Act No. 512
Public Acts of 2018
Approved by the Governor
December 27, 2018
Filed with the Secretary of State
December 28, 2018
EFFECTIVE DATE: December 28, 2018

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Rep. VanSingel

ENROLLED HOUSE BILL No. 6378

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 41, 42, and 42a (MCL 38.1341, 38.1342, and 38.1342a), section 41 as amended by 2018 PA 181, section 42 as amended by 2017 PA 92, and section 42a as added by 2018 PA 328, and by adding sections 43h and 43i.

The People of the State of Michigan enact:

Sec. 41. (1) The annual level percentage of payroll contribution rates to finance benefits being provided and to be provided by the retirement system must be determined by actuarial valuation under subsection (2) on the basis of the risk assumptions that the retirement board and the department adopt after consultation with the state treasurer and an actuary. An annual actuarial valuation must be made of the retirement system to determine the actuarial condition of the retirement system and the required contribution to the retirement system. An annual actuarial gain-loss experience study of the retirement system must be made to determine the financial effect of variations of actual retirement system experience from projected experience.

(2) Except as otherwise provided in sections 41a and 41b, the annual contribution rates for benefits are subject to all of the following:

(a) Except as otherwise provided in this subdivision, the contribution rate for benefits must be computed using an individual projected benefit entry age normal cost method of valuation. If the contributions described in section 43e are determined by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted to be unconstitutional and the contributions are not deposited into the appropriate funding account referenced in section 43e, the contribution rate for health benefits provided under section 91 must be computed using a cash disbursement method.

(b) Subject to subdivision (c), the contribution rate for service likely to be rendered in the current year, the normal cost contribution rate, for reporting units must be determined as follows:

(*i*) Calculate the aggregate amount of individual projected benefit entry age normal costs.

(*ii*) Divide the result of the calculation under subparagraph (*i*) by 1% of the aggregate amount of active members' valuation compensation.

(c) Except for the employee portion of the normal cost contribution rates for members under section 41b(2), beginning with the state fiscal year ending September 30, 2018 and for each subsequent fiscal year, the normal cost contribution rate must not be less than the normal cost contribution rate in the immediately preceding state fiscal year.

(d) Subject to subdivision (e), the contribution rate for unfunded service rendered before the valuation date, the unfunded actuarial accrued liability contribution rate, must be determined as follows:

(*i*) Calculate the aggregate amount of unfunded actuarial accrued liabilities of reporting units as follows:

(A) Calculate the actuarial present value of benefits for members attributable to reporting units.

(B) Calculate the actuarial present value of future normal cost contributions of reporting units.

(C) Calculate the actuarial present value of assets on the valuation date.

(D) Add the results of sub-subparagraphs (B) and (C).

(E) Subtract from the result of the calculation under sub-subparagraph (A) the result from the calculation under sub-subparagraph (D).

(*ii*) Subject to subsection (18), divide the result of the calculation under subparagraph (*i*) by 1% of the actuarial present value over a period not to exceed 50 years of projected valuation compensation.

(e) Except for the employee portion of the unfunded actuarial accrued liability contribution rates for members under section 41b(2), beginning with the state fiscal year ending September 30, 2018 and for each subsequent fiscal year until the state fiscal year ending September 30, 2021, the unfunded actuarial accrued liability contribution rate must not be less than the unfunded actuarial accrued liability contribution rate in the immediately preceding state fiscal year. Beginning with the state fiscal year ending September 30, 2022, and for each subsequent fiscal year until the unfunded actuarial accrued liability is paid off, the unfunded actuarial accrued liability contribution sum due and payable must not be less than the unfunded actuarial accrued liability contribution sum due and payable in the immediately preceding state fiscal year.

