

Act No. 83
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Brown

ENROLLED SENATE BILL No. 1021

AN ACT to amend 1986 PA 182, entitled "An act to provide for the Michigan department of state police retirement system; to create certain reserves and certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of state police, the department of management and budget, and certain state officers; and to repeal certain acts and parts of acts," by amending sections 3 and 4 (MCL 38.1603 and 38.1604), section 3 as amended by 2000 PA 374, and by adding section 24a.

The People of the State of Michigan enact:

Sec. 3. (1) "Banked leave time program" means the part B annual leave hours within the state's annual and sick leave program 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 in exchange for additional part B annual leave hours.

(2) "Credited service" means the sum of the prior service and membership service credited to a member's account.

(3) "Deferred member" means a member who separates from service with entitlement to a deferred retirement allowance as provided in section 30, but who is not a retirant.

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

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

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

(7) "DROP participant" means an officer who participates in the deferred retirement option plan established in section 24a.

(8) Beginning January 1, 2002, except as otherwise provided in this subsection, "eligible retirement plan" means an individual retirement account described in section 408(a) of the internal revenue code, 26 USC 408(a), an individual retirement annuity described in section 408(b) of the internal revenue code, 26 USC 408(b), an annuity plan described in section 403(a) of the internal revenue code, 26 USC 403(a), or a qualified trust described in section 401(a) of the internal revenue code, 26 USC 401(a), an annuity contract described in section 403(b) of the internal revenue code, 26 USC 403(b), or an eligible plan under section 457(b) of the internal revenue code, 26 USC 457(b), which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the eligible plan under section 457(b) of the internal revenue code, 26 USC 457(b), from this retirement system, that accepts the distributee's eligible rollover

distribution. However, in the case of an eligible rollover distribution to a surviving spouse on or before December 31, 2001, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

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

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

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

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

(d) The portion of any distribution that is not includable in federal gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities, except to the extent that the portion of the distribution is paid to either 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(a) or 408(b).

(ii) A qualified defined contribution plan as described in section 401(a) or 403(a) of the internal revenue code, 26 USC 401(a) or 403(a), that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable in gross income.

(10) "Final average compensation" means the average annual salary for the last 2 years of service with the department of state police for which the member was compensated as defined in subsection (13). In the case of a nonclassified member of the department holding the rank of colonel, final average compensation means the same average annual salary as that computed for the highest salaried classified member of the department, or at the average annual salary for the last 2 years of service with the department of state police for which the member was compensated, whichever is greater. Average annual salary includes only the following compensation items:

(a) Regular salary paid for the last 2 years of service, including, but not limited to, that salary that is deferred pursuant to a state deferred compensation program.

(b) Overtime, shift differential, and shift differential overtime paid for the last 2 years of service.

(c) Gross pay adjustments paid affecting the last 2 years of service, including compensatory time and emergency response compensation.

(d) Up to a maximum of 240 hours of accumulated annual leave, paid at the time of retirement separation excluding part B annual leave hours paid at the time of retirement separation.

(e) Deferred hours under Plan B of the fiscal years ending September 30, 1981, and September 30, 1982, that are paid at the time of retirement separation.

(f) Longevity pay equal to 2 full years.

(g) Bomb squad pay paid for the last 2 years of service.

(h) Post 29 freeway premium paid for the last 2 years of service.

(i) On-call pay paid for the last 2 years of service.

(j) Beginning October 1, 2003, the value of any unpaid furlough hours or 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, for a period during which a member is participating in the banked leave time program.

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

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

(13) "Last 2 years of service" means the 2-year period immediately preceding the member's last day of service or that period of 2 consecutive years of service with the department of state police immediately preceding the date the duty disability occurred according to the medical examinations conducted pursuant to section 29 or, if the officer participated in the deferred retirement option plan, the 2-year period immediately preceding participation in the deferred retirement option plan.

Sec. 4. (1) "Member", except where the context otherwise requires, means an employee of the Michigan department of state police who has subscribed to the constitutional oath of office.

(2) "Officer" means a nonexclusively represented member of the retirement system.

(3) "Retirant" means a member who separates from service and retires with a retirement allowance payable from the appropriate reserve of the retirement system.

(4) "Retirement allowance" means the annual amount, payable monthly, to which a retirant, retirement allowance beneficiary, or refund beneficiary is entitled pursuant to this act.

(5) "Retirement allowance beneficiary" means a person who is being paid or has entitlement to the payment of a retirement allowance in the event of the death of a member, deferred member, or retirant.

(6) "Retirement board" means the retirement board created in section 6.

(7) "Retirement system" means the system of benefits for members of the department of state police and their survivors and beneficiaries provided by this act.

(8) "Surviving spouse" means the spouse at the time of death of the member or retirant.

