

# HOUSE BILL No. 6639

November 12, 2008, Introduced by Rep. Hune and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1992 PA 234, entitled "The judges retirement act of 1992," by amending sections 105 and 604 (MCL 38.2105 and 38.2604), as amended by 2002 PA 95.

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

1       Sec. 105. (1) Beginning January 1, 2002, except as otherwise  
2 provided in this subsection, "eligible retirement plan" means ~~an~~1

3 **OR MORE OF THE FOLLOWING:**

4       (A) AN individual retirement account described in section  
5 408(a) of the internal revenue code, ~~an~~26 USC 408.

6       (B) AN individual retirement annuity described in section  
7 408(b) of the internal revenue code, ~~an~~26 USC 408.

8       (C) AN annuity plan described in section 403(a) of the  
9 internal revenue code, ~~a~~26 USC 403.

1 (D) A qualified trust described in section 401(a) of the  
2 internal revenue code, ~~an~~ **26 USC 401**.

3 (E) **AN** annuity contract described in section 403(b) of the  
4 internal revenue code, ~~or an~~ **26 USC 403**.

5 (F) **AN** eligible plan under section 457(b) of the internal  
6 revenue code, **26 USC 457**, that is maintained by a state, political  
7 subdivision of a state, or an agency or instrumentality of a state  
8 or political subdivision of a state and that separately accounts  
9 for amounts transferred into such eligible plan under section  
10 457(b) of the internal revenue code, **26 USC 457**, from this  
11 retirement system, that accepts the distributee's eligible rollover  
12 distribution. ~~However, in the case of an eligible rollover~~  
13 ~~distribution to a surviving spouse on or before December 31, 2001,~~  
14 ~~an eligible retirement plan means an individual retirement account~~  
15 ~~or an individual retirement annuity described above.~~

16 (G) **BEGINNING JANUARY 1, 2008, A ROTH INDIVIDUAL RETIREMENT**  
17 **ACCOUNT AS DESCRIBED IN SECTION 408A OF THE INTERNAL REVENUE CODE,**  
18 **26 USC 408A, SUBJECT TO THE RULES THAT APPLY TO ROLLOVERS FROM A**  
19 **TRADITIONAL INDIVIDUAL RETIREMENT ACCOUNT TO A ROTH INDIVIDUAL**  
20 **RETIREMENT ACCOUNT.**

21 (2) Beginning January 1, ~~2002-2007~~, "eligible rollover  
22 distribution" means a distribution of all or any portion of the  
23 balance to the credit of the distributee. Eligible rollover  
24 distribution does not include any of the following:

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

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

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

5 ~~—— (d) The portion of any distribution that is not includable in  
6 federal gross income, determined without regard to the exclusion  
7 for net unrealized appreciation with respect to employer  
8 securities, except to the extent that such portion is paid to  
9 either of the following:~~

10 ~~—— (i) An individual retirement account or annuity described in  
11 section 408(a) or (b) of the internal revenue code.~~

12 ~~—— (ii) A qualified defined contribution plan described in section  
13 401(a) or 403(a) of the internal revenue code that agrees to  
14 separately account for amounts so transferred, including separately  
15 accounting for the portion of the distribution that is includable  
16 in gross income and the portion of such distribution that is not  
17 includable in gross income.~~

18 (D) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN  
19 FEDERAL GROSS INCOME, EXCEPT TO THE EXTENT SUCH PORTION OF THE  
20 DISTRIBUTION IS PAID TO EITHER OF THE FOLLOWING:

21 (i) AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN  
22 SECTION 408(A) OR 408(B) OF THE INTERNAL REVENUE CODE, 26 USC 408.

23 (ii) A QUALIFIED PLAN DESCRIBED IN SECTION 401(A) OF THE  
24 INTERNAL REVENUE CODE, 26 USC 401, OR AN ANNUITY CONTRACT DESCRIBED  
25 IN SECTION 403(B) OF THE INTERNAL REVENUE CODE, 26 USC 403, AND THE  
26 PLAN PROVIDERS AGREE TO SEPARATELY ACCOUNT FOR THE AMOUNTS PAID,  
27 INCLUDING ANY PORTION OF THE DISTRIBUTION THAT IS INCLUDABLE IN

1 **FEDERAL GROSS INCOME, AND THE PORTION OF THE DISTRIBUTION WHICH IS**  
2 **NOT SO INCLUDABLE.**

3 (3) "Executive secretary" means the executive secretary of the  
4 retirement system as provided in section 205.

5 (4) Except as otherwise provided in this subsection, "final  
6 compensation" means the annual rate of compensation for the  
7 calendar year of retirement. For a member who retires on January 1,  
8 final compensation means the annual rate of compensation for the  
9 calendar year immediately preceding the date of retirement. Final  
10 compensation does not include an amount that exceeds the maximum  
11 salary set forth for that particular member or vested former member  
12 in the revised judicature act, if applicable. For a member who is a  
13 judge and who performs judicial duties for a limited period or a  
14 specific assignment as authorized by the supreme court pursuant to  
15 section 23 of article VI of the state constitution of 1963, final  
16 compensation means the annual rate of compensation the member was  
17 being paid at the termination of his or her tenure in office as an  
18 elected judge.

19 (5) "Former elected official" means a member who held a state  
20 elective office before membership in this retirement system, the  
21 former judges retirement system, or the former probate judges  
22 retirement system.

23 (6) "Former judges retirement system" means the state of  
24 Michigan judges' retirement system created by former 1951 PA 198.

25 (7) "Former probate judges retirement system" means the state  
26 of Michigan probate judges retirement system created by former 1954  
27 PA 165.

1           Sec. 604. (1) This section is enacted pursuant to section  
2 401(a) of the internal revenue code, **26 USC 401**, that imposes  
3 certain administrative requirements and benefit limitations for  
4 qualified governmental plans. This state intends that the  
5 retirement system be a qualified pension plan created in trust  
6 under section 401 of the internal revenue code and that the trust  
7 be an exempt organization under section 501 of the internal revenue  
8 code. The department shall administer the retirement system to  
9 fulfill this intent.

10 ~~—— (2) Except as otherwise provided in this section, employer-~~  
11 ~~financed benefits provided by the retirement system under this act~~  
12 ~~shall not exceed the lesser of \$90,000.00 or 100% of the member's~~  
13 ~~average compensation for high 3 years as described in section~~  
14 ~~415(b) (3) of the internal revenue code for retirement occurring at~~  
15 ~~age 62 or older.~~

16 ~~—— (3) The limitation on employer financed benefits provided by~~  
17 ~~the retirement system under subsection (2) applies unless~~  
18 ~~application of subsections (4) and (5) produces a higher~~  
19 ~~limitation, in which case the higher limitation applies.~~

20 ~~—— (4) If a member retires before age 62, the amount of~~  
21 ~~\$90,000.00 in subsection (2) is actuarially reduced to reflect~~  
22 ~~payment before age 62. The retirement system shall use an interest~~  
23 ~~rate of 5% per year compounded annually to calculate the actuarial~~  
24 ~~reduction in this subsection. If this subsection produces a~~  
25 ~~limitation of less than \$75,000.00 at age 55, the limitation at age~~  
26 ~~55 is \$75,000.00 and the limitations for ages under age 55 shall be~~  
27 ~~calculated from a limitation of \$75,000.00 at age 55.~~

~~(5) Section 415(d) of the internal revenue code requires the commissioner of internal revenue to adjust the \$90,000.00 limitation in subsection (2) to reflect cost of living increases, beginning with calendar year 1988. This subsection shall be administered using the limitations applicable to each calendar year as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.~~

(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 AND BEGINNING JANUARY 1, 2010, APPLICABLE PROVISIONS OF THE FINAL REGULATIONS ISSUED BY THE INTERNAL REVENUE SERVICE ON APRIL 5, 2007. 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, INCLUDING BENEFITS PAYABLE TO RETIRANTS AND RETIREMENT ALLOWANCE BENEFICIARIES, 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

1 OF THAT LIMITATION. IF THERE IS A CONFLICT BETWEEN THIS SECTION AND  
2 ANOTHER SECTION OF THIS ACT, THIS SECTION PREVAILS.

3 (3) ~~(6)~~—The assets of the retirement system shall be held in  
4 trust and invested for the sole purpose of meeting the legitimate  
5 obligations of the retirement system and shall not be used for any  
6 other purpose. The assets shall not be used for or diverted to a  
7 purpose other than for the exclusive benefit of the members, vested  
8 former members, retirants, and retirement allowance beneficiaries  
9 before satisfaction of all retirement system liabilities.