(f) Beginning with the state fiscal year ending September 30, 2013 and for each subsequent fiscal year, the unfunded actuarial accrued liability contribution rate applied to payroll must not exceed 20.96% for a reporting unit that is not a university reporting unit. Any additional unfunded actuarial accrued liability contributions as determined under this section for each fiscal year are to be paid by appropriation from the state school aid fund established by section 11 of article IX of the state constitution of 1963. Except as otherwise provided in this section and sections 41a and 41b, the unfunded actuarial accrued liability contribution rate must be based on and applied to the combined payrolls of the employees who are members or qualified participants, or both.

(g) Beginning with the state fiscal year ending September 30, 2016 and for each subsequent state fiscal year, the unfunded actuarial accrued liability contribution rate applied to the combined payroll, as provided in section 41a, must not exceed 25.73% for a university reporting unit. Any additional unfunded actuarial accrued liability contributions as determined under this section for each fiscal year for university reporting units are to be paid by appropriation under article III of the state school aid act of 1979, 1979 PA 94, MCL 388.1836 to 388.1891.

(3) Before November 1 of each year, the executive secretary of the retirement board shall certify to the director of the department the aggregate compensation estimated to be paid public school employees for the current state fiscal year.

(4) On the basis of the estimate under subsection (3), the annual actuarial valuation, and any adjustment required under subsection (6), the director of the department shall compute the sum due and payable to the retirement system and shall certify this amount to the reporting units.

(5) Except as provided in section 41b, the reporting units shall pay the amount certified under subsection (4) to the director of the department in equal payroll cycle installments for unfunded actuarial accrued liability contributions and payroll cycle installments for normal cost contributions.

(6) Not later than 90 days after termination of each state fiscal year, the executive secretary of the retirement board shall certify to the director of the department and each reporting unit the actual aggregate compensation paid to public school employees during the preceding state fiscal year. On receipt of that certification, the director of the department may compute any adjustment required to the amount because of a difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate. The difference, if any, must be paid as provided in subsection (9). This subsection does not apply in a fiscal year in which a deposit occurs under subsection (14).

(7) The director of the department may require evidence of correctness and may conduct an audit of the aggregate compensation that the director of the department considers necessary to establish its correctness.

(8) A reporting unit shall forward employee and employer Social Security contributions and reports as required by the federal old-age, survivors, disability, and hospital insurance provisions of title II of the social security act, 42 USC 401 to 434.

(9) For an employer of an employee of a local public school district or an intermediate school district, for differences occurring in fiscal years beginning on or after October 1, 1993, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6), if any, must be paid by that employer in the next succeeding state fiscal year and a minimum of 25% of the remaining difference must be paid by that employer in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. For an employer of other public school employees, for differences occurring in fiscal years beginning on or after October 1, 1991, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6), if any, must be paid by that employer in the next succeeding state fiscal year and a minimum of 25% of the remaining difference must be paid by that employer in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest must be included for each year that a portion of the remaining difference is carried forward. The interest rate must equal the actuarially assumed rate of investment return for the state fiscal year in which payment is made. This subsection does not apply in a fiscal year in which a deposit occurs under subsection (14).

(10) Beginning on September 30, 2006, all assets held by the retirement system must be reassigned their fair market value, as determined by the state treasurer, as of September 30, 2006, and in calculating any unfunded actuarial accrued liabilities, any market gains or losses incurred before September 30, 2006 may not be considered by the retirement system's actuaries.

(11) Except as otherwise provided in this subsection, beginning on September 30, 2006, the actuary used by the retirement board shall assume a rate of return on investments of 8% per annum, as of September 30, 2006, which rate may only be changed with the approval of the retirement board and the director of the department. Beginning on July 1, 2010, the actuary used by the retirement board shall assume a rate of return on investments of 7% per annum for investments associated with members who first became members after June 30, 2010, and before February 1, 2018, which rate may only be changed with the approval of the retirement board and the director of the department. Beginning on February 1, 2018, the actuary used by the retirement board shall assume a rate of return on investments of 6% per annum for investments associated with members who first became a member on or after February 1, 2018, which rate may only be changed with the approval of the retirement board and the director of the department.

(12) Beginning on September 30, 2006, the value of assets used must be based on a method that spreads over a 5-year period the difference between actual and expected return occurring in each year after September 30, 2006, and the methodology may only be changed with the approval of the retirement board and the director of the department.

(13) Beginning on September 30, 2006, the actuary used by the retirement board shall use a salary increase assumption that projects annual salary increases of 4%. In addition to the 4%, the retirement board shall use an additional percentage based on an age-related scale to reflect merit, longevity, and promotional salary increase. The actuary shall use this assumption until a change in the assumption is approved in writing by the retirement board and the director of the department.

(14) For fiscal years that begin on or after October 1, 2001, if the actuarial valuation prepared under this section 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 exceeds the actuarial present value of benefits, the amount based on the annual level percent of payroll contribution rate under subsections (1) and (2) may be deposited into the health advance funding subaccount created by section 34.

(15) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1686, the benefits that are required to be paid from that fund must be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that must be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

(16) The retirement board and the department shall conduct and review an experience investigation study and adopt risk assumptions on which actuarial valuations are to be based after consultation with the actuary and the state treasurer. The experience investigation study must be completed and risk assumptions must be periodically reviewed at least once every 5 years.

(17) Every April 1 following the periodic review of risk assumptions under subsection (16), the office of retirement services on behalf of the department and the state treasurer shall collaborate to submit a report to the senate majority leader, the speaker of the house of representatives, the senate and house of representatives appropriations committees, and the senate and house fiscal agencies. A report required under this subsection must be published on the office of retirement services's website and include at least all of the following:

(a) Forecasted rate of return on investments at all of the following probability levels:

(*i*) 5%.

(*ii*) 25%.

(*iii*) 50%.

(*iv*) 75%.

(*v*) 95%.

(b) The actual rate of return on investments for 10-, 15-, and 20-year intervals.

(c) Mortality assumptions.

(d) Retirement age assumptions.

(e) Payroll growth assumptions.

(f) Any other assumptions that have a material impact on the financial status of the retirement system.

(18) Except as otherwise provided in this subsection, for members who first became members before February 1, 2018, beginning with the state fiscal year ending September 30, 2022 and for each subsequent state fiscal year until the pension and retiree health care payroll growth assumption rate for a reporting unit that is not a university reporting unit is zero, the payroll growth assumption rate for a reporting unit that is not a university reporting unit must be reduced by 50 basis points. Beginning with the state fiscal year ending September 30, 2025 and for each subsequent state fiscal year until the rate described in this subsection is zero, if the pension and retiree health care unfunded actuarial accrued liability contribution sum directly attributable to the 50 basis points reduction under this subsection for the current fiscal year is 7% or more of the pension and retiree health care unfunded actuarial accrued liability contribution sum in the immediately preceding state fiscal year, the office of retirement services may reduce the rate described in this subsection by 25 basis points in that current fiscal year instead of the 50 basis point reduction described in this subsection. Beginning with the fiscal year ending September 30, 2022 and for each subsequent state fiscal year until the rate described in this subsection is zero, the office of retirement services and the retirement board may agree to reduce the rate described in this subsection by any number of additional basis points.

(19) As used in this section, "university reporting unit" means a reporting unit that is a university listed in the definition of public school employee under section 6.

Sec. 42. (1) Beginning with the state fiscal year ending September 30, 1995 and subject to section 41b, a reporting unit shall contribute the entire amount determined under section 41 to the reserve for employer contributions and to the reserve for health benefits. The reporting unit contribution under this subsection is the exclusive obligation of the reporting unit payable out of general budget resources of the reporting unit, including funds available under local millage and other local resources and from the state school aid allocation to the reporting unit, and is not a separate obligation by specific reimbursement or otherwise of this state.

