

Act No. 359  
Public Acts of 2012  
Approved by the Governor  
December 14, 2012  
Filed with the Secretary of State  
December 14, 2012  
EFFECTIVE DATE: December 14, 2012

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Senator Kahn

# **ENROLLED SENATE BILL No. 1360**

AN ACT to amend 1980 PA 300, entitled "An act to provide a retirement system for the public school employees of this state; to create certain funds for this retirement system; to provide for the creation of a retirement board; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; to authorize and make appropriations for the retirement system; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 8, 59, 84b, and 91a (MCL 38.1308, 38.1359, 38.1384b, and 38.1391a), section 8 as amended and sections 59, 84b, and 91a as added by 2012 PA 300.

*The People of the State of Michigan enact:*

Sec. 8. (1) "Service" means personal service performed as a public school employee or creditable under this act.

(2) "Simple interest" means interest at 1 or more rates per annum determined by the retirement board.

(3) "State of Michigan service" means service performed as a state employee in the classified or unclassified service under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(4) "Teacher" means a person employed by a reporting unit who is engaged in teaching, who is engaged in administering and supervising teaching, or who is under a teacher's contract with a reporting unit.

(5) "Tier 1" means the retirement plan available to a member under this act.

(6) "Tier 2" means the state of Michigan 457 plan established under section 457 of the internal revenue code, 26 USC 457, for elective employee contributions and the state of Michigan 401(k) plan established under section 401(k) of the internal revenue code, 26 USC 401, for employer contributions.

(7) "Transition date" means the first day of the pay period that begins on or after February 1, 2013 for the applicable member. The retirement system shall determine a method of determining service credit, compensation, and any applicable contributions for purposes of implementing provisions of this act that refer to the transition date.

(8) "Transitional public employment program" means participation in public service employment programs in the areas of environmental quality, health care, education, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans' outreach, and other fields of human betterment and community improvement as part of a program of comprehensive manpower services authorized, undertaken, and financed under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839.

Sec. 59. (1) The retirement system shall permit each qualified member to make an election with the retirement system to continue to receive credit for any future service and compensation on and after the transition date, for purposes of a calculation of a retirement allowance under section 84b. As part of the election under this subsection, the retirement system shall permit the qualified member to make a designation that the contributions prescribed in

section 43g shall be paid only until the member's attainment date. A qualified member who makes the election and the attainment date designation under this subsection shall make the contributions prescribed in section 43g only until the member's attainment date and shall make the contributions prescribed in section 43a on and after his or her attainment date. A qualified member who makes the election and the attainment date designation under this subsection shall continue to receive credit for any future service accrued and compensation earned after his or her attainment date for the purpose of the calculation of a retirement allowance under section 84b. A qualified member who makes the election under this subsection and who does not make the attainment date designation or rescinds the attainment date designation under this subsection shall make the contributions prescribed in section 43g until termination of employment. A qualified member who makes the election under this subsection and who does not make the attainment date designation under this subsection shall receive credit for any future service accrued and compensation earned for the purpose of the calculation of a retirement allowance under section 84b.

(2) The retirement system shall permit each qualified member to make an alternative election described in this subsection with the retirement system, if the qualified member does not make the election or the election and designation under subsection (1). A qualified member who does not make the election or the election and designation under subsection (1) and who does not make an alternative election described in this subsection is considered to have made the alternative election described in subdivision (a). A qualified member who does not make the election or the election and designation under subsection (1) shall be permitted to make 1 of the following alternative elections:

(a) To continue to receive credit for any future service and compensation on and after the transition date, for the purpose of the calculation of a retirement allowance under section 84b. A qualified member who makes or is considered to have made the alternative election in this subdivision shall continue to make the employee contributions as provided in section 43a and shall not make the employee contributions described in section 43g.

(b) To freeze all service and compensation to that member as of the day before the transition date for the purpose of the calculation of a retirement allowance under section 84b and, beginning on the transition date, to be eligible for the employer contribution to the member's Tier 2 account as provided in section 84b. Beginning on the transition date, a qualified member who makes the alternative election in this subdivision shall not make the employee contributions described in section 43a or 43g.

(3) The retirement system shall determine a method of accepting qualified member elections, designations, and alternative elections under this section. The retirement system shall accept elections, designations, and alternative elections under this section from qualified members during an election period that begins on September 4, 2012 and ends at 5 p.m. eastern standard time on January 9, 2013. A qualified member may rescind an election, designation, or alternative election before the close of the election period. An election, designation, or alternative election made by a qualified member and not rescinded before the close of the election period shall not be rescinded.

