

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5108

A bill to protect certain rights that public employees have in retirement benefits under certain circumstances; to provide for the establishment of certain funds and arrangements; and to prescribe the powers and duties of certain retirement systems, state departments, courts, public officials, and public employees.

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

1           Sec. 1. This act shall be known and may be cited as the  
2 "public employee retirement benefit protection act".

3           Sec. 2. As used in this act:

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

6           (b) "Employer contributions" means the amount transferred by  
7 an employer to a participating unit retirement system on behalf

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1 of members of the retirement system to pay for the actuarial  
2 accrued liabilities of the retirement system.

3 (c) "Member" means a member, vested former member, deferred  
4 member, beneficiary, designated beneficiary, or refund benefi-  
5 ciary of a retirement system.

6 (d) "Participating unit" means a retirement system that  
7 elects to come under the provisions of section 6.

8 (e) "Retirant" means a person who has retired with a retire-  
9 ment benefit payable from a retirement system.

10 (f) "Retirement benefit" means an annuity, a retirement  
11 allowance, an optional benefit, a postretirement benefit, a bene-  
12 fit received from a defined contribution plan, defined benefit  
13 plan, deferred compensation plan, disability plan, life insurance  
14 plan, all money, investments and income of the various funds cre-  
15 ated under a public employee retirement system, and any other  
16 right accruing to a member under a retirement system.

17 (g) "Retirement system" means a public employee retirement  
18 system established by this state or a political subdivision of  
19 this state.

20 (h) "State unit" means a retirement system established under  
21 the state employees' retirement act, 1943 PA 204, MCL 38.1 to  
22 38.69, the public school employees retirement act of 1979, 1980  
23 PA 300, MCL 38.1301 to 38.1467, the judges retirement act of  
24 1992, 1992 PA 234, MCL 38.2101 to 38.2670, the state police  
25 retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648, and  
26 the Michigan legislative retirement system act, 1957 PA 261,  
27 MCL 38.1001 to 38.1080.

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1           Sec. 3. The right of a member or retirant of a retirement  
2 system to a retirement benefit shall not be subject to execution,  
3 garnishment, attachment, the operation of bankruptcy or insol-  
4 vency laws, or other process of law and shall be unassignable.

5           Sec. 4. (1) The right of a member or retirant to a retire-  
6 ment benefit described in section 3 is subject to forfeiture  
7 under the public employee retirement benefits forfeiture act,  
8 1994 PA 350, MCL 38.2701 to 38.2705.

9           (2) The right of a member or retirant to a retirement bene-  
10 fit described in section 3 is subject to an award by a court  
11 under section 18 of 1846 RS 84, MCL 552.18, an eligible domestic  
12 relations order under the eligible domestic relations order act,  
13 1991 PA 46, MCL 38.1701 to 38.1711, and to any other domestic  
14 relations order of a court pertaining to alimony or child  
15 support.

16           Sec. 5. If an award or order described in section 4  
17 requires a retirement system to withhold payment of a retirement  
18 benefit or requires the retirement system to make payment or  
19 requires the individual to request that the retirement system  
20 make payment of a retirement benefit for the purposes of meeting  
21 the member's or retirant's obligations to a spouse, former  
22 spouse, or child, the withholding or payment provisions of the  
23 award or order are effective only against amounts that become  
24 payable to the member or retirant, unless otherwise provided in  
25 an eligible domestic relations order under the eligible domestic  
26 relations order act, 1991 PA 46, MCL 38.1701 to 38.1711. The  
27 limitations contained in this section do not apply to the

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1 accumulated contributions of a person who terminates employment  
2 before acquiring a vested member status.

3       Sec. 6. (1) A retirement system may elect by a majority  
4 vote of its governing body to establish and administer an  
5 arrangement and fund to pay accrued benefits of its members to  
6 its members to the extent that the accrued benefits paid out of  
7 the fund would not otherwise be payable under limitations in sec-  
8 tion 415 of the internal revenue code. An arrangement and fund  
9 established under this section shall be kept separate from the  
10 pension assets of participating units.

11       (2) If an arrangement and fund is established by a retire-  
12 ment system under subsection (1), the arrangement and fund shall  
13 be established and administered in accordance with section 415(m)  
14 of the internal revenue code. The governing board of the partic-  
15 ipating unit or the department on behalf of a state unit may  
16 establish and adopt policies and procedures for the arrangement  
17 and fund.

18       (3) If an arrangement and fund is established under  
19 subsection (1), the benefits that are paid from the fund shall be  
20 paid out of employer contributions or other eligible assets. The  
21 governing board shall determine the amount of the employer con-  
22 tribution that shall be allocated to the arrangement and fund.  
23 Employer contributions and other eligible assets that are con-  
24 tributed to the arrangement and fund shall be deposited in the  
25 arrangement and fund before deposits are made to the pension  
26 system of the participating unit.

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1           (4) Nothing in this section is intended to limit the amount  
2 of employer contributions that are contributed to a retirement  
3 fund of a participating unit for the accrued benefits that are  
4 allowed to be paid under section 415 of the internal revenue  
5 code.

6           Sec. 7. The retirement system and retirement benefits shall  
7 be subject to claims made under the state correctional facility  
8 reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

9           Sec. 8. (1) This act is not intended to prohibit a member  
10 or retirant from receiving a loan from the retirement system if  
11 the retirement system concludes that the member or retirant is  
12 otherwise eligible for a loan.

13           (2) Nothing in this act shall prevent a retirement system  
14 administrator from correcting records and seeking to recover  
15 overpayments that the retirement system made to a retirant or  
16 member.

17           Sec. 9. If the department receives notification from the  
18 United States internal revenue service that this act or any por-  
19 tion of this act will cause any state unit to be disqualified for  
20 tax purposes under the internal revenue code, then the portion  
21 that will cause the disqualification does not apply.

22           Enacting section 1. This act does not take effect unless  
23 all of the following bills of the 91st Legislature are enacted  
24 into law:

25           (a) House Bill No. 5109.

26           (b) House Bill No. 5110.

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- 1 (c) House Bill No. 5111.
- 2 (d) House Bill No. 5112.
- 3 (e) House Bill No. 5113.
- 4 (f) House Bill No. 5114.
- 5 (g) House Bill No. 5732.