Sec. 24a. (1) A deferred retirement option plan is established within the defined benefit plan that is part of the retirement system, and it is to be administered by the office of retirement services. Exclusively represented members of the retirement system may only participate in the deferred retirement option plan pursuant to notice from their collective bargaining agent that the agent agrees to the terms of the deferred retirement option plan. For each fiscal year that begins on or after October 1, 2004, the director of state police and the retirement board may elect to discontinue accepting applications for the deferred retirement option plan.

(2) An officer who has 25 years or more of credited service under this act or former act 1935 PA 251, or both, may elect to participate in the deferred retirement option plan by executing the application provided by the office of retirement services. Once the application is accepted by the office of retirement services, the officer's participation in the deferred retirement option plan is irrevocable and he or she becomes a DROP participant. The officer is solely responsible for any federal, state, or local tax due as a result of his or her participation in the deferred retirement option plan.

(3) Participation in the deferred retirement option plan does not guarantee continued employment. Except as otherwise provided in this section, an officer who elects to participate in the deferred retirement option plan will remain an active employee eligible to receive any applicable wage changes and benefits, will be subject to civil service rules and regulations, and will be subject to the policies and procedures of the department of state police and subject to removal by the governor, if applicable, in the same manner as if he or she had not elected to participate in the deferred retirement option plan.

(4) An officer shall indicate on the application for the deferred retirement option plan the number of years that the officer wants to participate in the deferred retirement option plan, up to a maximum of 6 years. As a condition for participation, the officer agrees to retire at the conclusion of his or her participation in the deferred retirement option plan.

(5) A deferred retirement option plan account shall be created in the accounting records of the retirement system for each DROP participant. Each deferred retirement option plan account shall earn interest at the rate of 3% per annum, prorated for any fraction of a year. The deferred retirement option plan account of a DROP participant shall be credited with the following percentage of his or her monthly retirement allowance as calculated pursuant to section 24 as if he or she had retired on the day prior to becoming a DROP participant:

(a) 100% if the officer remains in the deferred retirement option plan for 6 years.

(b) 90% if the officer remains in the deferred retirement option plan for 5 years but less than 6 years.

(c) 80% if the officer remains in the deferred retirement option plan for 4 years but less than 5 years.

(d) 70% if the officer remains in the deferred retirement option plan for 3 years but less than 4 years.

(e) 60% if the officer remains in the deferred retirement option plan for 2 years but less than 3 years.

(f) 50% if the officer remains in the deferred retirement option plan for 1 year but less than 2 years.

(g) 30% if the officer remains in the deferred retirement option plan for less than 1 year.

(6) A DROP participant shall not receive a monthly retirement allowance, as calculated pursuant to section 24, until termination of his or her deferred retirement option plan participation and commencement of retirement. A DROP participant shall not have any claim to any funds in his or her deferred retirement option plan account until he or she retires at the termination of his or her deferred retirement option plan participation.

(7) Upon termination of the deferred retirement option plan participation and commencement of retirement, the former DROP participant shall select 1 or more of the following options with regard to his or her deferred retirement option plan account:

(a) A total lump-sum distribution.

(b) A partial lump-sum distribution.

(c) A lump-sum direct rollover to another qualified plan if allowed by federal law and subject to the procedures of the retirement system.

(d) Maintain the funds in the account.

A former DROP participant shall remove all funds from his or her deferred retirement option plan account no later than April 1 following the later of the calendar year in which the DROP participant attains 70 years, 6 months of age or the calendar year in which the DROP participant is retired.

(8) If a DROP participant or former DROP participant dies before removing all funds from his or her deferred retirement option plan account, the former DROP participant's designated beneficiary shall receive any remaining balances. If the former DROP participant has not named a beneficiary for his or her deferred retirement option plan account, the amount in the deferred retirement option plan account shall be paid to the beneficiary of the former DROP participant's retirement allowance. If the former DROP participant has not named a beneficiary to his or her retirement allowance, the balance in the former DROP participant's account shall be paid to the former DROP participant's estate.

(9) If a DROP participant is found to be disabled under section 29, his or her participation in the deferred retirement option plan shall immediately cease and he or she shall be retired.

(10) The deferred retirement option plan shall be administered in compliance with section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to a governmental deferred retirement option plan. If there is a conflict between this subsection and another subsection of this section, this subsection prevails.

(11) A deferred retirement option plan shall not be implemented until the civil service commission adopts rules to regulate all of the following:

- (a) A DROP participant's payment for sick leave, annual leave, longevity, and related items.
- (b) A DROP participant's accrual of sick leave, annual leave, compensatory time, and related items.
- (c) A DROP participant's payment of group insurance plan premiums.

(12) If the department receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, 26 USC 1 to 1789, then the portion that will cause the disqualification does not apply.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5279 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor