

HOUSE BILL No. 4095

January 23, 2007, Introduced by Reps. Vagnozzi, Cushingberry and Clack and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending sections 1i, 13, and 55 (MCL 38.1i, 38.13, and 38.55), sections 1i and 55 as amended by 2004 PA 33 and section 13 as amended by 2002 PA 743, and by adding section 61a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1i. (1) "Service" means service rendered to this state by
2 an elected or appointed state official or employee of this state.
3 Credit for service shall be determined by appropriate rules and
4 regulations of the retirement board, but not more than 1 year of
5 service shall be creditable for all service in 1 calendar year. The
6 retirement board shall not allow credit for service for any period
7 of more than 1 month in any 1 calendar year during which the

1 employee was absent without pay. However, full service credit shall
2 be given for a period during which an employee is on leave of
3 absence and is receiving worker's compensation benefits as the
4 result of a duty-incurred disability. Full service credit shall
5 also be given to an employee for required 1-day layoffs, for
6 voluntary or involuntary participation in pay reduction plan A, pay
7 reduction plan B, or both, in effect during the fiscal years ending
8 on and after September 30, 1981, for required and designated
9 temporary layoffs, and, beginning October 1, 2003, for furlough
10 hours, and for participation in the banked leave time program.

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

12 (3) "Tier 1" means the retirement plan available to a member
13 under this act who **MEETS 1 OF THE FOLLOWING REQUIREMENTS:**

14 **(A) THE MEMBER** was first employed and entered upon the payroll
15 before March 31, 1997 and ~~who~~ **HE OR SHE** does not elect to become a
16 qualified participant of Tier 2.

17 **(B) THE MEMBER WAS FIRST EMPLOYED AND ENTERED UPON THE PAYROLL**
18 **ON OR AFTER MARCH 31, 1997 AND HE OR SHE ELECTS TO BECOME A MEMBER**
19 **OF TIER 1 UNDER SECTION 61A.**

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

23 Sec. 13. (1) Except as otherwise provided in this act,
24 membership in the retirement system consists of state employees
25 occupying permanent positions in the state civil service. All state
26 employees except those specifically excluded by law and those who
27 are members or eligible to be members of other statutory retirement

1 systems in this state, shall become members of the retirement
2 system. The employees may use service previously performed as an
3 employee of this state in meeting the service requirements for the
4 retirement allowances and death benefits provided by the retirement
5 system. However, the prior service shall not be used in computing
6 the amount of a retirement allowance to be paid by the retirement
7 system unless the employee pays to the retirement system the amount
8 the employee's contributions would have been had the employee
9 become a member immediately upon employment by the state with
10 interest compounded annually at the regular rate from a date 1 year
11 after the date of employment by this state to the date of payment.
12 A person who draws compensation as a state employee of a political
13 subdivision of this state is eligible for the benefits provided by
14 this act to the extent of the person's compensation paid by this
15 state. An individual who meets the requirements of section 44a is a
16 member of the retirement system.

17 (2) Elected or appointed state officials may elect not to
18 become or continue as members of the retirement system by filing
19 written notice with the retirement board. An appointed state
20 official who is a member of a state board, commission, or council
21 and who receives a per diem rate in his or her capacity as a member
22 of the board, commission, or council is excluded from membership in
23 the retirement system for the service rendered in his or her
24 capacity as a member of the board, commission, or council. Service
25 performed by an elected or appointed official during the time the
26 official elects not to participate shall not be used in meeting the
27 service requirement or in computing the amount of retirement

1 allowance to be paid by the retirement system. A member who elects
2 not to participate shall be refunded all contributions made before
3 the election.

4 (3) Membership in the retirement system does not include any
5 of the following:

6 (a) A person who is a contributing member in the public school
7 employees' retirement system provided for in the public school
8 employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to
9 38.1408.

10 (b) A person who is a contributing member in the Michigan
11 judges retirement system provided for in the judges retirement act
12 of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

13 (c) A person who comes within the Michigan state police
14 retirement system provided for in the state police retirement act
15 of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

16 (d) An individual who is first employed and entered upon the
17 payroll on or after March 31, 1997 for employment for which the
18 individual would have been eligible for membership under this
19 section before March 31, 1997 **UNLESS THAT INDIVIDUAL ELECTS TO**
20 **BECOMES A MEMBER OF TIER 1 UNDER SECTION 61A.** An individual
21 described in this subdivision **WHO DOES NOT MAKE THE ELECTION TO**
22 **BECOME A MEMBER OF TIER 1** is eligible to be a qualified participant
23 in Tier 2 subject to sections 50 to 69.

24 (e) Except as provided in section 19g, an individual who
25 elects to terminate membership under section 50 and who, but for
26 that election, would otherwise be eligible for membership in Tier 1
27 under this section.

1 (f) A retirant who again becomes employed by the state and is
2 entered upon the payroll on or after December 1, 2002, for
3 employment for which the retirant would have been eligible for
4 membership under this section before December 1, 2002. A retirant
5 described in this subdivision shall be a qualified participant in
6 Tier 2 subject to sections 50 to 69.

7 (4) A person who is hired in state classified or unclassified
8 service after June 30, 1974, who is first employed and entered upon
9 the payroll before March 31, 1997, and who possesses a Michigan
10 teaching certificate shall be a member of this retirement system.
11 After June 30, 1974, but before March 31, 1997, a person who
12 returns to state employment in the classified or unclassified
13 service who previously was a contributing member of the Michigan
14 public school employees' retirement system shall have the person's
15 accumulated contributions and service transferred to this
16 retirement system, or having withdrawn the contributions, may pay
17 into the retirement system the amount withdrawn together with
18 regular interest and have credit restored as provided for in
19 section 16. On and after March 31, 1997, an individual described in
20 this subsection who returns to state service shall make an
21 irrevocable election to remain in Tier 1 or to become a qualified
22 participant of Tier 2 in the manner prescribed in section 50.

23 (5) A person, not regularly employed by this state, who is
24 employed through participation in 1 or more of the following
25 programs, shall not be a member of the retirement system and shall
26 not receive service credit for the employment:

27 (a) A program authorized, undertaken, and financed pursuant to

1 the comprehensive employment and training act of 1973, former
2 Public Law 93-203, 87 Stat. 839.

3 (b) A summer youth employment program established pursuant to
4 the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229.

5 (c) A program established pursuant to the job training
6 partnership act, Public Law 97-300, 96 Stat. 1322.

7 (d) A program established pursuant to the Michigan opportunity
8 and skills training program, first established under sections 12 to
9 23 of 1983 PA 259.

10 (e) A program established pursuant to the Michigan community
11 service corps program, first established under sections 25 to 35 of
12 1983 PA 259.

13 (6) A person, not regularly employed by this state, who is
14 employed to administer a program described in subsection (5) shall
15 not be a member of the retirement system and shall not receive
16 service credit for the employment.

17 (7) If a person described in subsection (5)(a) later becomes a
18 member of this retirement system within 12 months after the date of
19 termination as a participant in a transitional public employment
20 program, service credit shall be given for employment which is
21 excluded in subsection (5) for purposes of determining a retirement
22 allowance upon the payment by the person's employer under
23 subsection (5) from funds provided under the comprehensive
24 employment and training act of 1973, former Public Law 93-203, 87
25 Stat. 839, as funds permit, to the retirement system of the
26 contributions, plus regular interest, the employer would have paid
27 had the employment been rendered in a position covered by this act.

1 During the person's employment in the transitional public
2 employment program, the person's employer shall place in reserve a
3 reasonable but not necessarily an actuarially determined amount
4 equal to the contributions that the employer would have paid to the
5 retirement system for those employees in the transitional public
6 employment program as if they were members under this act, but only
7 for that number of employees that the employer determined would
8 move from the transitional public employment program into positions
9 covered by this act. If the funds provided under the comprehensive
10 employment and training act of 1973, former Public Law 93-203, 87
11 Stat. 839, are insufficient, the remainder of the employer
12 contributions shall be paid by the person's current employer.

13 (8) For purposes of section 19g, a former member shall be
14 considered a member and shall be considered to have satisfied the
15 requirements of section 19g(1)(c) and (2)(c) if the former member
16 was employed by the department formerly known as the department of
17 mental health on January 1, 1996 and went on layoff status before
18 January 1, 1997.

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

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

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

1 ~~Tier 1~~ DOES NOT ELECT TO BECOME A MEMBER OF TIER 1 UNDER SECTION
2 61A.

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

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

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

11 (5) Except as otherwise provided in this subsection, "year of
12 service" means each period during which a qualified participant is
13 employed by the employer and is credited with 2,080 hours of
14 service. The Tier 2 plan administrator and the plan document may
15 provide for a lesser number of annual hours and a maximum number of
16 hours per pay period for any classification of employees, provided
17 that no participant shall receive credit for more than 1 year of
18 service for any 12-month period of employment. Beginning January 1,
19 2003, full service credit shall also be given to a participant for
20 furlough hours, for required 1-day layoffs, for required and
21 designated temporary layoffs, for a year in which a participant
22 temporarily leaves employment to enter active military duty and
23 then dies during that active military duty, and for participation
24 in the banked leave time program. In the event a terminated
25 participant is reemployed, such individual shall retain credit for
26 all full and partial years of service completed prior to such
27 reemployment, for purposes of determining his or her vesting

1 percentage in any employer contributions made pursuant to section
2 63(2) and (3) after his or her reemployment.

3 SEC. 61A. (1) AN INDIVIDUAL WHO IS FIRST EMPLOYED AND ENTERED
4 UPON THE PAYROLL OF HIS OR HER EMPLOYER ON OR AFTER THE EFFECTIVE
5 DATE OF THIS SECTION SHALL ELECT IN WRITING TO BECOME A MEMBER OF
6 TIER 1 OR TO BECOME A QUALIFIED PARTICIPANT IN TIER 2 WITHIN 30
7 DAYS AFTER HIS OR HER EMPLOYMENT. AN ELECTION MADE BY AN INDIVIDUAL
8 UNDER THIS SUBSECTION IS IRREVOCABLE. AN INDIVIDUAL WHO DOES NOT
9 MAKE A WRITTEN ELECTION OR WHO DOES NOT FILE THE ELECTION DURING
10 THE PERIOD SPECIFIED IN THIS SUBSECTION IS CONSIDERED TO HAVE
11 ELECTED TO BECOME A QUALIFIED PARTICIPANT OF TIER 2.

12 (2) THE RETIREMENT SYSTEM SHALL PROVIDE AN OPPORTUNITY FOR
13 EACH QUALIFIED PARTICIPANT WHO IS A QUALIFIED PARTICIPANT ON THE
14 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION TO
15 ELECT IN WRITING TO TERMINATE PARTICIPATION IN TIER 2 AND ELECT TO
16 BECOME A MEMBER IN TIER 1. AN ELECTION MADE BY A QUALIFIED
17 PARTICIPANT UNDER THIS SUBSECTION IS IRREVOCABLE. THE RETIREMENT
18 SYSTEM SHALL ACCEPT WRITTEN ELECTIONS UNDER THIS SUBSECTION FROM
19 QUALIFIED PARTICIPANTS DURING THE PERIOD BEGINNING ON THE EFFECTIVE
20 DATE OF THIS SECTION AND ENDING UPON THE EXPIRATION OF 60 DAYS
21 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
22 SECTION. A QUALIFIED PARTICIPANT WHO DOES NOT MAKE A WRITTEN
23 ELECTION OR WHO DOES NOT FILE THE ELECTION DURING THE PERIOD
24 SPECIFIED IN THIS SUBSECTION CONTINUES TO BE A QUALIFIED
25 PARTICIPANT OF TIER 2. A QUALIFIED PARTICIPANT WHO MAKES AND FILES
26 A WRITTEN ELECTION UNDER THIS SUBSECTION ELECTS TO DO ALL OF THE
27 FOLLOWING:

1 (A) CEASE TO BE A MEMBER OF TIER 2 EFFECTIVE 12 MIDNIGHT ON
2 THE DAY BEFORE THE FIRST DAY OF THE PAYROLL PERIOD THAT FOLLOWS THE
3 EXPIRATION OF 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
4 ACT THAT ADDED THIS SECTION.

5 (B) BECOME A MEMBER OF TIER 1 EFFECTIVE 12:01 A.M. ON THE
6 FIRST DAY OF THE PAYROLL PERIOD DESCRIBED IN SUBDIVISION (A).

7 (C) WAIVE ALL OF HIS OR HER RIGHTS TO A BENEFIT UNDER TIER 2
8 ON THE DATE HE OR SHE BECOMES A MEMBER OF TIER 1.

9 (3) AFTER CONSULTATION WITH THE RETIREMENT SYSTEM'S ACTUARY
10 AND THE RETIREMENT BOARD, THE DEPARTMENT OF MANAGEMENT AND BUDGET
11 SHALL DETERMINE THE METHOD BY WHICH AN INDIVIDUAL SHALL MAKE A
12 WRITTEN ELECTION UNDER THIS SECTION. IF THE INDIVIDUAL IS MARRIED
13 AT THE TIME OF THE ELECTION, THE ELECTION IS NOT EFFECTIVE UNLESS
14 THE ELECTION IS SIGNED BY THE INDIVIDUAL'S SPOUSE. HOWEVER, THE
15 RETIREMENT BOARD MAY WAIVE THIS REQUIREMENT IF THE SPOUSE'S
16 SIGNATURE CANNOT BE OBTAINED BECAUSE OF EXTENUATING CIRCUMSTANCES.

17 (4) AN ELECTION UNDER THIS SECTION IS SUBJECT TO THE ELIGIBLE
18 DOMESTIC RELATIONS ORDER ACT, 1991 PA 46, MCL 38.1701 TO 38.1711.

19 (5) IF THE DEPARTMENT OF MANAGEMENT AND BUDGET RECEIVES
20 NOTIFICATION FROM THE UNITED STATES INTERNAL REVENUE SERVICE THAT
21 THIS SECTION OR ANY PORTION OF THIS SECTION WILL CAUSE THE
22 RETIREMENT SYSTEM TO BE DISQUALIFIED FOR TAX PURPOSES UNDER THE
23 INTERNAL REVENUE CODE, THEN THE PORTION THAT WILL CAUSE THE
24 DISQUALIFICATION DOES NOT APPLY.

25 (6) FOR A QUALIFIED PARTICIPANT WHO ELECTS TO TERMINATE
26 PARTICIPATION IN TIER 2 UNDER SUBSECTION (2), THE RETIREMENT SYSTEM
27 SHALL DIRECT THE STATE TREASURER TO TRANSFER THE QUALIFIED

1 PARTICIPANT'S ACCUMULATED BALANCE TO THE APPROPRIATE FUND CREATED
2 UNDER SECTION 11 ON OR BEFORE THE EXPIRATION OF 120 DAYS AFTER THE
3 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THE
4 RETIREMENT SYSTEM SHALL CALCULATE THE AMOUNT TO BE TRANSFERRED,
5 WHICH SHALL BE EQUAL TO THE SUM OF THE FOLLOWING:

6 (A) THE PORTION OF THE PARTICIPANT'S ACCUMULATED BALANCE
7 ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS AND EARNINGS ON THOSE
8 CONTRIBUTIONS, IF ANY, AS OF THE DATE OF TRANSFER, TO THE
9 EMPLOYEE'S SAVINGS FUND.

10 (B) THE PORTION OF THE PARTICIPANT'S ACCUMULATED BALANCE
11 ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS AND EARNINGS ON THOSE
12 CONTRIBUTIONS, IF ANY, AS OF THE DATE OF TRANSFER, TO THE
13 EMPLOYER'S ACCUMULATION FUND.