10 (4) ~~(7)~~—The retirement system shall return post-tax member  
11 contributions made by a member and received by the retirement  
12 system to a member upon retirement, pursuant to internal revenue  
13 service regulations and approved internal revenue service exclusion  
14 ratio tables.

15 (5) ~~(8)~~—The required beginning date for retirement allowances  
16 and other distributions shall not be later than April 1 of the  
17 calendar year following the calendar year in which the employee  
18 attains age 70-1/2 or April 1 of the calendar year following the  
19 calendar year in which the employee retires. **THE REQUIRED MINIMUM**  
20 **DISTRIBUTION REQUIREMENTS IMPOSED BY SECTION 401(A)(9) OF THE**  
21 **INTERNAL REVENUE CODE, 26 USC 401, SHALL APPLY TO THIS ACT AND BE**  
22 **ADMINISTERED IN ACCORDANCE WITH A REASONABLE AND GOOD FAITH**  
23 **INTERPRETATION OF THE REQUIRED MINIMUM DISTRIBUTION REQUIREMENTS**  
24 **FOR ALL YEARS IN WHICH THE REQUIRED MINIMUM DISTRIBUTION**  
25 **REQUIREMENTS APPLY TO THIS ACT.**

26 (6) ~~(9)~~—If the retirement system is terminated, the interest  
27 of the members, vested former members, retirants, and retirement

1 allowance beneficiaries in the retirement system is nonforfeitable  
2 to the extent funded as described in section 411(d)(3) of the  
3 internal revenue code, **26 USC 411**, and related internal revenue  
4 service regulations applicable to governmental plans.

5 (7) ~~(10)~~ Notwithstanding any other provision of this act to  
6 the contrary that would limit a distributee's election under this  
7 act, a distributee may elect, at the time and in the manner  
8 prescribed by the retirement board, to have any portion of an  
9 eligible rollover distribution paid directly to an eligible  
10 retirement plan specified by the distributee in a direct rollover.  
11 This subsection applies to distributions made on or after January  
12 1, 1993.

13 (8) ~~(11)~~ For purposes of determining actuarial equivalent  
14 retirement allowances under sections 506(1)(a) and (b) and 602, the  
15 actuarially assumed interest rate shall be 8% with utilization of  
16 the 1983 group annuity and mortality table.

17 ~~—— (12) Notwithstanding any other provision of this section, the~~  
18 ~~retirement system shall be administered in compliance with the~~  
19 ~~provisions of section 415 of the internal revenue code and revenue~~  
20 ~~service regulations under that section that are applicable to~~  
21 ~~governmental plans. If there is a conflict between this section and~~  
22 ~~another section of this or any other act of this state, this~~  
23 ~~section prevails.~~

24 (9) ~~(13)~~ Notwithstanding any other provision of this act, the  
25 compensation of a member of the retirement system shall be taken  
26 into account for any year under the retirement system only to the  
27 extent that it does not exceed the compensation limit established



1 in section 401(a)(17) of the internal revenue code, **26 USC 401**, as  
2 adjusted by the commissioner of internal revenue. This subsection  
3 applies to any person who first becomes a member of the retirement  
4 system on or after October 1, 1996.

5 (10) ~~(14)~~ Notwithstanding any other provision of this act,  
6 contributions, benefits, and service credit with respect to  
7 qualified military service will be provided under the retirement  
8 system in accordance with section 414(u) of the internal revenue  
9 code. This subsection applies to all qualified military service on  
10 or after December 12, 1994. **BEGINNING ON JANUARY 1, 2007, IN**  
11 **ACCORDANCE WITH SECTION 401(A)(37) OF THE INTERNAL REVENUE CODE, 26**  
12 **USC 401, IF A MEMBER DIES WHILE PERFORMING QUALIFIED MILITARY**  
13 **SERVICE, FOR PURPOSES OF DETERMINING ANY DEATH BENEFITS PAYABLE**  
14 **UNDER THIS ACT, THE MEMBER SHALL BE TREATED AS HAVING RESUMED AND**  
15 **THEN TERMINATED EMPLOYMENT ON ACCOUNT OF DEATH.**