(2) As authorized by resolution or other enabling act of its governing body, the employer shall pick up all contributions of a member made under section 43a for all compensation paid after December 31, 1986 and reported to the retirement system. Although considered contributions of a member for certain purposes under this act, all contributions picked up must be treated as paid by the employer in lieu of contributions by the employee. Contributions picked up as provided in this subsection must be paid from the same source of funds that is used for paying compensation to the member. The employer may pick up these contributions by either a reduction to the member's cash salary, an offset against a future salary increase, or a combination of a reduction in salary and offset against a future salary increase. This subsection does not apply, and the employer shall not deduct, offset, or remit contributions, until the department receives notification from the United States Internal Revenue Service that contributions picked up will not be included as gross income of the member until they are distributed or made available to the member, retirant, retirement allowance beneficiary, or refund beneficiary.

(3) The employer shall deduct from a member's compensation the contributions for Social Security provided in 1951 PA 205, MCL 38.851 to 38.871. Contributions must be made while the member remains a public school employee. Each reporting unit official shall deduct the Social Security contributions from the compensation of each member for each payroll period after the date the employee becomes a member. Social Security contributions must be made notwithstanding that the minimum compensation provided by law is changed. Each member is considered to have agreed to the contributions prescribed in this subsection.

(4) Each reporting unit official shall forward member contributions to the retirement system on a schedule and in a manner determined by the retirement system.

(5) Each reporting unit official shall forward the entire employer contribution required by this act to the retirement system on a schedule and in a manner determined by the retirement system.

(6) Each reporting unit official shall submit to the retirement system a report that includes the information for retirement purposes, including, but not limited to, persons employed, retirants performing services at a reporting unit who are employed by an entity other than the reporting unit or who are independent contractors, wages or amounts paid, hours, and contributions required under this act. The report must include the information on a pay period basis and must be submitted to the retirement system on a schedule and in a manner determined by the retirement system. The superintendent for a reporting unit or the chief administrator for a reporting unit that does not have a superintendent shall complete an annual certification that gives authorization for the employees of the reporting unit to report the information to the retirement system.

(7) If a reporting unit fails to submit a report or contributions, or both, according to the schedule established by the retirement board, the reporting unit shall pay a late fee. If the remittance of contributions is late, the late fee must include interest for each day that the remittance of contributions is late. The retirement board periodically may establish the late fee, which must not be less than $25.00, and interest charges, which must not be less than 6% per annum.

(8) Subject to subsection (9), if a reporting unit fails to correct errors on a report before the errors are discovered by the retirement system or if the errors are intentional, the reporting unit shall pay the late fee and interest charges as described in subsection (7) for each day that the report is in error, unless reasonable cause is shown to the satisfaction of the retirement system.

(9) If the retirement board determines that a reporting unit has committed an intentional error or omission that includes a failure to submit contributions required by this act, the total assessment of daily late fees and daily interest charges under subsection (8) must not exceed the reporting unit's delinquent contribution balance associated with the error or omission, or the reporting unit's employer contribution balance for the previous school fiscal year, whichever is less. Subject to subsection (11), if the retirement board determines that a reporting unit has committed an intentional error or omission that does not include a failure to submit contributions required by this act, the total assessment of daily late fees and daily interest charges under subsection (8) must not exceed 100% of the reporting unit's employer contributions for the previous school fiscal year.

(10) On written notice from the retirement board, the superintendent of public instruction and the state treasurer shall withhold payment of state funds, in part or in whole, payable from the state school aid appropriation or higher education appropriations to a reporting unit that fails to comply with this section.

(11) Errors or omissions relating to the reporting of service rendered by an individual employed by a tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college for a school fiscal year before the 2018-2019 school fiscal year are not subject to the assessment of daily late fees and daily interest penalties under subsection (8) but are subject to the payment of regular late fees and regular interest under subsection (7).

(12) As used in this section, an "intentional" error or omission includes, but is not limited to, the following:

(a) A knowing and willful representation that service was performed if the service was not performed.

(b) A knowing and willful submission of a report that contains material misrepresentations or falsifications, or the knowing and willful failure to submit a required report.

(c) Any other knowing and willful act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this act.

Sec. 42a. (1) By August 31, 2018, each reporting unit that is a tax supported community or junior college shall submit a report to the office of retirement services with the information necessary for the retirement system to complete the report under subsection (2), as determined by the retirement system.

(2) By September 30, 2018, the office of retirement services shall submit a report to the senate and house of representatives committees on education. The report required under this subsection must include all of the following information, based on information included in the reports submitted to the retirement system under subsection (1), for each reporting unit that is a tax supported community or junior college:

(a) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the number of individuals employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(b) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the amount of reporting unit contributions the tax supported community or junior college contributed under section 42 associated with an individual employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(c) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the amount of reporting unit contributions the tax supported community or junior college failed to contribute under section 42, if any, associated with an individual employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(3) Subject to sections 43h and 43i, each reporting unit shall make appropriate adjustments and corrections to its reporting and crediting of service to correspond with the information contained in the report under this section, in a time and manner determined by the retirement system.

Sec. 43h. (1) An individual who was first employed by a reporting unit that is a tax supported community college or junior college before July 1, 2014, and who did not previously have that service reported by a reporting unit on his or her behalf, may claim and thereafter be credited with the service only if all of the following apply:

(a) The individual is described in section 5(1)(p).

(b) The individual files a written application with the retirement board after January 1, 2019 but not later than 5 p.m. Eastern Standard Time on January 31, 2020 in a method determined by the retirement system. A written application submitted by an individual under this subdivision is irrevocable.

(c) The individual fulfills the terms of any billing statement issued by the retirement system that corresponds with the amount the individual would have contributed according to the schedule governing contributions in effect at the time of that service, plus regular interest on the contributions. The retirement system may determine the time and manner of payment of the total amount under this subdivision.

(2) An individual who satisfies the conditions of subsection (1) must have service credited in an amount commensurate with the contributions remitted under subsection (1) in a time and manner as determined by the retirement system.

(3) An individual described in section 5(1)(p) who was first employed by a reporting unit that is a tax supported community or junior college before July 1, 2014 and who does not satisfy the conditions of subsection (1) shall forfeit any claim to receive credit for that service unless the individual can demonstrate to the satisfaction of the board that a reasonable person in the same circumstance as the individual would not have adequate notice of the application deadline under subsection (1)(b).

(4) Subject to section 43i, the retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college that corresponds with service claimed under subsection (1).

(5) Except as otherwise provided in this subsection, on payment by a reporting unit of the contributions assessed under subsection (4), a reporting unit's financial obligation for service claimed under subsection (1) is considered satisfied in full. If any service is thereafter claimed on the basis of lack of adequate notice under subsection (3), the reporting unit shall pay the contributions assessed in a time and manner as determined by the retirement system.

(6) Notwithstanding any other provision of this act, service otherwise creditable under this section that is not claimed in the manner provided under this section is considered not reportable.

Sec. 43i. (1) The retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college on the basis of information reported by the reporting unit under section 42a, and payroll data reported to the retirement system by the reporting unit. The contribution determined and assessed under this section must take into account all of the following:

(a) The extent to which the reporting unit remitted employer contributions and related retirement information for individuals employed by the reporting unit while enrolled as a part-time student in that same reporting unit for each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018.

(b) The contribution rate must be calculated in the manner provided by section 42.

(2) The retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college on the basis of service credit claimed under section 43h for the time period and payroll data reported to the retirement system by the reporting unit. In making its determination under this subsection, the retirement system shall take into account all of the following:

(a) The amount and duration of service claimed.

(b) The retirement plan election made by an eligible individual, as applicable.

(3) The contribution rate for service under subsection (2) must be calculated in the manner provided by section 42.

(4) On payment by a reporting unit of the supplemental employer contribution rate assessed under this section, the reporting unit's financial obligation for the service is considered satisfied in full.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor