

Act No. 743
Public Acts of 2002
Approved by the Governor
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Reps. Caul, Clarke, DeRossett, Ehardt, Godchaux, Howell, Hummel, Jacobs, Julian, LaSata, Lockwood, Mead, Newell, Pappageorge, Shulman, Stewart, Thomas, Toy, Vander Veen, Van Woerkom, Vear and Voorhees named co-sponsors

ENROLLED HOUSE BILL No. 4605

AN ACT to amend 1943 PA 240, entitled "An act to provide for a state employees' retirement system; to create a state employees' retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; to prescribe and make appropriations for the retirement system; and to prescribe penalties and provide remedies," by amending sections 11, 13, 45, 46, and 47 (MCL 38.11, 38.13, 38.45, 38.46, and 38.47), sections 11, 13, and 46 as amended by 2002 PA 93 and section 45 as amended by 1988 PA 351, and by adding sections 19i and 47a.

The People of the State of Michigan enact:

Sec. 11. (1) There is created the employees' savings fund, employer's accumulation fund, annuity reserve fund, pension reserve fund, income fund, expense fund, and health insurance reserve fund.

(2) The employees' savings fund is the fund in which shall be accumulated at regular interest the contributions to the retirement system deducted from the compensation of members. The retirement board shall provide for the maintenance of an individual account for each member that shows the amount of the member's contributions together with interest on those contributions. The accumulated contributions of a member returned to the member upon his or her withdrawal from service, or paid to the member's estate or designated beneficiary in the event of the member's death, as provided in this act, shall be paid from the employees' savings fund. Any accumulated contributions not claimed by a member or the member's legal representative as provided in this act within 5 years after the member's separation from state service shall be transferred from the employees' savings fund to the income fund. The accumulated contributions of a member, upon the member's retirement, shall be transferred from the employees' savings fund to the pension reserve fund.

(3) The employer's accumulation fund is the fund in which shall be accumulated the reserves derived from money provided by this state for the payment of all retirement allowances to be payable to retirants and beneficiaries as provided in this act. The amounts paid by this state shall be credited to the employer's accumulation fund. Upon the retirement of a member, or upon the member's death, if a beneficiary is entitled to a retirement allowance payable from funds of the retirement system, the difference between the reserve for the retirement allowance to be paid on account of the member's retirement or death and the member's accumulated contributions standing to his or her credit in the employees' savings fund at the time of his or her retirement or death shall be transferred from the employer's accumulation fund to the pension reserve fund. If, in any year, the pension reserve fund is insufficient to cover the reserves for retirement allowances and other benefits being paid from the fund, the amount or amounts of the insufficiency or insufficiencies shall be transferred from the employer's accumulation fund to the pension reserve fund.

(4) The annuity reserve fund is the fund from which shall be paid all annuities, or benefits in lieu of annuities, because of which reserves have been transferred from the employees' savings fund to the annuity reserve fund. Upon the adoption of this act, the balance in the annuity reserve fund shall be transferred to the pension reserve fund, and the annuities heretofore payable from the annuity reserve fund shall thereafter become payable from the pension reserve fund.

(5) The pension reserve fund is the fund from which shall be paid all retirement allowances and benefits in lieu of pensions, as provided in this act. For a disability retiree returned to active service with this state, his or her pension reserve, computed as of the date of return, shall be transferred from the pension reserve fund to the employees' savings fund and the employer's accumulation fund in the proportion that this reserve, as of the date of his or her retirement, was transferred to the pension reserve fund from the employees' savings fund and from the employer's accumulation fund. The amounts transferred to the employees' savings fund under this section shall be credited to the member's individual account in the fund.

(6) An income fund is created for the purpose of crediting regular interest on the amounts in the various other funds of the retirement system with the exception of the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. Transfers for special requirements shall be made only when the amount in the income fund exceeds the ordinary requirements of the fund as evidenced by a resolution of the retirement board recorded in its minutes. The retirement board shall annually allow regular interest for the preceding year to each of the funds enumerated in subsections (2), (3), (4), (5), and (8), and the amount allowed under this subsection shall be due and payable to each of these funds and shall be annually credited to the funds by the retirement board and paid from the income fund. However, interest on contributions from members within a calendar year shall begin on the first day of the next calendar year, and shall be credited at the end of the calendar year. Except as provided in this subsection, income, interest, and dividends derived from the deposits and investments authorized by this act shall be paid into the income fund. The retirement system shall determine the share of income, interest, and dividends attributable to the balance in the health advance funding subaccount created under subsection (9) and the share of income, interest, and dividends attributable to the health advance funding subaccount balance shall be paid into the health advance funding subaccount. The retirement board is authorized to accept gifts and bequests. Any funds that come into the possession of the retirement system as a gift or bequest, or any funds that may be transferred from the employees' savings fund by reason of lack of claimant, or because of a surplus in any fund created by this act, or any other money the disposition of which is not otherwise provided for in this act shall be credited to the income fund.

