

Act No. 191  
Public Acts of 1995  
Approved by the Governor  
November 6, 1995  
Filed with the Secretary of State  
November 7, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Rep. Rhead

# **ENROLLED HOUSE BILL No. 4869**

AN ACT to amend sections 2a, 10a, 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," section 2a as amended by Act No. 500 of the Public Acts of 1988, section 10a as added by Act No. 99 of the Public Acts of 1990, and section 56 as amended by Act No. 63 of the Public Acts of 1992, being sections 38.1502a, 38.1510a, and 38.1556 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 2a, 10a, and 56 of Act No. 427 of the Public Acts of 1984, section 2a as amended by Act No. 500 of the Public Acts of 1988, section 10a as added by Act No. 99 of the Public Acts of 1990, and section 56 as amended by Act No. 63 of the Public Acts of 1992, being sections 38.1502a, 38.1510a, and 38.1556 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2a. (1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the reserve for employee contributions.

(2) "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a retirement allowance or a return of contributions on account of a reason other than the individual's membership in the retirement system.

(3) "Chief judge" means the chief judge of a judicial circuit court, a judicial district court, or a judicial probate court as provided in the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

(4) "Compensation" means the salary or wages paid a member for personal services rendered the member's participating municipality or participating court while a member of the retirement system. Salary and wages shall include longevity pay; overtime pay; shift differentials; pay for periods of absence from work by reason of vacation, holiday, and sickness; deferred compensation amounts under deferred compensation programs recognized by the retirement board, including premiums for annuities and permanent life insurance policies that are transferred to the ownership of the member upon retirement; and items of a similar nature that are recognized as compensation by the retirement board. Compensation does not include any remuneration or reimbursement not specifically described in this subsection or recognized by the retirement board, such as allowances for clothing, equipment, cleaning, and travel; reimbursement of expenses; bonuses; termination pay; severance pay; payments in consideration of unused sick leave;

the value of fringe benefits; and items of remuneration that are the basis of a potential or actual benefit from another retirement program.

(5) "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

(6) "Distributee" includes a member or vested former member. Distributee also includes the member's or vested former member's surviving spouse or the member's or vested former member's spouse or former spouse under an eligible domestic relations order, with regard to the interest of the spouse or former spouse.

(7) Except as otherwise provided in this subsection, "eligible retirement plan" means an individual retirement account described in section 408(a) of the internal revenue code, an individual retirement annuity described in section 408(b) of the internal revenue code, an annuity plan described in section 403(a) of the internal revenue code, or a qualified trust described in section 401(a) of the internal revenue code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(8) "Eligible rollover distribution" means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

(a) A distribution made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary.

(b) A distribution for a specified period of 10 years or more.

(c) A distribution to the extent that the distribution is required under section 401(a)(9) of the internal revenue code.

(d) The portion of any distribution that is not includable in federal gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(9) "Final average compensation" means any of the following:

(a) One-fifth of the aggregate amount of compensation paid a member during the period of 5 consecutive years of the member's credited service in which the aggregate amount of compensation paid is highest, known as FAC-5. If the member has less than 5 years of credited service, final average compensation means the aggregate amount of compensation paid the member divided by the member's credited service. A member who has credited service in force with more than 1 participating municipality or participating court shall have a separate final average compensation computed based on the member's compensation record with each participating municipality and participating court.

(b) If the participating municipality or participating court has adopted benefit program FAC-3, 1/3 of the aggregate amount of compensation paid a member during the period of 3 consecutive years of the member's credited service in which the aggregate amount of compensation paid is highest. If the member has less than 3 years of credited service, final average compensation means the aggregate amount of compensation paid the member divided by the member's credited service. A member who has credited service in force with more than 1 participating municipality or participating court shall have a separate final average compensation computed based on the member's compensation record with each participating municipality or participating court.

(c) For a member who is a judge of the district court, the recorder's court of the city of Detroit, or the circuit court, and has converted a portion or all of his or her state salary standardization payment as provided for in section 504 of the judges retirement act of 1992, Act No. 234 of the Public Acts of 1992, being section 38.2504 of the Michigan Compiled Laws, as an addition to his or her state base salary under Act No. 234 of the Public Acts of 1992, being sections 38.2101 to 38.2608 of the Michigan Compiled Laws, the difference between the figure that would otherwise be used under subdivision (a) to compute the member's retirement benefits, and the amount of the state salary standardization payment converted.

(10) "Governing body" means the representative legislative body of a municipality, or the administrative board or commission of a public corporation or instrumentality that does not have a representative legislative body.

(11) "Internal revenue code" means the United States internal revenue code of 1986.

(12) "Judicial circuit court" means a judicial circuit of the circuit court as provided in section 11 of article VI of the state constitution of 1963.

(13) "Judicial district court" means a judicial district of the district court as provided in section 8101 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.8101 of the Michigan Compiled Laws.

(14) "Judicial employee" means an individual who is paid compensation for personal service rendered for a participating court. Judicial employee does not include anyone who is a municipal employee under section 2b(3) or anyone who is specifically excluded as a municipal employee under section 2b(3).

(15) "Judicial probate court" means a county probate court or probate court district as provided in section 15 of article VI of the state constitution of 1963.

Sec. 10a. (1) Subject to sections 43 and 43a, a participating municipality may by resolution of its governing body or a participating court may by administrative order of its chief judge adopt for a temporary period any of the following benefit programs or any legitimate combination of the following benefit programs:

- (a) Benefit program E-2 under section 22.
- (b) Benefit program FAC-3 under section 2a(9)(b).
- (c) Benefit program F50 under section 10(4).
- (d) Benefit program F55 under section 10(4).
- (e) Benefit program B-1 under section 15.
- (f) Benefit program B-2 under section 16.
- (g) Benefit program B-3 under section 16a.
- (h) Benefit program B-4 under section 16b.
- (i) Benefit program C, new under section 17(1).
- (j) Benefit program C-1, new under section 18(1).
- (k) Benefit program C-2 under section 19.
- (l) Benefit program RS50% under section 23a.

(2) The resolution or administrative order shall contain all of the following that are applicable:

(a) The benefit program or combination of benefit programs adopted under subsection (1).

(b) The beginning and ending dates of the temporary period selected under subsection (1). The temporary period selected shall be for not less than 60 days and not more than 180 days.

(c) The classification of members covered by the benefit program or combination of benefit programs for the temporary period under subsection (1).

(d) If benefit program F50 or F55 is adopted for a temporary period under subsection (1), the required period of credited service applicable to the benefit program.

(3) A member who is in the classification of members covered under the benefit program or combination of benefit programs for the temporary period under this section and who retires under section 10 during the temporary period shall receive a retirement allowance computed pursuant to the benefit program or combination of benefit programs adopted for the temporary period.

(4) A participating municipality or a participating court shall not adopt a temporary period under this section for the same classification of members on more than 2 occasions in any period of 5 consecutive calendar years.

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) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(8) If a participating municipality or participating court discontinues participation in the retirement system, or if the retirement system is terminated, 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.

(9) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(10) For purposes of determining actuarial equivalent retirement allowances under section 23(2)(b) through (e), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(11) 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 and revenue service regulations under that section 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.

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.