

Act No. 63
Public Acts of 1992
Approved by the Governor
May 22, 1992
Filed with the Secretary of State
May 22, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Rep. Wozniak

ENROLLED HOUSE BILL No. 5423

AN ACT to amend sections 2b, 4, 31, 33, 52, and 56 of Act No. 427 of the Public Acts of 1984, entitled as amended "An act to provide for a retirement system for municipal and judicial employees; to create a retirement board and to prescribe its powers and duties; to prescribe the powers and duties of certain other state officers and agencies; and to repeal certain acts and parts of acts," sections 2b and 4 as amended and section 56 as added by Act No. 99 of the Public Acts of 1990 and sections 31, 33, and 52 as amended by Act No. 500 of the Public Acts of 1988, being sections 38.1502b, 38.1504, 38.1531, 38.1533, 38.1552, and 38.1556 of the Michigan Compiled Laws; to add section 57; and to repeal certain parts of the act on specific dates.

The People of the State of Michigan enact:

Section 1. Sections 2b, 4, 31, 33, 52, and 56 of Act No. 427 of the Public Acts of 1984, sections 2b and 4 as amended and section 56 as added by Act No. 99 of the Public Acts of 1990 and sections 31, 33, and 52 as amended by Act No. 500 of the Public Acts of 1988, being sections 38.1502b, 38.1504, 38.1531, 38.1533, 38.1552, and 38.1556 of the Michigan Compiled Laws, are amended and section 57 is added to read as follows:

Sec. 2b. (1) "Member" means a municipal employee or judicial employee who is included in the membership of the retirement system.

(2) "Membership service" means personal service rendered a participating municipality or participating court while a member of the retirement system.

(3) "Municipal employee" means an individual who is paid compensation for personal services rendered for a participating municipality. Payment of compensation by a hospital, board, commission, public corporation, or instrumentality created by a municipality is considered payment by the municipality. Municipal employee does not include any of the following:

(a) The mayor, village president, or a member of the governing body of a participating municipality, unless the individual files a written application for membership with the retirement system.

(b) An individual who is employed on a basis that exempts the participating municipality from the withholding provisions of the internal revenue code.

(c) An individual, except a county elected official, who is wholly paid on a fee basis.

(d) An individual who is an active member of the state of Michigan probate judges retirement system created by the probate judges retirement act, Act No. 165 of the Public Acts of 1954, being sections 38.901 to 38.933 of the Michigan Compiled Laws.

(e) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the job training partnership act, Public Law 97-300, 96 Stat. 1322. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of the retirement system.

(f) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the Michigan opportunity and skills training program first provided for under sections 12 to 23 of Act No. 259 of the Public Acts of 1983. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of this retirement system.

(g) A person, not regularly employed by the participating municipality, who is employed by the municipality through participation in a program established pursuant to the Michigan community service corps program first provided for 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. In addition, a person described in this subdivision shall not receive service credit for the employment described in this subdivision even though the person subsequently becomes or has been a member of this retirement system.

(h) A person, not regularly employed by the participating municipality, who is employed by the municipality to administer a program described in subdivision (e), (f), or (g) shall not be a member of this retirement system.

(i) An individual who is, on the effective date of the municipality's or court's participation under this act, a member of another retirement system that is sponsored by the participating municipality or participating court if that individual remains as a member of the other retirement system.

(4) "Municipality" means a county, county road commission, city, village, township, or a combination of these units; a lawful public corporation or instrumentality established by 1 or more counties, cities, villages, townships, or a combination of these units; or a public corporation or instrumentality charged by law with the performance of a governmental function and whose jurisdiction is coextensive with 1 or more counties, cities, villages, townships, or a combination of these units.

Sec. 4. (1) Prior service and membership service to which a member is entitled shall be credited to the member's individual service account. Service shall be credited in years and twelfths of a year. Not more than 1 year of credited service shall be credited a member on account of all service rendered to a participating municipality or participating court in any period of 12 consecutive months. Not more than 1/12 of a year of credited service shall be credited a member on account of all service rendered to a participating municipality or participating court in a calendar month. Credited service shall not be credited for any calendar month during which a member acquires less than 10 days of work, as defined by the member's participating municipality or participating court pursuant to section 3(1).

(2) All or a portion of an individual's credited service shall be forfeited under the following conditions:

(a) All credited service shall be forfeited if the individual incurs a break in membership of more than 180 consecutive months and is not a vested former member pursuant to section 12.