(7) The expense fund is the fund from which shall be paid the expenses of the administration of this act, exclusive of amounts payable as retirement allowances and other benefits provided for in this act. The legislature shall appropriate the funds necessary to defray and cover the expenses of administering this act.

(8) The health insurance reserve fund is the fund into which appropriations made by the legislature, subscriber co-payments, and payments by the retirement system under section 68 for health, dental, and vision insurance premiums are paid. Health, dental, and vision insurance premiums payable pursuant to sections 20d and 68 shall be paid from the health insurance reserve fund. The assets and any earnings on the assets contained in the health insurance reserve fund and the health advance funding subaccount described in subsection (9) are not to be treated as pension assets for any purpose.

(9) The health advance funding subaccount is the account to which amounts transferred pursuant to sections 20d, 38(6), and 52 are credited. Any amounts received in the health advance funding subaccount and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 20d is at least 100% funded. The department may expend funds or transfer funds to another account to expend for health benefits under section 20d if the actuarial accrued liability for health benefits under section 20d is at least 100% funded. For each fiscal year after the fiscal year in which the actuarial accrued liability for health benefits under section 20d is at least 100% funded by the health advance funding subaccount, amounts received in the health advance funding subaccount and accumulated earnings on those amounts may be expended or credited to fund health benefits under section 20d as provided in section 38(3). For the fiscal year ending on September 30, 2003 only, the general fund portion of all amounts received in the health advance funding subaccount as of October 1, 2002 and accumulated earnings on those amounts shall be transferred to the general fund. Notwithstanding any other provision of this section, the department may transfer amounts from the health advance funding subaccount to the employer's accumulation fund created under this section if the department does both of the following:

(a) At least 45 days before the intended transfer, submits a request to the chairs of the senate and house appropriations committees and, at least 15 days before the intended transfer, obtains the approval of both the senate and house appropriations committees.

(b) Ensures that the request submitted to the senate and house appropriations committees contains an actuarial valuation prepared pursuant to section 38 that demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions does not exceed the actuarial present value of benefits.

(10) The description of the various funds in this section shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of assets credited to the various funds of the retirement system.

Sec. 13. (1) Except as otherwise provided in this act, membership in the retirement system consists of state employees occupying permanent positions in the state civil service. All state employees except those specifically excluded by law and those who are members or eligible to be members of other statutory retirement systems in this state, shall become members of the retirement system. The employees may use service previously performed as an employee of this state in meeting the service requirements for the retirement allowances and death benefits provided by the retirement system. However, the prior service shall not be used in computing the amount of a retirement allowance to be paid by the retirement system unless the employee pays to the retirement system the amount the employee's contributions would have been had the employee become a member immediately upon employment by the state with interest compounded annually at the regular rate from a date 1 year after the date of employment by this state to the date of payment. A person who draws compensation as a state employee of a political subdivision of this state is eligible for the benefits provided by this act to the extent of the person's compensation paid by this state. An individual who meets the requirements of section 44a is a member of the retirement system.

(2) Elected or appointed state officials may elect not to become or continue as members of the retirement system by filing written notice with the retirement board. An appointed state official who is a member of a state board, commission, or council and who receives a per diem rate in his or her capacity as a member of the board, commission, or council is excluded from membership in the retirement system for the service rendered in his or her capacity as a member of the board, commission, or council. Service performed by an elected or appointed official during the time the official elects not to participate shall not be used in meeting the service requirement or in computing the amount of retirement allowance to be paid by the retirement system. A member who elects not to participate shall be refunded all contributions made before the election.

(3) Membership in the retirement system does not include any of the following:

(a) A person who is a contributing member in the public school employees' retirement system provided for in the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(b) A person who is a contributing member in the Michigan judges retirement system provided for in the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(c) A person who comes within the Michigan state police retirement system provided for in the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(d) An individual who is first employed and entered upon the payroll on or after March 31, 1997 for employment for which the individual would have been eligible for membership under this section before March 31, 1997. An individual described in this subdivision is eligible to be a qualified participant in Tier 2 subject to sections 50 to 69.

(e) Except as provided in section 19g, an individual who elects to terminate membership under section 50 and who, but for that election, would otherwise be eligible for membership in Tier 1 under this section.

(f) A retirant who again becomes employed by the state and is entered upon the payroll on or after December 1, 2002, for employment for which the retirant would have been eligible for membership under this section before December 1, 2002. A retirant described in this subdivision shall be a qualified participant in Tier 2 subject to sections 50 to 69.

(4) A person who is hired in state classified or unclassified service after June 30, 1974, who is first employed and entered upon the payroll before March 31, 1997, and who possesses a Michigan teaching certificate shall be a member of this retirement system. After June 30, 1974, but before March 31, 1997, a person who returns to state employment in the classified or unclassified service who previously was a contributing member of the Michigan public school employees' retirement system shall have the person's accumulated contributions and service transferred to this retirement system, or having withdrawn the contributions, may pay into the retirement system the amount withdrawn together with regular interest and have credit restored as provided for in section 16. On and after March 31, 1997, an individual described in this subsection who returns to state service shall make an irrevocable election to remain in Tier 1 or to become a qualified participant of Tier 2 in the manner prescribed in section 50.

(5) A person, not regularly employed by this state, who is employed through participation in 1 or more of the following programs, shall not be a member of the retirement system and shall not receive service credit for the employment:

(a) A program authorized, undertaken, and financed pursuant to the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839.

(b) A summer youth employment program established pursuant to the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229.

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

(d) A program established pursuant to the Michigan opportunity and skills training program, first established under sections 12 to 23 of 1983 PA 259.

(e) A program established pursuant to the Michigan community service corps program, first established under sections 25 to 35 of 1983 PA 259.

(6) A person, not regularly employed by this state, who is employed to administer a program described in subsection (5) shall not be a member of the retirement system and shall not receive service credit for the employment.

(7) If a person described in subsection (5)(a) later becomes a member of this retirement system within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment which is excluded in subsection (5) for purposes of determining a retirement allowance upon the payment by the person's employer under subsection (5) from funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, as funds permit, to the retirement system of the contributions, plus regular interest, the employer would have paid had the employment been rendered in a position covered by this act. During the person's employment in the transitional public employment program, the person's employer shall place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions that the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees that the employer determined would move from the transitional public employment program into positions covered by this act. If the funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, are insufficient, the remainder of the employer contributions shall be paid by the person's current employer.

(8) For purposes of section 19g, a former member shall be considered a member and shall be considered to have satisfied the requirements of section 19g(1)(c) and (2)(c) if the former member was employed by the department formerly known as the department of mental health on January 1, 1996 and went on layoff status before January 1, 1997.

Sec. 19i. (1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On or before December 31, 2002, or on the effective date of his or her retirement, whichever is earlier, the member's combined age and length of credited service is equal to or greater than 75 years, or, if the member has at least 20 years of service credit, the member's combined age and length of credited service is equal to or greater than 65 years.

(b) The member is an employee of the legislature, is an employee of the office of governor, is an employee of the judicial system, or is an unclassified employee within the state civil service.

(c) The member was employed by this state or the legislature for the 30-month period ending on December 1, 2002. A member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(d) The member executes and files a written application with the retirement board, on or after December 1, 2002, but not later than December 31, 2002, stating a date on or after January 1, 2003, but not later than February 1, 2003, on which he or she desires to retire. A member may withdraw a written application on or before January 15, 2003. A written application submitted by a member and not withdrawn on or before January 15, 2003 is irrevocable.

(e) The member is not employed in a covered position as defined in section 45.

(f) The member is not a conservation officer as described in section 48.

(2) If a member meets all of the requirements of subsection (1) except the requirement in subsection (1)(c), the member may retire and receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-1/2% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(3) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments beginning on or after February 1, 2003. Payments received under this subsection may not be used to purchase service credit under this act. These payments for accumulated sick leave are to be paid from funds appropriated to the appointing authority and not from funds of the retirement system. These payments shall be considered taxable income under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(4) Upon his or her retirement as provided in this section, a member who did not make an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-3/4% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(5) Upon his or her retirement as provided in this section, a former member who made an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1/4% of his or her final average compensation. Except for the calculation provided in this subsection, the former member's retirement allowance is subject to section 20. The former member's retirement allowance is not subject to reduction pursuant to section 19(2).

(6) For purposes of this section, an individual who elected to terminate membership under section 50 and who, but for that election, would otherwise be eligible for membership in Tier 1 under section 13, shall be considered a member of Tier 1 for the limited purpose of receiving a retirement allowance calculated under this section and paid by the retirement system.

(7) An employee who retires under this section shall not be hired under contract by the state for a period of 2 years after the date of separation.

Sec. 45. As used in sections 45 to 47:

(a) "Covered position" means any of the following:

(i) On or after January 1, 1989, a position in the classified civil service with a classification of corrections officer; resident unit officer; corrections medical aide; corrections shift supervisor; corrections security specialist; deputy prison warden; or departmental administrator-prison warden.

(ii) On or after January 1, 1989, a position that is assigned to a work station inside the security perimeter of a state correctional facility designated as "medium", "close", or "maximum".

(iii) On or after January 1, 1989, a position within a state correctional facility that requires the employee to be in direct contact with prisoners for more than 50% of the employee's work time performing supervisory or disciplinary duties including 1 or more of the following:

(A) Supervising prisoners in the performance of tasks.

(B) Supervising prisoners for the purpose of enforcing the facility's rules.

(C) Direct participation in the disciplinary process.

(iv) On or after January 1, 1989, a position with the center for forensic psychiatry that is classified by civil service as forensics security aide IIB, forensics security aide IIIB, forensics security supervisor IVB, forensics security supervisor VB, forensics security supervisor VIB, or forensics supervisor VII.

(v) A position that was a covered position under this section before January 1, 1989, that is excluded by subparagraphs (i), (ii), (iii), and (iv), if and only as long as the person in the position on January 1, 1989, continues in the position after January 1, 1989.

(b) "Supplemental member" means a member who is employed in a covered position.

(c) "Covered service" means credited service acquired in a covered position.

(d) "Supplemental final average compensation" means 1/3 of the compensation paid a supplemental member during the period of 3 consecutive years of the member's covered service producing the highest average and contained within the member's last 10 years of credited service immediately preceding the date the member's employment in a covered position last terminates.

(e) "State correctional facility" means a facility under the jurisdiction of the department of corrections that has a designation of "maximum", "close", "medium", "minimum", "prison camp", or "correction center".

Sec. 46. (1) A supplemental member may retire with a supplemental early retirement allowance as provided for in section 47 if the supplemental member meets all of the following conditions:

(a) He or she is age 51 years or older but less than age 62 years.

(b) He or she has 25 or more years of covered service.

(c) His or her last 3 years of credited service are covered service.

(d) He or she files a written request for retirement with the retirement board stating the date that he or she wishes to be retired.

(2) A supplemental member may be separated from employment in a covered position the first day of the calendar month following the month in which he or she attains age 56 years. A supplemental member separated under this subsection may retire with a supplemental early retirement allowance provided in section 47 if he or she satisfies each of the following conditions:

(a) He or she has not attained age 62 years.

(b) He or she has 10 or more years of covered service.

(c) His or her last 3 years of credited service are covered service.

(d) He or she files a written request for retirement with the retirement board stating the date that he or she wishes to be retired.

(3) The state personnel director shall determine all questions on eligibility for supplemental early retirement benefits within the meaning of sections 45 to 47.

Sec. 47. (1) Upon retirement as provided in section 46, a supplemental member shall be paid a temporary straight life supplemental early retirement allowance terminating upon the supplemental member reaching age 62 years or his or her death, whichever occurs first. Prior to the effective date of retirement, the supplemental member may choose to be paid his or her retirement allowance under an optional form of payment provided in section 31(1)(a). For the purposes of this election, the provisions of section 31(1)(a) are modified to reflect the temporary nature of a supplemental early retirement allowance.

(2) The amount of the supplemental member's temporary straight life supplemental early retirement allowance is equal to the difference between (i) 2.0% of his or her supplemental final average compensation multiplied by his or her covered service plus 1.5% of the supplemental member's final average compensation multiplied by the excess, if any, of his or her credited service over his or her covered service; and (ii) the amount of retirement allowance paid under section 20.

Sec. 47a. The retirement board shall report to the house and senate appropriations committees not later than June 30, 2003 on the cost of transferring persons to noncovered positions if they were in covered positions with corrections centers before their positions were terminated due to the closures of the corrections centers between August 1, 1999 and August 1, 2000, if the persons continue in noncovered positions until retiring as supplemental members under sections 46 and 47 or transferred to covered positions but whose last 3 years of credited service are a combination of covered and uncovered service due to the termination of the covered positions by the closure of a corrections center.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.