



SENATE BILL No. 169

January 31, 1995, Introduced by Senator GOUGEON and
referred to the Committee on Financial Services.

A bill to establish a defined contribution plan for certain public employees; to provide for the administration of the plan; to provide for the forfeiture of rights under certain circumstances; to prescribe the powers and duties of certain public employers, state departments, and public officials; and to make appropriations for certain fiscal years.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

Sec. 101. (1) This act shall be known and may be cited as the "Michigan public employee defined contribution plan act".

(2) This act does not diminish or impair a benefit accrued or accruing to a member of any public employee retirement system established by a public employer and in existence on December 31, 1995.

1 Sec. 102. For the purposes of this act, the words and
2 phrases defined in this article have the meanings ascribed to
3 them in those sections.

4 Sec. 103. (1) "Accumulated balance" means the total balance
5 in a participant's, former participant's, or refund beneficiary's
6 individual account in the plan.

7 (2) "Compensation" means the remuneration paid a participant
8 on account of the participant's services rendered to the public
9 employer. Compensation includes only medicare taxable wages as
10 reported by the public employer on the participant's federal form
11 W-2, wage and tax statement.

12 (3) "Former participant" means a participant who is no
13 longer eligible to be a participant as described in
14 section 202(3).

15 Sec. 104. (1) "Health insurance coverage" means hospital,
16 medical-surgical, sick care, dental, vision, and hearing benefits
17 provided in section 304.

18 (2) "Institution of higher education" means a university
19 described in section 4, 5, or 6 of article VIII of the state con-
20 stitution of 1963 and a community or junior college established
21 pursuant to section 7 of article VIII of the state constitution
22 of 1963.

23 (3) "Internal revenue code" means the United States internal
24 revenue code of 1986.

25 (4) "Normal retirement age" means age 55.

26 Sec. 105. (1) "Participant" means an employee of this
27 state, a school district, a political subdivision, or an

1 institution of higher education who is eligible to participate in
2 the plan as provided in section 202. Participant does not
3 include any of the following public employees:

4 (a) A public employee who is a member or retirant of another
5 pension or retirement system maintained by the same public
6 employer. As used in this subdivision, member does not include a
7 person who is a deferred member of that retirement system.

8 (b) A public employee who is a deferred member of a retire-
9 ment system maintained by the same public employer and who again
10 becomes an active member of that retirement system as provided in
11 section 202(4).

12 (c) A person enrolled in a neighborhood youth corps program
13 operated with funds from the federal office of economic opportu-
14 nity or a person enrolled in a comparable youth training program
15 operated by an intermediate school district and designed to pre-
16 vent high school dropouts and to rehabilitate high school
17 dropouts.

18 (d) A person, not regularly employed by this state or a
19 school district, who is employed through participation in 1 or
20 more of the following programs:

21 (i) A program authorized, undertaken, and financed pursuant
22 to the comprehensive employment and training act, former Public
23 Law 93-203, 87 Stat. 839.

24 (ii) A summer youth employment program established pursuant
25 to the Michigan youth corps act, Act No. 69 of the Public Acts of
26 1983, being sections 409.221 to 409.229 of the Michigan Compiled
27 Laws.

1 (iii) A program established pursuant to the job training
2 partnership act, Public Law 97-300, 96 Stat. 1322.

3 (iv) A program established pursuant to the Michigan opportu-
4 nity and skills training program, first established under sec-
5 tions 12 to 23 of Act No. 259 of the Public Acts of 1983.

6 (v) A program established pursuant to the Michigan community
7 service corps program, first established under sections 25 to 35
8 of Act No. 259 of the Public Acts of 1983.

9 (vi) A program established pursuant to the older American
10 community service employment program under the older American
11 community service employment act, title V of the older Americans
12 act of 1965, Public Law 89-73, 42 U.S.C. 3056 to 3056i.

13 (e) A person, not regularly employed by this state or a
14 school district, who is employed to administer a program
15 described in subdivision (d).

16 (f) A person whose enrollment or status as a student is a
17 prerequisite for employment by a school district or an institu-
18 tion of higher education.

19 (g) A person providing contractual services to this state.

20 (h) An elected or appointed public official who has elected
21 not to become a participant of the plan or who has elected to
22 discontinue participation in the plan as provided in
23 section 203.

24 (i) An elected or appointed public official who is a member
25 of a state board, commission, or council and who receives a per
26 diem rate in his or her capacity as a member of the state board,
27 commission, or council, to the extent of the service rendered in

1 his or her capacity as a member of the state board, commission,
2 or council.