(b) Credited service for which the individual has made member contributions shall be forfeited if the individual's accumulated contributions are paid to the individual, the individual's designated beneficiary, or the individual's legal representative.

(3) Credited service forfeited for a reason other than a break in membership of more than 180 consecutive months shall be reinstated in the member's service account if each of the following conditions is satisfied:

(a) The forfeited credited service was acquired while the member was in the employ of the same participating municipality or participating court.

(b) The member pays to the retirement system all accumulated contributions previously paid to the member plus compound interest from the date of payment to the member to the date of repayment to the retirement system. Payment shall be made within 5 years after the date the member reacquires membership in the retirement system on account of employment with the same participating municipality or participating court. However, a participating municipality may by resolution of its governing body or a participating court may by administrative order of its chief judge establish a written policy to extend beyond 5 years the period for payment required under this subdivision. The policy shall be uniformly applicable to all members of the retirement system.

(4) The rates of compound interest applicable to repayment of accumulated contributions shall be as determined by the retirement board.

(5) Forfeited credited service acquired while a member was in the employ of another participating municipality or participating court shall not be reinstated under this section but shall be creditable subject to the requirements of section 6.

Sec. 31. The following special conditions shall apply if a retirant becomes employed by a participating municipality or participating court:

(a) Payment of the retirant's retirement allowance shall be suspended if the retirant becomes employed by the participating municipality or participating court from which the retirant retired. Suspension of payment shall become effective the first day of the calendar month next following the date the member earns more than \$5,000.00 in gross compensation during a calendar year on account of the reemployment. Payment of the retirement allowance shall resume, without change in amount or conditions by reason of the employment, on the first day of the calendar month next following termination of employment or on the January 1 following the suspension of the retirement allowance if the reemployment is not terminated. The retirant shall not be a member during the period of employment.

(b) Payment of the retirant's retirement allowance shall continue, without change in amount or conditions by reason of the employment, if the retirant becomes employed by a participating municipality or participating court other than the participating municipality or participating court from which the retirant retired. The retirant shall be considered, for the purposes of membership and potential benefit entitlement, in the same manner as an individual with no previous record of employment by a participating municipality or participating court.

Sec. 33. (1) A participating municipality or participating court that requires, on the effective date of the 1992 amendatory act that amended this section, member contributions on account of compensation earned, by resolution of the governing body of the municipality or by administrative order of the chief judge of the court, shall adopt contribution program P before July 1, 1992. The resolution or administrative order adopting contribution program P shall allow each member of the retirement system of the participating municipality or participating court to elect whether the participating municipality or participating court shall pick up that member's required contributions on account of compensation earned after the effective date of contribution program P. The participating municipality or participating court shall provide for the election within 30 days of the date of the resolution or administrative order. For each member who elects to have his or her contributions picked up under contribution program P, the program shall become effective on the date of the resolution or the administrative order, or on the date the retirement system receives notification from the United States internal revenue service of approval of this program, whichever occurs later. For each member who elects to not have his or her contributions picked up under contribution program P, the program shall not become effective. A member who is employed by the participating municipality or participating court after the date of the resolution or administrative order adopting contribution program P shall have his or her required contributions picked up under contribution program P.

(2) A participating municipality or a participating court that requires member contributions on account of compensation earned after the effective date of the 1992 amendatory act that amended this section shall adopt, by resolution or administrative order, contribution program P to pick up member contributions required on account of compensation earned after the effective date of contribution program P. Contribution program P shall become effective on the date of the resolution or administrative order, or on the date the retirement system receives notification from the United States internal revenue service of approval of this program, whichever occurs later.

(3) The picked up contributions shall be treated as participating municipality or participating court contributions for the purpose of determining tax treatment under the internal revenue code. The participating municipality or participating court shall pay contributions picked up under contribution program P from the same source of funds that are used for paying compensation to the member.

(4) A participating municipality or participating court shall pick up member contributions by a reduction in the member's cash salary or an offset against a future salary increase, or both. The participating municipality or participating court shall designate contributions that are picked up and paid to the retirement system as employer contributions in lieu of employee contributions to the retirement system. The members who participate in contribution program P shall not have the option of receiving the contributed amounts directly instead of having those amounts paid to the retirement system. Member contributions picked up pursuant to contribution program P shall be treated for all other purposes in the same manner and to the same extent as member contributions made before the effective date of an election of contribution program P.

Sec. 52. The retirement system shall at least annually allocate all or a portion of undistributed investment income to the individual balances in the reserve for employee contributions, the reserve for employer contributions, and the reserve for retired benefit payments and on the aggregate balance in the reserve for excess casualty experience. The amounts allocated shall be charged to the reserve for undistributed investment income. The allocation rates shall be determined by the retirement board. Allocation rates may vary by reserve account but shall be uniformly applied to each subaccount within a reserve account. Allocations to the reserve for employer contributions shall apply only to subaccounts of participating municipalities and participating

courts on the date the allocation is adopted by the retirement board. Before accumulated contributions are paid under section 35, the retirement system may allocate the portion of investment earnings attributable to the accumulated contributions for the number of complete months between the date that investment earnings were last allocated under this section and the date the accumulated contributions are paid.

Sec. 56. (1) This section is enacted pursuant to federal law that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan 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 department of management and budget, bureau of retirement systems, 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 following:

(a) \$50,000.00 or the adjusted amount described in subsection (4) per year for a retirant who was a full-time employee of a police department or fire department and who has 15 or more years of credited service as a police officer, fire fighter, or public safety officer at retirement.

(b) \$10,000.00 per year for all other retirants.

(3) Employer-financed benefits provided by the retirement system under this act shall not exceed the limitation under subsection (2) unless application of this subsection results in a higher limitation. Employer-financed benefits provided by the retirement system shall not exceed the lesser of the following:

(a) One of the following amounts that is applicable to the member:

(i) If a member retires at age 62 or older, \$90,000.00 or the adjusted amount described in subsection (4) per year.

(ii) If a member retires at or after age 55 but before age 62, the actuarially reduced amount of the limitation prescribed in subparagraph (i) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph. However, the limitation in this subparagraph shall not be actuarially reduced below \$75,000.00.

(iii) If a member retires before age 55, the actuarially reduced amount of the limitation prescribed in subparagraph (ii) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph.

(b) 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code.

(4) Section 415(d) of the internal revenue code requires the secretary of the treasury or his or her delegate to annually adjust the \$10,000.00 limitation described in subsection (2)(b) and the \$90,000.00 limitation described in subsection (3)(a)(i) for increases in cost of living, beginning in 1988. This section shall be administered using the limitations applicable to each calendar year as adjusted by the secretary of the treasury or his or her delegate 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.

(5) The assets of the retirement system shall be held 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 beneficiaries before satisfaction of all retirement system liabilities.

(6) 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.

(7) If a participating municipality or participating court discontinues participation in the retirement system, or if the retirement system is discontinued, the interest of the members, vested former members, retirants, and beneficiaries in the plan is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and the related internal revenue service regulations applicable to governmental plans.

(8) 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 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.

Sec. 57. (1) A municipality, by resolution, may petition the retirement board to become a participating municipality and to transfer a preexisting pension or retirement system of the municipality to this retirement system as provided in this section. The municipality shall comply with section 41 and other provisions of law or charter in order to become a participating municipality.

(2) Upon receipt of a petition under subsection (1), the retirement board shall approve or disapprove the petition to become a participating municipality and to transfer a preexisting pension or retirement system. If the retirement board does not approve the petition, the retirement board shall notify the municipality of the disapproval and the reasons for the disapproval. A municipality is not prohibited from filing a new petition under subsection (1) after receipt of notice that a prior petition was disapproved by the retirement board.

(3) If the retirement board approves the petition, the retirement board shall notify the municipality of the approval. The municipality shall transfer to this retirement system all of the assets and benefit obligations of the preexisting pension or retirement system and the preexisting pension or retirement system shall be terminated.

(4) All active members, vested former members, retirants, and beneficiaries of the preexisting pension or retirement system shall be active members, vested former members, retirants, and beneficiaries of this retirement system in a separate benefit program coverage classification, as provided in section 41. The active members, vested former members, retirants, and beneficiaries are eligible to receive the retirement allowances and benefits provided under the preexisting pension or retirement system or the retirement allowances and benefits provided under this retirement system, whichever are greater. A pension or retirement allowance payable to a retirant or beneficiary shall not be diminished or impaired by reason of the transfer.

Section 2. Section 57 of Act No. 427 of the Public Acts of 1984, being section 38.1557 of the Michigan Compiled Laws, is repealed effective 1 year after the effective date of the amendatory act that added section 57 of Act No. 427 of the Public Acts of 1984.

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.