

**SENATE BILL NO. 605**

May 18, 1999, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend 1992 PA 234, entitled "The judges retirement act of 1992," by amending sections 701, 702, 705, 706, and 711 (MCL 38.2651, 38.2652, 38.2655, 38.2656, and 38.2661), sections 701 and 702 as amended by 1998 PA 66 and sections 705, 706, and 711 as added by 1996 PA 523.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 701. (1) The retirement system shall provide an oppor-  
2 tunity for each member who is a member on March 30, 1997, to  
3 elect in writing to terminate membership in Tier 1 and elect to  
4 become a qualified participant in Tier 2. An election made by a  
5 member under this subsection is irrevocable. The retirement  
6 system shall accept written elections under this subsection from  
7 members during the period beginning on January 2, 1998 and ending  
8 on May 31, 1998. A member who does not make a written election

1 or who does not file the election during the period specified in  
2 this subsection continues to be a member of Tier 1. A member who  
3 makes and files a written election under this subsection elects  
4 to do all of the following:

5 (a) Cease to be a member of Tier 1 effective 12 midnight  
6 June 30, 1998.

7 (b) Become a qualified participant in Tier 2 effective 12:01  
8 a.m., July 1, 1998.

9 (c) Except as otherwise provided in this subdivision, waive  
10 all of his or her rights to a pension, an annuity, a retirement  
11 allowance, an insurance benefit, or any other benefit under Tier  
12 1 effective 12 midnight June 30, 1998. This subdivision does not  
13 affect a person's right to health benefits provided under this  
14 act pursuant to section 719.

15 (2) If an individual who was a vested former member on March  
16 30, 1997, or an individual who was a former nonvested member on  
17 March 30, 1997 becomes a judge or state official and is again  
18 eligible for membership in Tier 1, the individual shall elect in  
19 writing to remain a member of Tier 1 or to terminate membership  
20 in Tier 1 and become a qualified participant in Tier 2. An elec-  
21 tion made by a vested former member or a former nonvested member  
22 under this subsection is irrevocable. The retirement system  
23 shall accept written elections under this subsection from a  
24 vested former member or a former nonvested member during the  
25 period beginning on the date of the individual's eligibility for  
26 membership and ending upon the expiration of 60 days after the  
27 date of that eligibility. A vested former member or former

1 nonvested member who makes and files a written election to remain  
2 a member of Tier 1 retains all rights and is subject to all con-  
3 ditions as a member of Tier 1 under this act. A vested former  
4 member or former nonvested member who does not make a written  
5 election or who does not file the election during the period  
6 specified in this subsection continues to be a member of Tier 1.  
7 A vested former member or former nonvested member who makes and  
8 files a written election to terminate membership in Tier 1 elects  
9 to do all of the following:

10 (a) Cease to be a member of Tier 1 effective 12 midnight on  
11 the last day of the payroll period that includes the date of the  
12 election.

13 (b) Become a qualified participant in Tier 2 effective 12:01  
14 a.m. on the first day of the payroll period immediately following  
15 the date of the election.

16 (c) Except as otherwise provided in this subdivision, waive  
17 all of his or her rights to a pension, an annuity, a retirement  
18 allowance, an insurance benefit, or any other benefit under Tier  
19 1 effective 12 midnight on the last day of the payroll period  
20 that includes the date of the election. This subdivision does  
21 not affect an individual's right to health benefits provided  
22 under this act pursuant to section 719.

23 (3) After consultation with the retirement system's actuary  
24 and the retirement board, the department of management and budget  
25 shall determine the method by which a member, vested former  
26 member, or former nonvested member shall make a written election  
27 under this section. If the member, vested former member, or

1 former nonvested member is married at the time of the election,  
2 the election is not effective unless the election is signed by  
3 the individual's spouse. However, the retirement board may waive  
4 this requirement if the spouse's signature cannot be obtained  
5 because of extenuating circumstances.

6 (4) An election under this section is subject to the eligi-  
7 ble domestic relations order act, 1991 PA 46, MCL 38.1701 to  
8 38.1711.

9 (5) If the department of management and budget receives  
10 notification from the United States internal revenue service that  
11 this section or any portion of this section will cause the  
12 retirement system to be disqualified for tax purposes under the  
13 internal revenue code, then the portion that will cause the dis-  
14 qualification does not apply.

15 (6) A JUDGE OF THE CIRCUIT COURT, PROBATE COURT, OR DISTRICT  
16 COURT WHO WAS A MEMBER ON MARCH 30, 1997 AND WHO EITHER MADE AN  
17 ELECTION UNDER THIS SECTION BUT WAS NOT ABLE TO HAVE THE ELECTION  
18 IMPLEMENTED DUE TO THE RESTRAINING ORDER ENTERED IN MICHIGAN  
19 JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE  
20 NO. 98-DT-72771-CV (ED MI), OR WHO RETIRED BEFORE THE EFFECTIVE  
21 DATE OF THE RESTRAINING ORDER MAY MAKE AN ELECTION IN THE MANNER  
22 AND UNDER THE CONDITIONS PRESCRIBED IN THE STIPULATED ORDER  
23 REGARDING TEMPORARY RESTRAINING ORDER IN MICHIGAN JUDGES ASSN V  
24 TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED  
25 MI), ENTERED ON FEBRUARY 18, 1999. NOTWITHSTANDING ANY OTHER  
26 PROVISION OF THIS SECTION TO THE CONTRARY, THE DEPARTMENT OF

1 MANAGEMENT AND BUDGET AND THE TIER 2 PLAN ADMINISTRATOR SHALL  
2 DETERMINE THE METHOD BY WHICH THIS SUBSECTION IS IMPLEMENTED.

3       Sec. 702. (1) For a member who elects to terminate member-  
4 ship in Tier 1 under section 701(1), the retirement system shall  
5 direct the state treasurer to transfer a lump sum amount from the  
6 appropriate fund created under this act to the qualified  
7 participant's account in Tier 2 on or before ~~October 31, 1998~~  
8 THE EXPIRATION OF 5 MONTHS AFTER THE TEMPORARY RESTRAINING ORDER  
9 IS NO LONGER IN EFFECT. The retirement system shall calculate  
10 the amount to be transferred, which shall be equal to the sum of  
11 the following:

12       (a) The member's accumulated contributions, if any, from the  
13 reserve for member contributions as of 12 midnight June 30,  
14 1998.

15       (b) For a member who is vested under section 501(1) as of 12  
16 midnight on June 30, 1998, the excess, if any, of the actuarial  
17 present value of the member's accumulated benefit obligation,  
18 over the amount specified in subdivision (a), from the reserve  
19 for employer contributions. Except as provided in subsection  
20 (5), for the purposes of this subsection, the present value of  
21 the member's accumulated benefit obligation is based upon the  
22 member's estimated credited service and estimated final salary as  
23 of 12 midnight on June 30, 1998. The actuarial present value  
24 shall be computed as of 12 midnight June 30, 1998 and shall be  
25 based on the following:

26       (i) Eight percent effective annual interest, compounded  
27 annually.

1           (ii) A 50% male and 50% female gender neutral blend of the  
2 mortality tables used to project retirant longevity in the most  
3 recent actuarial valuation report.

4           (iii) A benefit commencement age, based upon the member's  
5 estimated credited service as of 12 midnight June 30, 1998. The  
6 benefit commencement age shall be the younger of the following,  
7 but shall not be younger than the member's age as of 12 midnight  
8 June 30, 1998:

9           (A) Age 60.

10          (B) Age 55, if the member's estimated credited service  
11 equals or exceeds 18 years.

12          (C) The member's age, if the member's estimated credited  
13 service equals or exceeds 25 years.

14          (c) Interest on any amounts determined in subdivisions (a)  
15 and (b), from July 1, 1998 to the date of the transfer, based  
16 upon 8% annual interest, compounded annually.

17          (2) For each member who elects to terminate membership in  
18 the retirement system under section 701(1), the retirement system  
19 shall recompute the amount transferred under subsection (1) not  
20 later than ~~December 31, 1998~~ THE EXPIRATION OF 7 MONTHS AFTER  
21 THE TEMPORARY RESTRAINING ORDER IS NO LONGER IN EFFECT, based  
22 upon the member's actual credited service and actual final salary  
23 as of 12 midnight June 30, 1998. If the recomputed amount dif-  
24 fers from the amount transferred under subsection (1) by \$10.00  
25 or more, not later than ~~January 15, 1999~~ THE EXPIRATION OF 8  
26 MONTHS AFTER THE TEMPORARY RESTRAINING ORDER IS NO LONGER IN  
27 EFFECT, the retirement system shall do all of the following:

1 (a) Direct the state treasurer to transfer from the reserve  
2 for employer contributions to the qualified participant's account  
3 in Tier 2 the excess, if any, of the recomputed amount over the  
4 previously transferred amount together with interest from 12 mid-  
5 night June 30, 1998 to the date of the transfer under this sub-  
6 section, based upon 8% effective annual interest, compounded  
7 annually.

8 (b) Direct the state treasurer to transfer from the quali-  
9 fied participant's account in Tier 2 to the reserve for employer  
10 contributions the excess, if any, of the previously transferred  
11 amount over the recomputed amount, together with interest, from  
12 the date of the transfer made under subsection (1), based upon 8%  
13 effective annual interest, compounded annually.

14 (3) For a vested former member who elects to terminate mem-  
15 bership in this retirement system under section 701(2), the  
16 retirement system shall direct the state treasurer to transfer a  
17 lump sum amount from the appropriate fund created under this act  
18 to the qualified participant's account in Tier 2 on or before the  
19 expiration of 60 days after the date of the individual's termina-  
20 tion of employment. The retirement system shall calculate the  
21 amount to be transferred, which shall be equal to the sum of the  
22 following:

23 (a) The vested former member's accumulated contributions, if  
24 any, from the reserve for member contributions as of 12 midnight  
25 on the last day of the payroll period that includes the date of  
26 the election.

1 (b) The excess, if any, of the actuarial present value of  
2 the vested former member's accumulated benefit obligation, over  
3 the amount specified in subdivision (a), from the reserve for  
4 employer contributions. Except as provided in subsection (5),  
5 for the purposes of this subsection, the present value of the  
6 vested former member's accumulated benefit obligation is based  
7 upon the vested former member's estimated credited service and  
8 estimated final salary as of 12 midnight on the last day of the  
9 payroll period that includes the date of the election. The actu-  
10 arial present value shall be computed as of 12 midnight on that  
11 date and shall be based on the following:

12 (i) Eight percent effective annual interest, compounded  
13 annually.

14 (ii) A 50% male and 50% female gender neutral blend of the  
15 mortality tables used to project retirant longevity in the most  
16 recent annual actuarial valuation report.

17 (iii) A benefit commencement age, based upon the member's  
18 estimated credited service as of 12 midnight on the last day of  
19 the payroll period that includes the date of the election. The  
20 benefit commencement age shall be the younger of the following,  
21 but shall not be younger than the member's age as of 12 midnight  
22 on the last day of the payroll period that includes the date of  
23 the election:

24 (A) Age 60.

25 (B) Age 55, if the vested former member's estimated credited  
26 service equals or exceeds 18 years.

1 (C) The vested former member's age, if the vested former  
2 member's estimated credited service equals or exceeds 25 years.

3 (c) Interest on any amounts determined in subdivisions (a)  
4 and (b), from the first day of the payroll period immediately  
5 following the date of the election to the date of the transfer,  
6 based upon 8% effective annual interest, compounded annually.

7 (4) For each vested former member who elects to terminate  
8 membership in Tier 1 under section 701(2), the retirement system  
9 shall recompute the amount transferred under subsection (3) not  
10 later than the expiration of 90 days after the transfer occurs  
11 under subsection (3) based upon the vested former member's actual  
12 credited service and actual final salary as of 12 midnight on the  
13 last day of the payroll period that includes the date of the  
14 election. If the recomputed amount differs from the amount  
15 transferred under subsection (3) by \$10.00 or more, the retire-  
16 ment system shall do all of the following:

17 (a) Direct the state treasurer to transfer from the reserve  
18 for employer contributions to the qualified participant's account  
19 in Tier 2 the excess, if any, of the recomputed amount over the  
20 previously transferred amount together with interest from 12 mid-  
21 night on the last day of the payroll period that includes the  
22 date of the election to the date of the transfer under this sub-  
23 section, based upon 8% effective annual interest, compounded  
24 annually.

25 (b) Direct the state treasurer to transfer from the quali-  
26 fied participant's account in Tier 2 to the reserve for employer  
27 contributions the excess, if any, of the previously transferred

1 amount over the recomputed amount, together with interest, from  
2 the date of the transfer made under subsection (3), based upon 8%  
3 effective annual interest, compounded annually.

4 (5) For the purposes of subsections (1) to (4), the calcula-  
5 tion of estimated and actual present value of the member's or  
6 vested former member's accumulated benefit obligation shall be  
7 based upon methods adopted by the department of management and  
8 budget and the retirement system's actuary in consultation with  
9 the retirement board. The retirement system shall utilize the  
10 same actuarial valuation report used to calculate the amount  
11 transferred under subsection (1) or (3) when making the recompu-  
12 tation required under subsection (2) or (4). Estimated and  
13 actual final salary shall be determined as provided in section  
14 105(4) as of 12 midnight on the date the member or deferred  
15 member ceases to be a member of Tier 1 under section 701.

16 (6) For a former nonvested member who elects to terminate  
17 membership in Tier 1 under section 701(2) and who has accumulated  
18 contributions standing to his or her credit in the reserve for  
19 member contributions, the retirement system shall direct the  
20 state treasurer to transfer a lump sum amount from the reserve  
21 for member contributions created under section 210 to the quali-  
22 fied participant's account in Tier 2 on or before the expiration  
23 of 60 days after the date of the individual's election to termi-  
24 nate membership. The retirement system shall calculate the  
25 amount to be transferred, which shall be equal to the sum of the  
26 following:

1 (a) The former nonvested member's accumulated contributions,  
2 if any, from the reserve for member contributions as of 12  
3 midnight on the last day of the payroll period that includes the  
4 date of the election.

5 (b) Interest on any amounts determined in subdivision (a),  
6 from the first day of the payroll period immediately following  
7 the date of the election to the date of the transfer, based upon  
8 8% effective annual interest, compounded annually.

9 (7) If the department of management and budget receives  
10 notification from the United States internal revenue service that  
11 this section or any portion of this section will cause the  
12 retirement system to be disqualified for tax purposes under the  
13 internal revenue code, then the portion that will cause the dis-  
14 qualification does not apply.

15 (8) AS USED IN THIS SECTION, "TEMPORARY RESTRAINING ORDER"  
16 MEANS THE TEMPORARY RESTRAINING ORDER IN MICHIGAN JUDGES ASSN V  
17 TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED  
18 MI), ENTERED AS OF 5 P.M. ON JUNE 30, 1998.

19 Sec. 705. (1) "Employer" means ~~the qualified participant's~~  
20 ~~reporting unit~~ THIS STATE AND, IF REQUIRED FOR COMPLIANCE WITH  
21 THE INTERNAL REVENUE CODE, ANY PARTICIPATING POLITICAL SUBDIVI-  
22 SIONS, AGENCIES, OR INSTRUMENTALITIES OF THIS STATE, AS DETER-  
23 MINED BY THE TIER 2 PLAN ADMINISTRATOR.

24 (2) "Former qualified participant" means an individual who  
25 was a qualified participant and who terminates the employment  
26 upon which his or her participation is based for any reason.

1 (3) "Health benefit dependent" means the qualified or former  
2 qualified participant's spouse, if any, and an unmarried child  
3 who is considered a dependent of the qualified or former quali-  
4 fied participant under section 152 of the internal revenue code,  
5 if any.

6 Sec. 706. (1) "Qualified participant" means an individual  
7 who is a participant of Tier 2 and who meets 1 of the following  
8 requirements:

9 (a) An individual who first becomes a judge or state offi-  
10 cial on or after March 31, 1997, and who before March 31, 1997  
11 would have been eligible to be a member of Tier 1.

12 (b) An individual who elects to terminate membership in Tier  
13 1 and who elects to participate in Tier 2 in the manner pre-  
14 scribed in section 701.

15 (2) "Refund beneficiary" means an individual nominated by a  
16 qualified participant or a former qualified participant under  
17 section 717 to receive a distribution of the participant's accu-  
18 mulated balance in the manner prescribed in section 718.

19 (3) "SALARY" MEANS AN AMOUNT EQUAL TO THE SALARY PAID BOTH  
20 DIRECTLY AND INDIRECTLY BY THIS STATE FOR THE POSITION THAT A  
21 QUALIFIED PARTICIPANT HOLDS, WHICH SALARY IS PAID PURSUANT TO THE  
22 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.101 TO  
23 600.9948.

24 (4) ~~(3)~~ "State treasurer" means the treasurer of this  
25 state.

26 Sec. 711. A qualified participant shall not participate in  
27 any other public sector retirement benefits plan for simultaneous

1 service rendered to the same public sector employer. Except as  
2 otherwise provided in this act or by the state treasurer, this  
3 section does not ~~prohibit~~ DO ANY OF THE FOLLOWING:

4 (A) PROHIBIT a qualified participant from participating in a  
5 retirement plan established by this state or other public sector  
6 employer under the internal revenue code.

7 (B) IMPAIR A QUALIFIED PARTICIPANT'S RIGHT TO RECEIVE HEALTH  
8 CARE BENEFITS OR OTHER INSURANCE BENEFITS FROM A REPORTING UNIT.