

Act No. 33
Public Acts of 2004
Approved by the Governor
March 19, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Condino, Hardman, Waters, Daniels, Woronchak, Anderson, O'Neil, Rocca, Gielegem, Woodward, Pappageorge, Phillips, Rick Johnson, Minore, Zelenko, Kolb, Jamnick, DeRossett, Richardville, Lipsey, Murphy, Tabor, Kooiman, Voorhees, Middaugh, Ehardt, Meyer, Julian, Newell, Vander Veen, Dennis, Williams, Pumford, Shackleton, Brown, Palmer, Gaffney, Cheeks, Smith, Stallworth, Hunter, Hood, Tobocman, Farrah, Paletko, Pastor, Hopgood, Law, Brandenburg, Bieda, Wojno, Acciavatti, Clack, Vagnozzi, DeRoche, Accavitti, Amos, Stakoe, Hune, Gleason, Milosch, Caswell, Nofs, Byrum, Van Regenmorter, Sak, Stahl, Sheen, Huizenga, Farhat, Elkins, Moolenaar, Gillard and Mortimer

ENROLLED HOUSE BILL No. 5266

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 1a, 1e, 1i, 49, 53, 55, and 64 (MCL 38.1a, 38.1e, 38.1i, 38.49, 38.53, 38.55, and 38.64), section 1a as amended by 1998 PA 205, sections 1e and 1i as amended and sections 53, 55, and 64 as added by 1996 PA 487, and section 49 as amended by 2002 PA 93.

The People of the State of Michigan enact:

Sec. 1a. (1) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the employees' savings fund, together with regular interest on that account.

(2) "Actuarial cost" means an amount that shall be paid, except as otherwise specifically provided by this act, by a member to purchase additional service credit as allowed under this act. Actuarial cost shall be computed as provided in section 17j.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member. An annuity shall be paid in equal monthly installments.

(4) "Annuity reserve" means the present value, computed upon the basis of mortality and other tables adopted by the retirement board, of all payments to be made on account of an annuity, or benefits in lieu of an annuity, granted to a member under this act.

(5) "Appointing authority" means the departmental officer who has the responsibility of making appointments and handling all other personnel transactions affecting the employees in the agency that the officer represents.

(6) "Banked leave time program" means the part B annual leave hours within the annual and sick leave program for state employees approved by a ruling of the internal revenue service on September 5, 2003, in which a pay reduction or other concessions are applied to a member or qualified participant in exchange for additional part B annual leave hours.

Sec. 1e. (1) "Final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 5 consecutive years of credited service; or if the member has less than 5 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited service. For a person whose retirement allowance effective date is on or after October 1, 1987, "final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 3 consecutive years of credited service; or if the member has less than 3 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited service. A member's final average compensation shall not be diminished because of required 1-day layoffs. The compensation used in computing the final average compensation for a period during which a member is in a voluntary or involuntary pay reduction plan A or on a designated temporary layoff shall include the value of the hours not worked calculated at the member's hourly rate or rates of pay in effect immediately before the applicable final average compensation period. A member's final average compensation shall not be increased or decreased by the member's participation in voluntary or involuntary pay reduction plan B. Payment for accrued annual leave at separation in excess of 240 hours and payment for part B annual leave hours at separation shall not be included in final average compensation. Beginning October 1, 2003, the compensation used to compute the final average compensation for a period during which a member is participating in the banked leave time program shall include the value of any unpaid furlough hours and the value of any unpaid hours exchanged for part B annual leave hours calculated at the member's then current hourly rate or rates of pay.

(2) "Final compensation" means a member's annual rate of compensation at the time the member last terminates employment with this state.

(3) "Furlough hours" means unworked hours incurred in conjunction with the banked leave time program.

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

Sec. 1i. (1) "Service" means service rendered to this state by an elected or appointed state official or employee of this state. Credit for service shall be determined by appropriate rules and regulations of the retirement board, but not more than 1 year of service shall be creditable for all service in 1 calendar year. The retirement board shall not allow credit for service for any period of more than 1 month in any 1 calendar year during which the employee was absent without pay. However, full service credit shall be given for a period during which an employee is on leave of absence and is receiving worker's compensation benefits as the result of a duty-incurred disability. Full service credit shall also be given to an employee for required 1-day layoffs, for voluntary or involuntary participation in pay reduction plan A, pay reduction plan B, or both, in effect during the fiscal years ending on and after September 30, 1981, for required and designated temporary layoffs, and, beginning October 1, 2003, for furlough hours, and for participation in the banked leave time program.

(2) "State treasurer" means the treasurer of this state.

(3) "Tier 1" means the retirement plan available to a member under this act who was first employed and entered upon the payroll before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

(4) "Tier 2" means the retirement plan established pursuant to section 401(k) of the internal revenue code that is available to qualified participants under sections 50 to 69.

Sec. 49. (1) This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans. Employer-financed benefits provided by the retirement system under this act shall not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation shall apply to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

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

(5) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411, and related internal revenue service regulations applicable to governmental plans.

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

(8) For purposes of determining actuarial equivalent retirement allowances under sections 31(1)(a) and (b) and 20(2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(10) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code, 26 USC 414. This subsection applies to all qualified military service on or after December 12, 1994.

Sec. 53. (1) For the purposes of this section and sections 54 to 69, the words and phrases defined in this section and sections 54 to 69 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(3) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer equal to the sum of the following:

(a) A participant's W-2 earnings for services performed for the employer excluding part B annual leave hours paid at separation.

(b) Any amount contributed or deferred at the election of the participant which is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

(c) Beginning October 1, 2003, the value of any unpaid furlough hours and the value of any unpaid hours exchanged for part B annual leave hours calculated at the participant's then current hourly rate or rates of pay for a period during which a participant is participating in the banked leave time program.

(d) The value of hours not worked during which a participant is in a voluntary or involuntary pay reduction plan A or on 1-day layoff or designated temporary layoff calculated at the participant's then current hourly rate or rates of pay.

Sec. 55. (1) "Plan document" means the document that contains the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(2) "Qualified participant" means an individual who is a participant of Tier 2 and who meets 1 of the following requirements:

(a) An individual who is first employed and entered upon the payroll of his or her employer on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 50.

(3) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 66 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 67.

(4) "State treasurer" means the treasurer of this state.

(5) Except as otherwise provided in this subsection, "year of service" means each period during which a qualified participant is employed by the employer and is credited with 2,080 hours of service. The Tier 2 plan administrator and the plan document may provide for a lesser number of annual hours and a maximum number of hours per pay period for any classification of employees, provided that no participant shall receive credit for more than 1 year of service for

any 12-month period of employment. Beginning January 1, 2003, full service credit shall also be given to a participant for furlough hours, for required 1-day layoffs, for required and designated temporary layoffs, for a year in which a participant temporarily leaves employment to enter active military duty and then dies during that active military duty, and for participation in the banked leave time program. In the event a terminated participant is reemployed, such individual shall retain credit for all full and partial years of service completed prior to such reemployment, for purposes of determining his or her vesting percentage in any employer contributions made pursuant to section 63(2) and (3) after his or her reemployment.

Sec. 64. (1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2 and employer contributions under the banked leave time program. Except as otherwise provided in this section, a qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

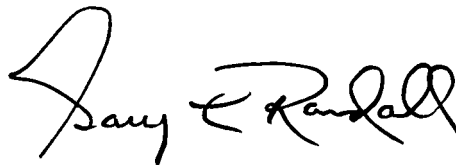
- (a) Upon completion of 2 years of service, 50%.
- (b) Upon completion of 3 years of service, 75%.
- (c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in the health insurance coverage provided in section 68 if the qualified participant meets 1 of the following requirements:

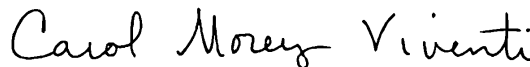
(a) The qualified participant has completed 10 years of service as a qualified participant and was not a member, deferred member, or former nonvested member of Tier 1.

(b) The qualified participant was a member, deferred member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 50, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 20d.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor