

Act No. 47  
Public Acts of 1991  
Approved by the Governor  
June 27, 1991  
Filed with the Secretary of State  
June 27, 1991

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1991**

Introduced by Reps. Ciaramitaro, Gubow, Barns, Fitzgerald, Nye and Brown

# **ENROLLED HOUSE BILL No. 4761**

AN ACT to amend sections 46 and 85 of Act No. 300 of the Public Acts of 1980, entitled "An act to provide a retirement system for the public school employees of this state; to create certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of management and budget; to prescribe penalties; and to repeal certain acts and parts of acts," as amended by Act No. 194 of the Public Acts of 1989, being sections 38.1346 and 38.1385 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 46 and 85 of Act No. 300 of the Public Acts of 1980, as amended by Act No. 194 of the Public Acts of 1989, being sections 38.1346 and 38.1385 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 46. (1) Except as otherwise provided in this section, a retirement allowance, an optional benefit, or any other benefit accrued or accruing to a person under this act, the reserves created by this act, and the money, investments, or income of those reserves are exempt from state, county, municipal, or other local tax and are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law. The right to a retirement allowance, an optional benefit, or any other benefit accrued or accruing to a person under this act is unassignable, except as specifically provided in this act.

(2) The retirement system may offset retirement benefits or refunds payable under this act against amounts owed to the retirement system by a member, retirant, retirement allowance beneficiary, or refund beneficiary.

(3) If the retirement system is required by the federal government pursuant to a court order to transmit a part of a member's contributions standing to the member's credit in the reserve for employee contributions to a federal agency, the service credit that is covered by the payment shall be forfeited in the same manner as if the employee had requested and been paid a refund of the member's most recent contributions.

(4) A retirement allowance, an optional benefit, accumulated contributions, or any other benefit to a member, a deferred member, a retirement allowance beneficiary, or a retirant under this act is subject to award by a court pursuant to section 88 of chapter 84 of the Revised Statutes of 1846, being section 552.18 of the Michigan Compiled Laws, and to any other order of a court pertaining to alimony or child support. However, this subsection does not permit or require a benefit to be paid or to be provided that is not otherwise available under this act.

(5) If an award or order described in subsection (4) requires the retirement system to withhold payment of a retirement allowance, deferred retirement allowance, accumulated contributions, or other benefit from the person to whom it is due or requires the retirement system to pay or requires the person to request that the retirement system pay a retirement allowance, deferred retirement allowance, accumulated contributions, or other benefit, for the purpose of meeting the person's obligations to a spouse, former spouse, or child, as provided in subsection (4), the withholding or payment provisions of the award or order are effective only against such amounts as they become payable to the person otherwise entitled to receive the retirement allowance unless otherwise provided in an eligible domestic relations order under the eligible domestic relations order act. The limitation contained in this subsection does not apply to the accumulated contributions of a person who has terminated employment before acquiring a vested member status.

(6) A retirement allowance or an optional benefit payable to a member, deferred member, or retirant under this act is subject to an eligible domestic relations order under the eligible domestic relations order act.

Sec. 85. (1) A retiring member or retiring deferred member who meets the requirements of section 81 or 81a or a member whom the retirement board finds to be totally and permanently disabled and eligible to receive a retirement allowance under section 86 or 87 shall elect to receive his or her retirement allowance under 1 of the payment options provided in this subsection. The election shall be in writing and filed with the retirement board at least 15 days before the effective date of the retirement allowance except as provided for a disability retirant under section 86 or 87. The amount of retirement allowance under either subdivision (b) or (c) shall be the actuarial equivalent of the amount of retirement allowance under subdivision (a). The options are as follows:

(a) A retirant shall be paid a straight retirement allowance for life computed pursuant to section 84. An additional retirement allowance payment shall not be made upon the retirant's death.

(b) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or deferred member designates in a writing filed with the retirement board at the time of election of this option. A member or deferred member may elect this option and designate a retirement allowance beneficiary under the conditions set forth in section 82(2) or 89(3).

(c) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of 1/2 of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(2) In addition to the election under subsection (1), a retirant, other than a disability retirant who is 60 years of age or less, may elect to coordinate his or her retirement allowance with an estimated primary social security benefit. The retirant shall be paid an increased retirement allowance until 62 years of age and a reduced retirement allowance after 62 years of age. The increased retirement allowance paid until 62 years of age shall approximate the sum of the reduced retirement allowance payable after 62 years of age and the retirant's estimated social security primary insurance amount. The estimated social security primary insurance amount shall be determined by the retirement system. The election under this subsection shall be made at the same time and in the same manner as required under subsection (1).

(3) Except as otherwise provided in this section, the election of a payment option in subsections (1) and (2) shall not be changed on or after the effective date of the retirement allowance. Except as provided in subsection (5), the retirement allowance beneficiary selected under subsection (1)(b) or (c) shall not be changed on or after the effective date of the retirement allowance and shall be either a spouse, brother, sister, parent, or child, including an adopted child, of the member, deferred member, retiring member, or retiring deferred member entitled to make the election under this act. Another retirement allowance beneficiary shall not be selected. If a member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date, an election under subsection (1), other than an election under subsection (1)(b) or (c) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse, except that this requirement may be waived by the board if the signature of a spouse cannot be obtained because of extenuating circumstances. For purposes of this subsection, "spouse" means the person to whom the member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date. Payment to a retirement allowance beneficiary shall start the first day of the month following the retirant's death.

(4) If the retirement allowance beneficiary selected under subsection (1)(b) or (c) predeceases the retirant, the retirant's benefit shall revert to a straight retirement allowance including post-retirement adjustments, if any, shall be effective the first of the month following the death, and shall be paid during the remainder of the retirant's life. This subsection applies to a retirant whose effective date of retirement is after June 28, 1976, but the straight retirement allowance shall not be payable for any month beginning before the later of the retirement allowance beneficiary's death or October 31, 1980. This subsection also applies to a retirant whose effective date of retirement was on or before June 28, 1976, but the straight retirement allowance shall not be

payable for any month beginning before the later of the retirement allowance beneficiary's death or January 1, 1986. A retirant who on January 1, 1986 is receiving a reduced retirement allowance because the retirant designated a retirement allowance beneficiary and the retirement allowance beneficiary predeceased the retirant is eligible to receive the straight retirement allowance beginning January 1, 1986, but the straight retirement allowance shall not be payable for any month beginning before January 1, 1986.

(5) A retirant who returns to service pursuant to section 61 and whose retirement allowance beneficiary selected under subsection (1)(b) or (c) predeceases the member before he or she again becomes a retirant may again choose a retirement allowance beneficiary pursuant to subsection (1)(b) or (c).

(6) If a retirant receiving a reduced retirement allowance under subsection (1)(b) or (c) is divorced from the spouse who had been designated as the retirant's retirement allowance beneficiary under subsection (1)(b) or (c), the election of a reduced retirement allowance payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in section 46 and dated after the effective date of the amendatory act that added this subsection provides that the election of a reduced retirement allowance payment option under subsection (1)(b) or (c) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement allowance payment option under subsection (1)(b) or (c) is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a straight retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in section 46. The retirement allowance shall revert to a straight retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on the effective date of the amendatory act that added this subsection. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(7) If the retirement allowance payments terminate before an aggregate amount equal to the retirant's accumulated contributions has been paid, the difference between the retirant's accumulated contributions and the aggregate amount of retirement allowance payments made shall be paid to the person designated in a writing filed with the retirement board on a form provided by the retirement board. If the designated person does not survive the retirant or retirement allowance beneficiary, the difference shall be paid to the deceased recipient's estate or to the legal representative of the deceased recipient.

(8) A retirement allowance payable under a payment option provided in this section is subject to an eligible domestic relations order under the eligible domestic relations order act.

Section 2. This amendatory act shall not take effect unless House Bill No. 4884 of the 86th Legislature is enacted into law.

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.