(4) A qualified member who does not make or who rescinds the election under subsection (1) on or before the close of the election period and who makes or is considered to have made the alternative election under subsection (2)(a) is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the day before the transition date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the transition date for purposes of a calculation of a retirement allowance.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited service and compensation allowed under section 84b(1) and (2). This subdivision does not affect an individual's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(5) A qualified member who does not make or who rescinds an election under subsection (1) and who makes the alternative election under subsection (2)(b) on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the day before the transition date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the transition date for purposes of a calculation of a retirement allowance and eligibility for the employer contribution to the member's Tier 2 account.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited service and compensation allowed under section 84b(3) and (4). This subdivision does not affect an individual's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(6) A qualified member who makes the election and the attainment date designation under subsection (1) and who does not rescind the election and designation on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the member's attainment date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the day after the attainment date if he or she remains employed by an employer.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited service and compensation allowed under section 84b(5) and (6). This subdivision does not affect a person's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(7) An individual who is not a qualified member, who was a member before July 1, 2010, who is a deferred member or former nonvested member on September 3, 2012, and who is reemployed on or after September 4, 2012 shall be treated in the same manner as a member described in subsection (4) and shall become subject to section 84b for any future service and compensation.

(8) Any member who is reemployed on or after September 4, 2012 and who, while a member, made an election, designation, or alternative election or is considered to have made an alternative election under this section shall be treated as retaining that election, designation, or alternative election on his or her date of reemployment.

(9) As used in this section:

(a) "Attainment date" means that term as defined in section 84b.

(b) "Qualified member" means a member who meets all of the following requirements:

(i) He or she first became a member before July 1, 2010.

(ii) He or she has earned service credit in the 12 months ending September 3, 2012 or was on an approved professional services or military leave of absence on September 3, 2012.

Sec. 84b. (1) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who did not make the election under section 59(1) and who made or is considered to have made the alternative election under section 59(2)(a) shall include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to that member before the transition date.

(b) Service credit that was purchased before February 1, 2013.

(c) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of February 1, 2013.

(d) Credit for years of service under sections 73 and 108(10).

(2) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (1) shall also include the following items of credited service, as applicable, multiplied by 1.25% of final average compensation:

(a) The years and fraction of a year of credited service accrued to that member on and after the transition date.

(b) Service credit that was purchased on and after February 1, 2013, except as provided in subsection (1)(c).

(3) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who did not make the election under section 59(1) and who made the alternative election under section 59(2)(b) shall include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to that member before the transition date.

(b) Service credit that was purchased before February 1, 2013.

(c) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of January 31, 2013.

(d) Credit for years of service under sections 73 and 108(10).

(4) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (3) shall not include any year or fraction of a year of service performed by that member on and after the transition date or any service credit that is purchased by that member after February 1, 2013, except as provided in subsection (3)(c). Beginning with the first payroll date after the transition date, and ending upon the member's termination of service, the employer of a member described in subsection (3) shall contribute 4% of the member's compensation as defined in section 122(2) to the member's Tier 2 account. A member is vested in employer contributions made under this subsection according to the vesting provisions under section 132. A member shall be credited with years of service accrued under Tier 1 as of the transition date for purposes of meeting the applicable vesting requirements.

(5) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who makes the election and attainment date designation under section 59(1) shall include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to that member on or before the attainment date.

(b) Service credit that was purchased on or before the attainment date.

(c) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of the attainment date.

(d) Credit for years of service under sections 73 and 108(10).

(6) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (5) shall also include the following items of credited service, as applicable, multiplied by 1.25% of final average compensation:

(a) The years and fraction of a year of credited service accrued to that member on and after the attainment date.

(b) Service credit that was purchased on and after the attainment date, except as provided in subsection (5)(c).

(7) Beginning on the transition date, a member described in subsection (1), (3), or (5) shall continue to accumulate years of service credit as necessary for the purpose of vesting in a retirement allowance and to determine when a retirement allowance may begin under this act, regardless of when the service credit was accrued, except as otherwise provided in section 59(8). A member described in subsection (1), (3), or (5) shall continue to be treated as a member for all purposes, except as otherwise provided in section 59(8) and except for the limitations on credited service and calculation of a retirement allowance as provided in subsections (1) through (6).

(8) The calculation of a retirement allowance under this act for a member who makes the election under section 59(1) but who does not make the attainment date designation under section 59(1) shall include all items of credited service accrued to that member, regardless of when the service credit was accrued, which shall be multiplied by 1.5% of final average compensation as provided in section 84.

(9) As used in this section, "attainment date" means the final day of the pay period in which the member attains 30 years of credited service.

Sec. 91a. (1) An individual who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5) shall not receive any health insurance coverage premium from the retirement system for any benefits under section 91 or as a result of benefits provided under section 86, 87, or 89. In lieu of any of these benefits that might have been paid by the retirement system, a member's or qualified participant's employer shall make a matching contribution up to 2% of the member's or qualified participant's compensation to Tier 2 for each member who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5). A matching contribution under this subsection shall not be used as the basis for a loan from an employee's Tier 2 account. If the department or retirement system offers a health expenditure account or similar account for the purpose of managing a member's health care funds under this section, as permitted by state or federal law, the department or retirement system shall issue a request for proposals before implementation of that health expenditure account or similar account.

(2) An individual who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5) may make a contribution up to 2% of the member's or qualified participant's compensation to a Tier 2 account. A member or qualified participant described in this subsection may make additional contributions to his or her Tier 2 account as permitted by the department and the internal revenue code.

(3) Except as otherwise provided in this subsection, a member or qualified participant is vested in contributions made to his or her Tier 2 account under subsections (1) and (2) according to the vesting provisions under section 132. A member who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 90 is not vested in any employer contributions under subsection (1) and forfeits the employer contributions and earnings on those contributions.

(4) The contributions described in this section shall begin with the first payroll date after the member or qualified participant is employed or on or after the transition date for a member who makes the election under subsection (5) and end upon his or her termination of employment.

(5) Except as otherwise provided in this section, beginning September 4, 2012 and ending at 5 p.m. eastern standard time on January 9, 2013, the retirement system shall permit each qualified member to make an election to opt out of health insurance coverage premiums that would have been paid by the retirement system under section 91 and opt into the Tier 2 account provisions of this section effective on the transition date. A qualified member who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premiums that would have been paid by the retirement system under section 91 as if that section continued to apply.

(6) A qualified member who does not make the election under subsection (5) continues to be eligible for the payment of health insurance coverage premiums by the retirement system under section 91 and is not eligible for the Tier 2 account provisions of this section. An individual who is not a qualified member, who is a former member on September 3, 2012, and who is reemployed by an employer on or after September 4, 2012 shall be treated in the same manner as a member described in this subsection who did not make the election under subsection (5).

(7) The retirement system shall calculate an amount to be credited to a Tier 2 account for each member who makes the election under subsection (5). The amount described in this subsection shall be an amount equal to the contributions

made by the member under section 43e. A member who makes the election under subsection (5) shall cease making contributions under section 43e as determined by the retirement system, but no later than the first payroll date after the transition date. The amount calculated under this subsection shall be deposited as an employer contribution into the member's Tier 2 account as determined by the retirement system, but no later than the first payroll date after March 1, 2013. A member is immediately 100% vested in amounts deposited to his or her Tier 2 account under this subsection.

(8) A member or former member who does not make the election under subsection (5), who is 60 years of age or older, who does not qualify for the payment of health insurance coverage premiums by the retirement system under section 91, and who files an application with the retirement system on or after termination of employment shall receive a separate retirement allowance as calculated under this subsection. Except as otherwise provided under this subsection, the separate retirement allowance under this subsection shall be paid for 60 months and shall be equal to 1/60 of the amount equal to the contributions made by the member under section 43e. The retirement system may pay out de minimus amounts as a lump sum as determined by the retirement system and as permitted by the internal revenue code. A member receiving a separate retirement allowance under this subsection shall not subsequently receive the payment of health insurance coverage premiums by the retirement system under section 91. A member who dies before qualifying for the payment of health insurance coverage premiums by the retirement system under section 91 shall have a separate retirement allowance as provided in this subsection paid to the member's beneficiary upon application to the retirement system. A member who qualifies for the payment of health insurance coverage premiums by the retirement system under section 91 but who dies before the payment of health insurance coverage premiums by the retirement system in an amount equal to or greater than the amounts contributed under section 43e shall have a separate retirement allowance as provided in this subsection paid to the member's beneficiary following the cessation of health insurance coverage premiums paid by the retirement system in an amount equal to the difference between the health insurance coverage premiums paid by the retirement system under section 91 and contributions made by the member under section 43e. The amount of the separate retirement allowance as determined under this subsection shall be increased in a manner as determined by the retirement system by a percentage equal to 1.5% multiplied by the total number of years that member made contributions under section 43e.

(9) A member or former member who has a break in service and is reemployed retains the same election that the member made under this section before the break in service. If the member made the election under subsection (5), the member shall continue to receive the Tier 2 account contributions as provided in subsections (1) and (2). If the member did not make the election under subsection (5), the member shall continue to make the contributions as provided under section 43e and is subject to subsection (8), if applicable.

(10) In lieu of any other health insurance coverage premium that might have been paid by the retirement system under section 91, a credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, shall be made by the retirement system in the amounts and to the members or qualified participants as follows:

(a) Two thousand dollars to an individual who first became a member or qualified participant on or after September 4, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment.

(b) One thousand dollars to an individual who first became a member or qualified participant on or after September 4, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment.

(11) The retirement system shall determine a method to implement subsections (5) to (10), including a method for crediting the amounts in those subsections to comply with any restrictions imposed by the internal revenue code. Notwithstanding any provision of this act to the contrary, the Tier 2 plan provisions of this section shall be implemented by the department as soon as feasible but not later than January 1, 2013.

(12) Subsections (5) to (10) do not apply to a member who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 90.

(13) On or before July 1, 2017, the retirement system shall provide a report to the chairs of the house and senate appropriations committees that provides the projected impact of subsection (10) as it applies to members first employed and entered upon the payroll of reporting units on or after July 1, 2017 with regard to the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared under section 28(1).

(14) As used in this section:

(a) "Compensation" means that term as defined in section 122(2).

(b) "Qualified member" means a member who meets all of the following requirements:

(i) He or she first became a member before September 4, 2012.

(ii) He or she has earned service credit in the 12 months ending September 3, 2012 or was on an approved professional services or military leave of absence on September 3, 2012.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved .....

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Governor