3 (j) A person who draws compensation as an employee of a
4 political subdivision to the extent of the person's compensation
5 that is not paid by this state or a school district. This subdi-
6 vision does not apply to an employee of a political subdivision
7 that is a participant of the plan pursuant to section 406.

8 (k) A person who is employed by a police or fire department
9 and who is subject to compulsory arbitration of labor disputes
10 pursuant to Act No. 312 of the Public Acts of 1969, being sec-
11 tions 423.231 to 423.247 of the Michigan Compiled Laws.

12 (l) A person who is employed by this state and who is eligi-
13 ble to become a member of the Michigan judges retirement system
14 created by the judges retirement act of 1992, Act No. 234 of the
15 Public Acts of 1992, being sections 38.2101 to 38.2608 of the
16 Michigan Compiled Laws.

17 (m) A person who is employed by this state and who is eligi-
18 ble to become a member of the Michigan state police retirement
19 system created by the state police retirement act of 1986, Act
20 No. 182 of the Public Acts of 1986, being sections 38.1601 to
21 38.1648 of the Michigan Compiled Laws.

22 (n) A person who is employed by this state and who is eligi-
23 ble to become a member of the Michigan legislative retirement
24 system created by the Michigan legislative retirement system act,
25 Act No. 261 of the Public Acts of 1957, being sections 38.1001 to
26 38.1060 of the Michigan Compiled Laws.

1 (2) "Plan" means the Michigan public employee defined
2 contribution plan provided for in this act.

3 (3) "Political subdivision" means all of the following:

4 (a) A public entity created under authority of state or
5 local law, charter, or ordinance including but not limited to a
6 county, county road commission, city, township, village, public
7 corporation, board, authority, agency, instrumentality,
8 quasi-corporation, or a combination of these entities, which
9 public entity provides pension or retirement benefits pursuant to
10 that authority.

11 (b) An institution of higher education.

12 (4) "Public employee" means a person employed by a public
13 employer.

14 (5) "Public employer" means this state and a school
15 district. Public employer includes an agency that has employees
16 on its payroll who are employees of a school district and who are
17 participants of the plan. Public employer includes a political
18 subdivision if the political subdivision participates in the plan
19 as provided in section 406.

20 Sec. 106. (1) "Qualified pension plan" means a pension or
21 retirement plan created in trust under section 401 of the inter-
22 nal revenue code, which trust is an exempt organization under
23 section 501 of the internal revenue code.

24 (2) "Qualified recipient" means a former participant who has
25 attained normal retirement age; a former participant who has not
26 attained normal retirement age but who is receiving social
27 security disability benefits or worker's compensation benefits; a

1 refund beneficiary who is the surviving spouse of a deceased
2 participant or former participant and the surviving spouse has
3 attained normal retirement age; and a refund beneficiary who is a
4 child of a deceased participant or former participant and the
5 child has not attained 18 years of age.

6 (3) "Refund beneficiary" means a person or persons nominated
7 by a participant or former participant under section 302 to
8 receive a distribution of the participant's or former
9 participant's accumulated balance as provided in section 303.

10 (4) "School district" means a local public school district,
11 an intermediate school district, and a district library as
12 defined in section 69g of the public school employees retirement
13 act of 1979, Act No. 300 of the Public Acts of 1980, being
14 section 38.1369g of the Michigan Compiled Laws.

15 ARTICLE 2

16 Sec. 201. The Michigan public employee defined contribution
17 plan is created for public employees.

18 Sec. 202. (1) Except as otherwise provided in this act, a
19 person whose effective date of employment by this state or a
20 school district is on or after January 1, 1996 is a participant
21 of the plan. A person whose effective date of employment by this
22 state or a school district is before January 1, 1996 is a partic-
23 ipant of the plan if the requirements of section 405 are met. An
24 employee of a political subdivision is a participant of the plan
25 if the requirements of section 406 are met.

26 (2) A participant shall not participate in any other public
27 sector retirement benefits plan for simultaneous service rendered

1 to the same public employer on or after January 1, 1996. This
2 subsection does not prohibit a participant from participating in
3 a deferred compensation plan established by the public employer
4 pursuant to the internal revenue code, if the deferred compensa-
5 tion plan provides for only employee contributions.

6 (3) A participant who becomes ineligible to participate for
7 any reason ceases to be a participant and is considered a former
8 participant beginning on the day immediately following the event
9 that caused the ineligibility.

10 (4) This section does not prohibit a person who is a
11 deferred member of a retirement system maintained by a public
12 employer under this act and who becomes reemployed by that public
13 employer on or after January 1, 1996 from again becoming an
14 active member of that retirement system subject to the provisions
15 of that retirement system.

16 Sec. 203. An elected or appointed public official may elect
17 not to become a participant of the plan or may elect to discon-
18 tinue participation in the plan by filing written notice of the
19 election with the state treasurer. The public employer shall not
20 contribute the percentage of compensation for an elected or
21 appointed public official who elects not to become a participant
22 or who discontinues participation under this section.

23 Sec. 204. (1) The state treasurer is the sole fiduciary and
24 trustee of the plan. The state treasurer may appoint an advisory
25 board to assist the state treasurer in carrying out his or her
26 duties as fiduciary and trustee.

1 (2) The state treasurer shall make a writing prepared,
2 owned, used, in the possession of, or retained by the state
3 treasurer in the performance of an official function as fiduciary
4 of the plan available to the public in compliance with the free-
5 dom of information act, Act No. 442 of the Public Acts of 1976,
6 being sections 15.231 to 15.246 of the Michigan Compiled Laws.

7 (3) The state treasurer may promulgate rules pursuant to the
8 administrative procedures act of 1969, Act No. 306 of the Public
9 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
10 Compiled Laws, for the implementation and administration of this
11 act.

12 (4) The state treasurer shall conduct hearings under this
13 act pursuant to Act No. 306 of the Public Acts of 1969. An indi-
14 vidual may be represented by counsel or other duly-authorized
15 agent at a hearing conducted under this act.

16 (5) The state treasurer shall determine the provisions and
17 procedures of the plan, consistent with the provisions and proce-
18 dures that are specified in this act.

19 Sec. 205. The state treasurer shall hire a manager, and
20 employ other professional, legal, clerical, technical, and admin-
21 istrative employees or consultants that the state treasurer con-
22 siders necessary for the proper administration of the plan.

23 Sec. 206. (1) The state treasurer shall contract with pri-
24 vate investment managers to invest the assets of the plan.
25 Except as otherwise provided in subsection (2), each participant,
26 former participant, and refund beneficiary may direct the
27 investment of the individual's accumulated balance to 1 or more

1 available categories of investment provided by the investment
2 managers. The following categories of investment shall be made
3 available to participants, former participants, and refund
4 beneficiaries:

5 (a) Short term securities.

6 (b) Fixed income securities.

7 (c) Equity securities.

8 (d) Any other category of investment the state treasurer
9 considers appropriate.

10 (2) During the first 6 months of participation, the state
11 treasurer may restrict the investment of a participant's accumu-
12 lated balance to a single category of investment. The state
13 treasurer shall determine the investment category for the accumu-
14 lated balances of participants, former participants, and refund
15 beneficiaries who do not direct their own investments.

16 Sec. 207. (1) Except as provided in subsection (2), the
17 expenses of the plan shall be paid by the participants, former
18 participants, and refund beneficiaries, in a manner to be deter-
19 mined by the state treasurer.

20 (2) From the amounts appropriated to all state departments
21 for federal insurance contributions act payments and retirement
22 benefits, whether appropriated as a single line item or commin-
23 gled with program line items, included for state fiscal years
24 ending September 30, 1995, September 30, 1996, and September 30,
25 1997, are sums sufficient to pay for the administrative start-up
26 costs of the plan. Charges against these appropriations by and
27 in amounts and in a manner prescribed by the state treasurer

1 shall be made and are appropriated to the state treasurer for
2 staff salaries, fringe benefits, and other administrative costs
3 incurred for this purpose.

4 ARTICLE 3

5 Sec. 301. (1) A public employer shall contribute 5% of each
6 participant's compensation to the plan. The state treasurer
7 shall adopt provisions and procedures for the payment of public
8 employer contributions to the plan. The state treasurer shall
9 earmark 20% of the employer contribution under this subsection
10 for the payment of the cost of health insurance coverage, to the
11 extent allowed by federal law.

12 (2) A participant is not required to contribute to the
13 plan. A participant may elect to contribute to the plan, subject
14 to rules promulgated by the state treasurer and only to the
15 extent allowed by federal law. A participant may rollover quali-
16 fied distributions from other qualified pension plans into this
17 plan, to the extent allowed by federal law.

18 (3) Except as provided in section 402, a participant is
19 immediately 100% vested in the participant's accumulated
20 balance.

21 Sec. 302. A participant or former participant may nominate
22 1 or more persons as refund beneficiary by filing written notice
23 of the nomination with the state treasurer. The state treasurer
24 shall adopt provisions and procedures for the nomination of
25 refund beneficiaries by participants and former participants.

1 Sec. 303. (1) A participant is eligible to receive
2 distribution of his or her accumulated balance in the plan upon
3 becoming a former participant.

4 (2) Upon the death of a participant or former participant,
5 the accumulated balance of that deceased participant or former
6 participant is considered to belong to the refund beneficiary of
7 that deceased participant or former participant, if any. If a
8 valid nomination of refund beneficiary is not on file with the
9 state treasurer, the state treasurer, in a lump sum distribution,
10 shall distribute the accumulated balance to the legal representa-
11 tive of the deceased participant or former participant, if any,
12 or to the estate of the deceased participant or former
13 participant.

14 (3) Subject to subsection (4), the state treasurer shall
15 adopt provisions and procedures by which a former participant or
16 refund beneficiary, subject to federal law, may elect 1 or a com-
17 bination of several of the following methods of distribution of
18 the accumulated balance:

19 (a) A lump sum distribution to the recipient.

20 (b) A lump sum direct rollover to another qualified pension
21 plan, to the extent allowed by federal law.

22 (c) An annuity for the life of the recipient.

23 (d) An optional form of annuity as established by the state
24 treasurer.

25 (e) No current distribution, in which case the accumulated
26 balance shall remain in the plan until the former participant or
27 refund beneficiary elects a method or methods of distribution

1 under subdivisions (a) to (d), to the extent allowed by federal
2 law.

3 (4) If the former participant or refund beneficiary eligible
4 for a distribution of an accumulated balance under this section
5 is a qualified recipient, then the qualified recipient may elect
6 health insurance coverage and a portion of the accumulated bal-
7 ance may be applied toward the cost of that health insurance cov-
8 erage, to the extent allowed by federal law.

9 Sec. 304. (1) The state treasurer shall establish a medical
10 benefits plan or plans for hospital, medical-surgical, sick care,
11 dental, vision, and hearing benefits for former participants,
12 refund beneficiaries, and spouses and minor children of former
13 participants under this section. The state treasurer shall adopt
14 provisions and procedures for the health insurance coverage pro-
15 vided under this section.

16 (2) A qualified recipient may elect health insurance cover-
17 age in a medical benefits plan or plans upon election of a method
18 of distribution of the accumulated balance under section 303. A
19 former participant who elects health insurance coverage under
20 this subsection may also elect health insurance coverage for the
21 spouse of the former participant or the children of the former
22 participant who have not attained 18 years of age, or both. A
23 refund beneficiary who is the surviving spouse of a deceased par-
24 ticipant or former participant and who elects health insurance
25 coverage under this subsection may also elect health insurance
26 coverage for the children of the deceased participant or former
27 participant who have not attained 18 years of age.

1 (3) Upon direction by the qualified recipient and to the
2 extent allowed by federal law, the state treasurer shall deduct
3 the cost of the health insurance coverage elected by the quali-
4 fied recipient from the portion of the accumulated balance ear-
5 marked under section 301 for the payment of the cost of health
6 insurance coverage before distribution. However, if the ear-
7 marked portion of the accumulated balance is not sufficient to
8 pay the cost of the health insurance coverage elected under this
9 section, the qualified recipient shall pay to the state treasurer
10 the amount due to maintain the elected health insurance
11 coverage.

12 ARTICLE 4

13 Sec. 401. (1) Except as otherwise provided in this section,
14 the right of a person to an accumulated balance or any other ben-
15 efit from the plan is unassignable and is not subject to execu-
16 tion, garnishment, attachment, the operation of bankruptcy or
17 insolvency law, or other process of law. The right of a person
18 to an accumulated balance or any other benefit from the plan is
19 subject to award by a court pursuant to section 18 of chapter 84
20 of the Revised Statutes of 1846, being section 552.18 of the
21 Michigan Compiled Laws, and to any other order of a court per-
22 taining to alimony or child support. The right of a person to an
23 accumulated balance or any other benefit from the plan is subject
24 to an eligible domestic relations order under the eligible domes-
25 tic relations order act, Act No. 46 of the Public Acts of 1991,
26 being sections 38.1701 to 38.1711 of the Michigan Compiled Laws.

1 (2) The plan has the right of setoff to recover overpayments
2 made by the plan and to satisfy any claim arising from
3 embezzlement or fraud committed by a participant, former partici-
4 pant, refund beneficiary, or other person who has a claim to an
5 accumulated balance or any other benefit from the plan.

