

Act No. 193
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. 4871

AN ACT to amend sections 104, 105, 106, and 604 of Act No. 234 of the Public Acts of 1992, entitled "An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to prescribe penalties and provide remedies; and to repeal certain acts and parts of acts," being sections 38.2104, 38.2105, 38.2106, and 38.2604 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 104, 105, 106, and 604 of Act No. 234 of the Public Acts of 1992, being sections 38.2104, 38.2105, 38.2106, and 38.2604 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 104. (1) "Compensation" means 1 of the following:

- (a) For a plan 1 member or plan 2 member, the salary paid by this state.
- (b) For a plan 3 member, the salary paid by this state, except that for a plan 3 member who is a judge of the recorder's court of the city of Detroit, compensation means an amount equal to the salary paid by this state to a judge of the circuit court and for a plan 3 member who is a judge of the probate court, compensation means an amount equal to the salary paid by this state to a judge of the district court. In addition, compensation for a plan 3 member includes salary standardization payments converted as an addition to the state base salary as provided by section 504, if any.
- (c) For a plan 4 member, the total judicial salary payable from all sources.
- (d) For a plan 5 member, the total salary paid by this state and the district control unit of the district court in the thirty-sixth district.
- (e) For a plan 6 or 7 member, the salary approved by the county board of commissioners and includes salary standardization payments made to the member by the county.

(2) "County retirement plan" means a county retirement plan established under section 12a of Act No. 156 of the Public Acts of 1851, being section 46.12a of the Michigan Compiled Laws.

(3) "Court fees" means a court filing fee or costs earmarked for the retirement system and collected by a county clerk, clerk of the circuit court, or clerk of the district court pursuant to sections 880, 2529, 5756, 8371, 8381, and 8420 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.880, 600.2529, 600.5756, 600.8371, 600.8381, and 600.8420 of the Michigan Compiled Laws.

(4) "Credited service" means all of the following:

- (a) Service credited to a member under this act, the former judges retirement system, and the former probate judges retirement system.
- (b) Other public service purchased under section 403.
- (c) Service purchased under section 404.

(5) "Department" means the department of management and budget.

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

(7) "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.

(8) "District control unit" means district control unit as defined in section 8104 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.8104 of the Michigan Compiled Laws.

Sec. 105. (1) 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.

(2) "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.

(3) "Executive secretary" means the executive secretary of the retirement system as provided in section 205.

(4) Except as otherwise provided in this subsection, "final compensation" means the annual rate of compensation for the calendar year of retirement. For a member who retires on January 1, final compensation means the annual rate of compensation for the calendar year immediately preceding the date of retirement. Final compensation does not include an amount that exceeds the maximum salary set forth for that particular member or vested former member in the revised judicature act, if applicable. For a member who is a judge and who performs judicial duties for a limited period or a specific assignment as authorized by the supreme court pursuant to section 23 of article VI of the state constitution of 1963, final compensation means the annual rate of compensation the member was being paid at the termination of his or her tenure in office as an elected judge.

(5) "Former elected official" means a member who held a state elective office before membership in this retirement system, the former judges retirement system, or the former probate judges retirement system.

(6) "Former judges retirement system" means the state of Michigan judges' retirement system created by former Act No. 198 of the Public Acts of 1951.

(7) "Former probate judges retirement system" means the state of Michigan probate judges retirement system created by former Act No. 165 of the Public Acts of 1954.

Sec. 106. (1) "Interest" means the rate or rates of interest per annum, compounded annually, as determined by the retirement board.

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

(3) "Judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of the circuit court, judge of the district court, judge of the probate court, or judge of the recorder's court of the city of Detroit.

(4) "Medical adviser" means the medical adviser of the retirement system as provided in section 205.

(5) "Member" means a judge or state official who is included in the membership of the retirement system as provided in section 401.

(6) "Membership service" means service performed as a member under this act or under the former judges retirement system or former probate judges retirement system.

Sec. 604. (1) This section is enacted pursuant to section 401(a) of the internal revenue code that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust 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 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 lesser of \$90,000.00 or 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code for retirement occurring at age 62 or older.

(3) The limitation on employer financed benefits provided by the retirement system under subsection (2) applies unless application of subsections (4) and (5) produces a higher limitation, in which case the higher limitation applies.

(4) If a member retires before age 62, the amount of \$90,000.00 in subsection (2) is actuarially reduced to reflect payment before age 62. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subsection. If this subsection produces a limitation of less than \$75,000.00 at age 55, the limitation at age 55 is \$75,000.00 and the limitations for ages under age 55 shall be calculated from a limitation of \$75,000.00 at age 55.

(5) Section 415(d) of the internal revenue code requires the commissioner of internal revenue to adjust the \$90,000.00 limitation in subsection (2) to reflect cost of living increases, beginning with calendar year 1988. This subsection shall be administered using the limitations applicable to each calendar year as adjusted by the commissioner of internal revenue 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.

(6) The assets of the retirement system shall be held in trust 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 retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(7) 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.

(8) 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.

(9) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and related internal revenue service regulations applicable to governmental plans.

(10) 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.

(11) For purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(12) 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.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.