

SENATE BILL No. 1638

November 12, 2008, Introduced by Senators JANSEN and SWITALSKI and referred to the Committee on Appropriations.

A bill to amend 1980 PA 300, entitled
"The public school employees retirement act of 1979,"
by amending sections 4 and 108 (MCL 38.1304 and 38.1408), section 4
as amended by 2007 PA 15 and section 108 as amended by 2002 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Compound interest" means interest compounded
2 annually on July 1 on the contributions on account as of the
3 previous July 1 and computed at the rate of investment return
4 determined under section 104a(1) for the last completed state
5 fiscal year.

6 (2) "Contributory service" means credited service other than
7 noncontributory service.

8 (3) "Deferred member" means a member who has ceased to be a

1 public school employee and has satisfied the requirements of
2 section 82 for a deferred vested service retirement allowance.

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

5 (5) "Designated date" means September 30, 2006.

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

8 (7) "Distributee" includes a member or deferred member.
9 Distributee also includes the member's or deferred member's
10 surviving spouse or the member's or deferred member's spouse or
11 former spouse under an eligible domestic relations order, with
12 regard to the interest of the spouse or former spouse.

13 (8) Beginning January 1, 2002, except as otherwise provided in
14 this subsection, "eligible retirement plan" means ~~an~~**1 OR MORE OF**
15 **THE FOLLOWING:**

16 (A) **AN** individual retirement account described in section
17 408(a) of the internal revenue code, ~~an~~**26 USC 408.**

18 (B) **AN** individual retirement annuity described in section
19 408(b) of the internal revenue code, ~~an~~**26 USC 408.**

20 (C) **AN** annuity plan described in section 403(a) of the
21 internal revenue code, ~~or a~~**26 USC 403.**

22 (D) **A** qualified trust described in section 401(a) of the
23 internal revenue code, ~~an~~**26 USC 401.**

24 (E) **AN** annuity contract described in section 403(b) of the
25 internal revenue code, ~~or an~~**26 USC 403.**

26 (F) **AN** eligible plan under section 457(b) of the internal
27 revenue code, **26 USC 457**, which is maintained by a state, political

1 subdivision of a state, or an agency or instrumentality of a state
2 or political subdivision of a state and which agrees to separately
3 account for amounts transferred into such eligible plan under
4 section 457(b) of the internal revenue code, **26 USC 457**, from this
5 retirement system, that accepts the distributee's eligible rollover
6 distribution. However, in the case of an eligible rollover
7 distribution to a surviving spouse, an eligible retirement plan
8 means an individual retirement account or an individual retirement
9 annuity described above.

10 **(G) BEGINNING JANUARY 1, 2008, EXCEPT AS OTHERWISE PROVIDED IN**
11 **THIS SUBSECTION, "ELIGIBLE RETIREMENT PLAN" MEANS A ROTH INDIVIDUAL**
12 **RETIREMENT ACCOUNT AS DESCRIBED IN SECTION 408A OF THE INTERNAL**
13 **REVENUE CODE, 26 USC 408A.**

14 (9) Beginning January 1, ~~2002~~**2007**, "eligible rollover
15 distribution" means a distribution of all or any portion of the
16 balance to the credit of the distributee. Eligible rollover
17 distribution does not include any of the following:

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

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

22 (c) A distribution to the extent that the distribution is
23 required under section 401(a)(9) of the internal revenue code, **26**
24 **USC 401.**

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

~~securities, except to the extent that the portion of a distribution that is not includable in federal gross income is paid to either of the following:~~

~~—— (i) An individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.~~

~~—— (ii) A qualified defined contribution plan as described in section 401(a) or 403(a) of the internal revenue code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution which is not includable in gross income.~~

(D) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN FEDERAL GROSS INCOME, EXCEPT TO THE EXTENT SUCH PORTION OF THE DISTRIBUTION IS PAID TO ANY OF THE FOLLOWING:

(i) AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN SECTION 408(A) OR 408(B) OF THE INTERNAL REVENUE CODE, 26 USC 408.

(ii) A QUALIFIED PLAN DESCRIBED IN SECTION 401(A) OF THE INTERNAL REVENUE CODE, 26 USC 401, OR AN ANNUITY CONTRACT DESCRIBED IN SECTION 403(B) OF THE INTERNAL REVENUE CODE, 26 USC 403, AND THE PLAN PROVIDERS AGREE TO SEPARATELY ACCOUNT FOR THE AMOUNTS PAID, INCLUDING ANY PORTION OF THE DISTRIBUTION THAT IS INCLUDABLE IN FEDERAL GROSS INCOME, AND THE PORTION OF THE DISTRIBUTION WHICH IS NOT SO INCLUDABLE.

(10) "Employee organization professional services leave" or "professional services leave" means a leave of absence that is renewed annually by the reporting unit so that a member may accept a position with a public school employee organization to which he

1 or she belongs and which represents employees of a reporting unit
2 in employment matters. The member shall be included in membership
3 of the retirement system during a professional services leave if
4 all of the conditions of section 71(5) and (6) are satisfied.

5 (11) "Employee organization professional services released
6 time" or "professional services released time" means a portion of
7 the school fiscal year during which a member is released by the
8 reporting unit from his or her regularly assigned duties to engage
9 in employment matters for a public school employee organization to
10 which he or she belongs. The member's compensation received or
11 service rendered, or both, as applicable, by a member while on
12 professional services released time shall be reportable to the
13 retirement system if all of the conditions of section 71(5) and (6)
14 are satisfied.

15 (12) "Final average compensation" means the aggregate amount
16 of a member's compensation earned within the averaging period in
17 which the aggregate amount of compensation was highest divided by
18 the member's number of years, including any fraction of a year, of
19 credited service during the averaging period. The averaging period
20 shall be 36 consecutive calendar months if the member contributes
21 to the member investment plan; otherwise, the averaging period
22 shall be 60 consecutive calendar months. If the member has less
23 than 1 year of credited service in the averaging period, the number
24 of consecutive calendar months in the averaging period shall be
25 increased to the lowest number of consecutive calendar months that
26 contains 1 year of credited service.

27 (13) "Health benefits" means hospital, medical-surgical, and

1 sick care benefits and dental, vision, and hearing benefits for
2 retirants, retirement allowance beneficiaries, and health insurance
3 dependents provided pursuant to section 91.

4 (14) "Internal revenue code" means the United States internal
5 revenue code of 1986.

6 (15) "Long-term care insurance" means group insurance that is
7 authorized by the retirement system for retirants, retirement
8 allowance beneficiaries, and health insurance dependents, as that
9 term is defined in section 91, to cover the costs of services
10 provided to retirants, retirement allowance beneficiaries, and
11 health insurance dependents, from nursing homes, assisted living
12 facilities, home health care providers, adult day care providers,
13 and other similar service providers.

14 (16) "Member investment plan" means the program of member
15 contributions described in section 43a.

16 Sec. 108. (1) This section is enacted pursuant to federal law
17 that imposes certain administrative requirements and benefit
18 limitations for qualified governmental plans. This state intends
19 that the retirement system be a qualified pension plan created in
20 trust under section 401 of the internal revenue code, **26 USC 401**,
21 and that the trust be an exempt organization under section 501 of
22 the internal revenue code, **26 USC 501**. The department shall
23 administer the retirement system to fulfill this intent.

24 ~~— (2) Except as otherwise provided in this section, employer-~~
25 ~~financed benefits provided by the retirement system under this act~~
26 ~~shall not exceed \$10,000.00 per year for a retirant who has 15 or~~
27 ~~more years of credited service at retirement.~~

~~———— (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. The higher limitation of this subsection applies to employer financed benefits provided by the retirement system and, for purposes of section 415(b) of the internal revenue code, applies to aggregated benefits received from all qualified pension plans administered by the department of management and budget, office of retirement systems. 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.~~

~~1 (b) 100% of the member's average compensation for high 3 years~~
~~2 as described in section 415(b)(3) of the internal revenue code.~~

~~3 (4) Section 415(d) of the internal revenue code requires the~~
~~4 secretary of the treasury or his or her delegate to annually adjust~~
~~5 the \$10,000.00 limitation described in subsection (2) and the~~
~~6 \$90,000.00 limitation described in subsection (3)(a)(i) for~~
~~7 increases in cost of living, beginning in 1988. This section shall~~
~~8 be administered using the limitations applicable to each calendar~~
~~9 year as adjusted by the secretary of the treasury or his or her~~
~~10 delegate under section 415(d) of the internal revenue code. The~~
~~11 retirement system shall adjust the benefits subject to the~~
~~12 limitation each year to conform with the adjusted limitation.~~

13 (2) THE RETIREMENT SYSTEM SHALL BE ADMINISTERED IN COMPLIANCE
14 WITH THE PROVISIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE, 26
15 USC 415, AND REGULATIONS UNDER THAT SECTION THAT ARE APPLICABLE TO
16 GOVERNMENTAL PLANS AND BEGINNING JANUARY 1, 2010, APPLICABLE
17 PROVISIONS OF THE FINAL REGULATIONS ISSUED BY THE INTERNAL REVENUE
18 SERVICE ON APRIL 5, 2007. EMPLOYER-FINANCED BENEFITS PROVIDED BY
19 THE RETIREMENT SYSTEM UNDER THIS ACT SHALL NOT EXCEED THE
20 APPLICABLE LIMITATIONS SET FORTH IN SECTION 415 OF THE INTERNAL
21 REVENUE CODE, 26 USC 415, AS ADJUSTED BY THE COMMISSIONER OF
22 INTERNAL REVENUE UNDER SECTION 415(D) OF THE INTERNAL REVENUE CODE,
23 26 USC 415, TO REFLECT COST-OF-LIVING INCREASES, AND THE RETIREMENT
24 SYSTEM SHALL ADJUST THE BENEFITS, INCLUDING BENEFITS PAYABLE TO
25 RETIRANTS AND RETIREMENT ALLOWANCE BENEFICIARIES, SUBJECT TO THE
26 LIMITATION EACH CALENDAR YEAR TO CONFORM WITH THE ADJUSTED
27 LIMITATION. FOR PURPOSES OF SECTION 415(B) OF THE INTERNAL REVENUE

1 CODE, 26 USC 415, THE APPLICABLE LIMITATION SHALL APPLY TO
2 AGGREGATED BENEFITS RECEIVED FROM ALL QUALIFIED PENSION PLANS FOR
3 WHICH THE OFFICE OF RETIREMENT SERVICES COORDINATES ADMINISTRATION
4 OF THAT LIMITATION. IF THERE IS A CONFLICT BETWEEN THIS SECTION AND
5 ANOTHER SECTION OF THIS ACT, THIS SECTION PREVAILS.

6 (3) ~~(5)~~—The assets of the retirement system shall be held in
7 trust and invested for the sole purpose of meeting the legitimate
8 obligations of the retirement system and shall not be used for any
9 other purpose. The assets shall not be used for or diverted to a
10 purpose other than for the exclusive benefit of the members,
11 deferred members, retirants, and retirement allowance
12 beneficiaries.

13 (4) ~~(6)~~—The retirement system shall return post-tax member
14 contributions made by a member and received by the retirement
15 system to a member upon retirement, pursuant to internal revenue
16 service regulations and approved internal revenue service exclusion
17 ratio tables.

18 (5) ~~(7)~~—The required beginning date for retirement allowances
19 and other distributions shall not be later than April 1 of the
20 calendar year following the calendar year in which the employee
21 attains age 70-1/2 or April 1 of the calendar year following the
22 calendar year in which the employee retires. **THE REQUIRED MINIMUM**
23 **DISTRIBUTION REQUIREMENTS IMPOSED BY SECTION 401(A)(9) OF THE**
24 **INTERNAL REVENUE CODE, 26 USC 401, SHALL APPLY TO THIS ACT AND BE**
25 **ADMINISTERED IN ACCORDANCE WITH A REASONABLE AND GOOD FAITH**
26 **INTERPRETATION OF THE REQUIRED MINIMUM DISTRIBUTION REQUIREMENTS**
27 **FOR ALL YEARS TO WHICH THE REQUIRED MINIMUM DISTRIBUTION**

1 **REQUIREMENTS APPLY TO THE ACT.**

2 (6) ~~(8)~~—If the retirement system is terminated, the interest
3 of the members, deferred members, retirants, and retirement
4 allowance beneficiaries in the retirement system is nonforfeitable
5 to the extent funded as described in section 411(d)(3) of the
6 internal revenue code, **26 USC 411**, and the related internal revenue
7 service regulations applicable to governmental plans.

8 (7) ~~(9)~~—Notwithstanding any other provision of this act to the
9 contrary that would limit a distributee's election under this act,
10 a distributee may elect, at the time and in the manner prescribed
11 by the retirement board, to have any portion of an eligible
12 rollover distribution paid directly to an eligible retirement plan
13 specified by the distributee in a direct rollover. This subsection
14 applies to distributions made on or after January 1, 1993.

15 (8) ~~(10)~~—For purposes of determining actuarial equivalent
16 retirement allowances under sections 45 and 85(1)(b), (1)(c),
17 (1)(d), and (2), the actuarially assumed interest rate shall be 8%
18 with utilization of the 1983 group annuity and mortality table.

19 ~~—(11) Notwithstanding any other provision of this section, the~~
20 ~~retirement system shall be administered in compliance with the~~
21 ~~provisions of section 415 of the internal revenue code and revenue~~
22 ~~service regulations under that section that are applicable to~~
23 ~~governmental plans. If there is a conflict between this section and~~
24 ~~another section of this or any other act of this state, this~~
25 ~~section prevails.~~

26 (9) ~~(12)~~—Notwithstanding any other provision of this act, the
27 compensation of a member of the retirement system shall be taken

1 into account for any year under the retirement system only to the
2 extent that it does not exceed the compensation limit established
3 in section 401(a)(17) of the internal revenue code, **26 USC 401**, as
4 adjusted by the commissioner of internal revenue. This subsection
5 applies to any person who first becomes a member of the retirement
6 system on or after October 1, 1996.

7 **(10) ~~(13)~~** Notwithstanding any other provision of this act,
8 contributions, benefits, and service credit with respect to
9 qualified military service will be provided under the retirement
10 system in accordance with section 414(u) of the internal revenue
11 code. This subsection applies to all qualified military service on
12 or after December 12, 1994. **EFFECTIVE JANUARY 1, 2007, IN**
13 **ACCORDANCE WITH SECTION 401(A)(37) OF THE INTERNAL REVENUE CODE, 26**
14 **USC 401, IF A MEMBER DIES WHILE PERFORMING QUALIFIED MILITARY**
15 **SERVICE, FOR PURPOSES OF DETERMINING ANY DEATH BENEFITS PAYABLE**
16 **UNDER THIS ACT, THE MEMBER SHALL BE TREATED AS HAVING RESUMED AND**
17 **THEN TERMINATED EMPLOYMENT ON ACCOUNT OF DEATH.**