6 Sec. 402. Except as otherwise provided in this section, a
7 participant, former participant, refund beneficiary, or other
8 person who has a claim to an accumulated balance or any other
9 benefit from the plan forfeits his or her right to the accumu-
10 lated balance or other benefit from the plan if the participant
11 or former participant is convicted of or enters a nolo contendere
12 plea accepted by a court for a felony or misdemeanor relating to,
13 arising out of, or in connection with the participant's or former
14 participant's service as a public employee for a public
15 employer. The state treasurer shall pay to a person whose rights
16 under this act are forfeited the portion of the accumulated bal-
17 ance attributable to voluntary participant contributions and
18 direct rollovers from other qualified pension plans not funded by
19 the same public employer.

20 Sec. 403. The plan shall correct errors in the records and
21 actions of the plan. The plan shall seek to recover overpayments
22 and shall make up underpayments.

23 Sec. 404. (1) Except as otherwise provided in
24 subsection (2), the provisions of this act are not subject to
25 collective bargaining under Act No. 336 of the Public Acts of
26 1947, being sections 423.201 to 423.217 of the Michigan Compiled
27 Laws. Except as otherwise provided in subsection (2), a

1 collective bargaining agreement entered into under Act No. 336 of
2 the Public Acts of 1947 shall not amend, modify, supersede, or
3 otherwise affect the terms of this act in any respect.

4 (2) A matter relating to retirement benefits for police
5 officers and fire fighters who are subject to compulsory arbitra-
6 tion pursuant to Act No. 312 of the Public Acts of 1969, being
7 sections 423.231 to 423.247 of the Michigan Compiled Laws, shall
8 remain a mandatory subject of bargaining under Act No. 336 of the
9 Public Acts of 1947.

10 Sec. 405. (1) A school district shall comply with
11 section 109 of the public school employees retirement act of
12 1979, Act No. 300 of the Public Acts of 1980, being section
13 38.1409 of the Michigan Compiled Laws. This state shall comply
14 with section 49 of the state employees' retirement act, Act No.
15 240 of the Public Acts of 1943, being section 38.49 of the
16 Michigan Compiled Laws, section 61 of the Michigan legislative
17 retirement system act, Act No. 261 of the Public Acts of 1957,
18 being section 38.1061 of the Michigan Compiled Laws, and section
19 309 of the judges retirement act of 1992, Act No. 234 of the
20 Public Acts of 1992, being section 38.2309 of the Michigan
21 Compiled Laws. An employee of this state or a school district
22 who makes the election provided for in the applicable section of
23 Act No. 300 of the Public Acts of 1980, Act No. 240 of the Public
24 Acts of 1943, Act No. 261 of the Public Acts of 1957, or Act
25 No. 234 of the Public Acts of 1992, is a participant effective
26 12:01 a.m. January 1, 1997.

1 (2) The state treasurer shall credit the participant's
2 account in the plan with the lump sum transferred pursuant to
3 section 109 of Act No. 300 of the Public Acts of 1980, section 49
4 of Act No. 240 of the Public Acts of 1943, or section 61 of Act
5 No. 261 of the Public Acts of 1957.

6 Sec. 406. (1) A political subdivision shall comply with the
7 political subdivision pension and retirement plan closure act.
8 Pursuant to provisions and procedures established by the state
9 treasurer, a political subdivision may allow employees whose
10 effective date of employment is before January 1, 1996 to make an
11 election to participate in the plan.

12 (2) The state treasurer shall credit the participant's
13 account in the plan with any lump sum amount transferred to the
14 plan pursuant to an election by an employee of a political subdi-
15 vision to participate in the plan under subsection (1).

16 (3) This act does not preclude a political subdivision from
17 including in or transferring to the plan an employee whose effec-
18 tive date of employment by that political subdivision is before
19 January 1, 1996, regardless of whether employees of that classi-
20 fication are included within the plan for employees whose effec-
21 tive date of employment is on or after January 1, 1996, as pro-
22 vided in this section and the political subdivision pension and
23 retirement plan closure act.

24 Sec. 407. The state intends the plan to be a qualified pen-
25 sion plan created in trust under section 401 of the internal rev-
26 enue code and that the trust be an exempt organization under
27 section 501 of the internal revenue code. The contribution and

1 benefit limits contained in section 415 of the internal revenue
2 code are applicable to the plan. The state treasurer may promul-
3 gate rules containing additional provisions to the plan that are
4 necessary to fulfill this intent.

5 Sec. 408. If any section or part of a section of this act
6 is for any reason held to be invalid or unconstitutional, the
7 holding shall not be construed to affect the validity of the
8 remaining sections of this act or the act in its entirety.

9 Sec. 409. This act shall not take effect unless Senate Bill
10 No. _____ or House Bill No. _____ (request no. 02271'95) of the
11 88th Legislature is enacted into law.