actual compensation received by a county employee, other than a county employee who is either a judge of a municipal court of record subject to subsection (21) or a judge subject to subsection (24), during either a period of 5 consecutive years of service contained within the employee's 10 years of service immediately preceding the employee's retirement or a period of 5 years of service as specified in the plan. In a county having adopted a plan for granting longevity pay, the county board of commissioners may exclude this longevity pay from average final compensation for the purpose of computing the rate of employee contribution and the amount of benefits payable to an employee upon retirement. "Longevity pay" means increments of compensation payable at annual or semiannual intervals and based upon years of service to the county, exclusive of compensation provided for a given class of positions.

(3) A circuit court stenographer shall be eligible for membership in, and the benefits of, a pension or retirement benefit under a plan established pursuant to this section, or a social security plan established by the county or 1 of the counties which pays a portion of the compensation of a circuit court stenographer.

(4) If the employment of a county employee eligible to receive a pension or retirement benefit under a plan established pursuant to this section is terminated after the employee has completed 8 or more years of service in county employment, the employee shall receive the amount of pension or retirement benefit to which the employee's service would have entitled the employee under the plan established, if the employee waives the employee's right to a refund of the employee's total participation upon the termination of employment; the payment of pension or retirement benefits to begin, as provided in the plan, after the employee would have become eligible for retirement under the plan had the employee's employment not been terminated, but not later than 90 days after the employee becomes 65 years of age. The payment of pension or retirement benefits shall not begin until the employee has applied for pension or retirement benefits in the manner prescribed in the plan established.

(5) A plan established under this section may provide for pension or retirement benefits for a county employee who becomes totally disabled for work in the county service from any cause, after not less than 10 years of county employment, to the extent of the limitations provided in this section. A plan may also provide for pension or retirement benefits to the extent of the limitations provided in this section or \$400.00 per month, whichever is the greater sum, for an employee who became totally disabled for work in the county service from causes which are the direct and proximate result of county employment, to continue for the duration of the disability or until eligible for retirement pursuant to other provisions of the plan authorized by this section. A plan may also provide for pension or retirement benefits, to the extent of the limitations provided in this section, for the actual dependents of a county employee who dies while still employed by the county after not less than 10 years of county employment, or who dies after leaving county employment with not less than the number of years of service required to vest in the plan but before becoming eligible to receive a pension or retirement benefit. A plan may also provide for pension or retirement benefits to the extent of the limitations provided in this section or \$400.00 per month, whichever may be the greater sum, for the actual dependents of a deceased county employee whose death is the direct and proximate result of county employment. The plan may provide that the period from the end of the deceased or disabled employee's period of service to the date that employee would have become eligible for retirement be used as service for the sole purpose of computing the amount of disability or death pension.

(6) "County employee" includes a bailiff of the district court in the thirty-sixth district who serves pursuant to section 8322 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being section 600.8322 of the Michigan Compiled Laws, and a person who receives more than 50% of all compensation for personal services, rendered to governmental units, from a county fund or county road fund, except a person, other than a bailiff of the district court in the thirty-sixth district, engaged for special services on a contract or

fee basis. The plan adopted under this section, until December 31, 1979, may include as a county employee a person on leave of absence from county employment who is not a member of another retirement system except as a retirant and who pays or arranges payment of contributions equal to the contributions that would have been required to be paid under the plan by both the county and the employee, based upon the compensation the employee would have received from the county, if the employee had not taken a leave of absence or a person who has complied with the requirements of such a provision approved for inclusion in a plan by the county board of commissioners before January 1, 1976, who shall be considered to be a county employee during the period of compliance. Provision may be made to exclude a person who is employed on a temporary basis and a person employed in a position normally requiring less than 1,000 hours, or some lesser specified number of hours, work per year. A bailiff serving in the district court in the thirty-sixth district shall be eligible to receive benefits under this act if a plan has been established by law by which the cost of benefits shall be payable from sources including charges on all legal instruments in which the service of process by a bailiff is required and earmarked by law for benefits, and contributions made by the state and each bailiff pursuant to section 8322(7) of Act No. 236 of the Public Acts of 1961, as amended. The plan shall include provisions by which a bailiff or former bailiff who served as bailiff as of January 1, 1967, may retire after 25 years of service regardless of age, with maximum benefits to be computed as follows: starting as of January 1, 1969, the average of any 5 years of earnings of the previous 10 years served in succession before retirement multiplied by 1.9% times the years of service; starting as of June 1, 1975, the average of any 5 years of earnings multiplied by 2% times the years of service. For purposes of this subsection, "earnings" means the salary and fees, other than mileage, received by a bailiff pursuant to section 8322(6) of Act No. 236 of the Public Acts of 1961, as amended. The plan shall include provisions by which health, accident, and hospitalization insurance premiums may be paid out of the earnings of this fund. These payments shall be made at the discretion of the pension board of trustees. The county which has a retirement fund for bailiffs under this section shall annually review the retirement fund and shall ensure that the fund is maintained in an actuarially sound condition. Copies of the actuarial reports shall be provided to the state judicial council created in chapter 91 of Act No. 236 of the Public Acts of 1961, being sections 600.9101 to 600.9107 of the Michigan Compiled Laws.

(7) An employee while receiving a pension or retirement benefit because of disability, pursuant to this section, may be considered as employed in the county service for the purpose of retirement under this section.

(8) A county employee who is included by law in another pension or retirement system by reason of the compensation the employee receives from the county may be excluded from a plan established under this section or included only to the extent of the difference between benefits granted under this section and the other pension or retirement system.

(9) The county board of commissioners, upon the request of a county employee, by not less than a 3/5 vote may credit that county employee with the amount of government service resulting from employment with the United States government, except military service, a state, or any of their political subdivisions under the following conditions:

(a) Employment by the county occurred within 5 years following the county employee's separation from service of the last unit of government by which the county employee was employed.

(b) Service rendered before the last break in service of more than 5 years shall not be credited.

(c) Service which is recognized for the purpose of a deferred retirement allowance under a retirement system or other employer-funded retirement benefit plan, except for a retirement benefit plan under the social security act, chapter 531, 49 Stat. 620, of the United States government, a state, or a political subdivision of a state shall not be credited if the county employee retired under a retirement system of the United States government, a state, or any of their political subdivisions or until the county employee irrevocably forfeits the right to the deferred retirement allowance.

(d) The county employee deposits in the plan established under this section an amount equal to the aggregate amount of contributions the county employee would have made had the service been acquired in the employ of the county, plus interest from the dates the contributions would have been made to the date of deposit, at rates determined by the board. If records are insufficient or unavailable to compute the exact amount of required deposit, the board may estimate the amount.

(e) The county employee has 8 or more years of credited service in county employment, has legal vesting in the county plan, and deposits in the county employees' retirement system an amount equal to the aggregate amount of contributions the employer would have made had the government service being credited under this section been acquired in the employ of the county.

(10) A plan adopted under this section may provide for annual or less frequent postretirement redetermination of a pension. The redetermined amount of pension shall be not greater than the amount of pension otherwise payable multiplied by the following percent: 100%, plus the percentage the county board of commissioners determines appropriate for each full year, excluding a fraction of a year, in the period from the effective date of payments of the pension and the date as of which the redetermination is being made. The

redetermined amount shall not be less than the amount of pension otherwise payable. A provision of this section which limits the amount of a pension shall not apply to the operation of this subsection redetermining the amount of a pension. As used in this subsection, "the amount of pension otherwise payable" means the amount of pension which would be payable without regard to this subsection. The application of a provision redetermining pension amounts may be restricted to pensions having an effective date of payment either before or after a specified date.

(11) The board may also provide that except in the case of becoming a beneficiary, prior service and membership service which has been credited to the person shall be forfeited if the person's membership terminates.

(12) The cost of pension or retirement benefits for a county employee under this section may be paid from the same fund from which the employee receives compensation, and the county board of commissioners may appropriate the necessary funds to carry out the purposes of this section. If a county establishes a plan by which the county pays pension or retirement benefits to an employee pursuant to this section, the county shall, in accordance with provisions for pension or retirement benefits which shall be incorporated in the plan, establish and maintain reserves on an actuarial basis in the manner provided in this subsection sufficient to finance the pension and retirement and death benefit liabilities under the plan and sufficient to pay the pension and retirement and death benefits as they become due. A county which has adopted a retirement plan under this section and has established reserves on an actuarial basis shall maintain them as provided in this subsection. The reserves shall be determined by an actuarial valuation and established and maintained by yearly appropriations by the county and contributions by employees. The reserves shall be established, maintained, and funded to cover the pension and other benefits provided for in the plan in the same manner and within the same limits as to time as is provided for Benefit Program B in the municipal employees' retirement system described in section 14 of the municipal employees' retirement act, Act No. 427 of the Public Acts of 1984, being section 38.1514 of the Michigan Compiled Laws. These reserves are trust funds and shall not be used for any other purpose than the payment of pension, retirement, and other benefits and refunds of employees' contributions in accordance with the plan established in a county. An employee's contributions shall be kept and accumulated in a separate fund and used only for the payment of annuities and refunds to employees. This subsection shall not apply to a county that adopted a retirement plan under this section and had not established reserves on an actuarial basis before October 11, 1947.

(13) A plan established by a county for the payment of pension and retirement benefits to an employee under this section shall be approved as complying with this section by a county pension plan committee consisting of the attorney general, the state treasurer, and the executive secretary of the state employees' retirement system established under the state employees' retirement act, Act No. 240 of the Public Acts of 1943, as amended, being sections 38.1 to 38.47 of the Michigan Compiled Laws, before the plan becomes effective or operative in the county. Each county retirement plan operating under this section shall be approved by the committee as complying with this section biennially. A financial statement for each county retirement plan operating under this section shall be submitted annually to the county pension plan committee by the county board, official, or employee designated by the county board of commissioners. The financial statement shall be in the form, contain the information, and be submitted as the county pension plan committee prescribes. The state treasurer shall audit the funds and accounts of county retirement plans established under this section in the same manner as the state treasurer audits other county accounts and may audit and investigate county retirement plan funds and accounts to the extent necessary to effectuate the purposes of this section. This subsection shall not apply to a county that adopted a retirement plan under this section and had not established reserves on an actuarial basis before October 11, 1947.

(14) If a county establishes a plan for the payment of pension and retirement benefits to its employees pursuant to this section, the county board of commissioners may provide for a board of trustees to administer the plan and for the manner of election or appointment of the members of the board of trustees. The county board of commissioners may grant authority to the board of trustees to fully administer and operate the plan and to deposit, invest, and reinvest the funds and reserves of the plan within the limitations prescribed by the county board of commissioners in the plan. The county board of commissioners may authorize the investment of funds of a county retirement plan established under this section in anything in which the funds of the state employees' retirement system or the funds of the municipal employees' retirement system may be invested, pursuant to Act No. 240 of the Public Acts of 1943, as amended, and Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws. A county retirement plan established under this section may provide for financing, funding, and the payment of benefits in the same manner and to the same extent as is provided for in Act No. 240 of the Public Acts of 1943, as amended, and Act No. 427 of the Public Acts of 1984, may provide for and require contributions by county employees, and may permit additional employee contributions on a voluntary basis.

(15) Upon the approval of the county board of commissioners, a member who entered the armed service of the United States before June 1, 1980 or who entered the armed service of the United States on or after June 1,

1980 during a time of war or emergency condition as described in section 1 of Act No. 190 of the Public Acts of 1965, as amended, being section 35.61 of the Michigan Compiled Laws, may elect to receive credited service for not more than 5 years of active military service. Credit for military service shall be given upon request and payment to the retirement system of an amount equal to 5% of the member's full-time or equated full-time annual compensation for the year in which payment is made multiplied by the number of years, and fraction of a year, of credited service that the member elects to purchase up to the maximum. Service shall not be credited if the service is or would be credited under any other federal, state, or local publicly supported retirement system. Service shall not be credited under this subsection until the member has 10 years of credited service in force. Only completed years and months of armed service shall be credited under this subsection.

(16) As used in this subsection, "transitional public employment program" means a public service employment program in the area of environmental quality, health care, education, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans' outreach, or any other area of human betterment and community improvement as part of a program of comprehensive manpower services authorized, undertaken, and financed pursuant to the comprehensive employment and training act, former Public Law 93-203, 87 Stat. 839. A person participating in a transitional public employment program shall not be eligible for membership in a retirement system or pension plan established under this section. If the person later becomes a member of a retirement system or pension plan established under this section within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment in the transitional public employment program for purposes of determining a retirement allowance upon the payment by the person and the person's employer under the transitional public employment program from funds provided under the comprehensive employment and training act, former Public Law 93-203, 87 Stat. 839, as funds permit, to the retirement system of the contributions, plus regular interest, the person and the employer would have paid had the employment been rendered in a position covered by this act. During the person's employment in the transitional public employment program, the person's employer shall provide an opportunity by payroll deduction for the person to make his or her employee contribution to the applicable pension system. To provide for the eventual payment of the employer's contribution, the person's employer shall during this same period place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions which the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees which the employer determined would transfer from the transitional public employment program into positions covered by this act. If the funds provided under the comprehensive employment and training act, former Public Law 93-203, 87 Stat. 839, are insufficient, the remainder of the employer contributions shall be paid by the person's current employer.

(17) Subsection (16) shall not exclude the participant in a transitional public employment program from the accident, disability, or other benefits available to members of the retirement system covered by this act.

(18) Once a probate judge who is a member of a plan established under this section has contributed for not less than 20 years, the county board of commissioners may allow the probate judge to cease further contributions.

(19) An employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit who became an employee of the state judicial council on September 1, 1981, and who was 44 years of age or older as of that date, and who will have accumulated 25 or more years of service credit by September 1, 1987, shall continue to be eligible for membership in, and the benefits of, a pension or retirement benefit plan established pursuant to this section in the same manner as the employee was eligible before September 1, 1981. A person who was an employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit on August 31, 1981, who last entered county employment prior to November 2, 1956, who became an employee of the state judicial council on September 1, 1981, and who had accumulated not less than 24 years of service credit by August 31, 1981, shall continue to be eligible for membership in, and the benefits of, a pension or retirement benefit plan established pursuant to this section in the same manner as the employee was eligible before September 1, 1981. An election to continue to be a member of a pension or retirement benefit plan established pursuant to this section as authorized by section 594(2) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.594 of the Michigan Compiled Laws, or section 36(2) of Act No. 369 of the Public Acts of 1919, being section 725.36 of the Michigan Compiled Laws, shall not be effective unless the employee has made the election in the manner prescribed by those sections and has made the payments required by those sections.

(20) A plan adopted under this section may provide that an employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit who is a member of the Wayne county employees' retirement system on August 31, 1981, who becomes an employee of

the state judicial council and a member of the state employees' retirement system on September 1, 1981, receive a benefit based on the annual average of the highest actual compensation received by the employee during a period of 5 years of county or state service.

(21) Beginning September 1, 1981, for determining the retirement benefit for a county employee who is a judge of a municipal court of record pursuant to subsection (2), "average final compensation" means the annual average of the highest actual compensation received by the judge as additional salary pursuant to section 13(2) of Act No. 369 of the Public Acts of 1919, as amended, being section 725.13 of the Michigan Compiled Laws, during a period of 5 years of service as specified in the plan. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(22) Beginning September 1, 1981, for each county employee who is a judge of a municipal court of record, or of the circuit or district court, the sum of the average final compensation determined for that county employee pursuant to this section and the final salary determined for that county employee as a member of the judges' retirement system pursuant to the judges' retirement act, Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.831 of the Michigan Compiled Laws, shall not exceed the employee's total annual judicial salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(23) Beginning September 1, 1981, for each county employee who is a judge of the probate court, the sum of the average final compensation calculated for that employee pursuant to this section and the final salary calculated for that employee as a member of the probate judges' retirement system pursuant to the probate judges retirement act, Act No. 165 of the Public Acts of 1954, as amended, being sections 38.901 to 38.933 of the Michigan Compiled Laws, shall not exceed the employee's total annual judicial salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(24) Beginning September 1, 1981, for determining a retirement benefit pursuant to subsection (2) for a county employee who is a judge who receives an annuity pursuant to section 14(5) of Act No. 198 of the Public Acts of 1951, as amended, being section 38.814 of the Michigan Compiled Laws, "average final compensation" means the difference between the judge's total annual salary payable from all sources on August 31, 1981, and the judge's state base salary payable on August 31, 1981. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(25) Beginning January 1, 1983, the sum of the final salary determined for each county employee who is a judge of the probate court used as the basis for determining the judge's retirement allowance as a member of a retirement system established pursuant to this section and the salary or compensation figure used as the basis for determining the judge's retirement allowance as a member of the judges' retirement system created under Act No. 198 of the Public Acts of 1951, shall not exceed the judge's total annual salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(26) The county board of commissioners, upon the request of a county employee, by not less than a 3/5 vote may credit that county employee with the amount of membership service that the county employee had previously been credited with by the retirement system established under this section under the following conditions:

(a) The membership service previously credited to the county employee must have been service rendered for the same county.

(b) Service which is recognized for the purpose of a deferred retirement allowance under a retirement system or other employer-funded retirement benefit plan, except for a retirement benefit plan under the social security act, chapter 531, 49 Stat. 620, of the United States government, a state, or a political subdivision of a state shall not be credited if the county employee retired under a retirement system of the United States government, a state, or any of their political subdivisions or until the county employee irrevocably forfeits the right to the deferred retirement allowance.

(c) The county employee deposits in the plan established under this section an amount equal to the aggregate amount of contributions the county employee made at the time of the previous membership service plus interest from the date of withdrawal of the accumulated contributions to the date of deposit, at rates determined by the board. If records are insufficient or unavailable to compute the exact amount of required deposit, the board may estimate the amount.

(d) The county employee deposits in the county employees' retirement system an amount equal to the aggregate amount of contributions the employer made at the time of the previous membership service plus interest from the date of separation to the date of deposit, at rates determined by the board.

(27) A person participating in a program described in this subsection shall not be eligible for membership in a retirement system or pension plan established under this section. In addition, that person shall not receive

service credit for the employment described in this subsection even though the person subsequently becomes or has been a member of the retirement system. This subsection applies to the following:

(a) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the job training partnership act, Public Law 97-300, 96 Stat. 1322.

(b) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the Michigan opportunity and skills training program, first established under sections 12 to 23 of Act No. 259 of the Public Acts of 1983.

(c) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the Michigan community service corps program, under sections 25 to 35 of Act No. 259 of the Public Acts of 1983 and sections 148 to 160 of Act No. 246 of the Public Acts of 1984.

(d) A person, not regularly employed by the county, who is hired by the county to administer a program described in subdivisions (a), (b), and (c).

Section 2. This amendatory act shall take effect March 3, 1988.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved .....

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Governor.