

Act No. 366
Public Acts of 2008
Approved by the Governor
December 23, 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Switalski and Jansen

ENROLLED SENATE BILL No. 1640

AN ACT to amend 1986 PA 182, entitled "An act to provide for the Michigan department of state police retirement system; to create certain reserves and certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of state police, the department of management and budget, and certain state officers; and to repeal certain acts and parts of acts," by amending sections 3 and 14a (MCL 38.1603 and 38.1614a), section 3 as amended by 2004 PA 83 and section 14a as amended by 2004 PA 50.

The People of the State of Michigan enact:

Sec. 3. (1) "Banked leave time program" means the part B annual leave hours within the state's annual and sick leave program approved by a ruling of the internal revenue service on September 5, 2003, in which a pay reduction or other concessions are applied to a member in exchange for additional part B annual leave hours.

(2) "Credited service" means the sum of the prior service and membership service credited to a member's account.

(3) "Deferred member" means a member who separates from service with entitlement to a deferred retirement allowance as provided in section 30, but who is not a retirant.

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

(5) "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

(6) "Distributee" includes a member or deferred member. Distributee also includes the member's or deferred member's surviving spouse or the member's or deferred member's spouse or former spouse under an eligible domestic relations order, with regard to the interest of the spouse or former spouse.

(7) "DROP participant" means an officer who participates in the deferred retirement option plan established in section 24a.

(8) Beginning January 1, 2002, except as otherwise provided in this subsection, "eligible retirement plan" means 1 or more of the following:

(a) An individual retirement account described in section 408(a) of the internal revenue code, 26 USC 408.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code, 26 USC 408.

(c) An annuity plan described in section 403(a) of the internal revenue code, 26 USC 403.

(d) A qualified trust described in section 401(a) of the internal revenue code, 26 USC 401.

(e) An annuity contract described in section 403(b) of the internal revenue code, 26 USC 403.

(f) An eligible plan under section 457(b) of the internal revenue code, 26 USC 457, which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the eligible plan under section 457(b) of the internal revenue code, 26 USC 457, from this retirement system, that accepts the distributee's eligible rollover distribution.

(g) Beginning January 1, 2008, a Roth individual retirement account as described in section 408A of the internal revenue code, 26 USC 408A, subject to the rules that apply to rollovers from a traditional individual retirement account to a Roth individual retirement account.

(9) Beginning January 1, 2007, “eligible rollover distribution” means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

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

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

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

(d) The portion of any distribution that is not includable in federal gross income, except to the extent such portion of the distribution is paid to either of the following:

(i) An individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, 26 USC 408.

(ii) A qualified plan described in section 401(a) of the internal revenue code, 26 USC 401, or an annuity contract described in section 403(b) of the internal revenue code, 26 USC 403, and the plan providers agree to separately account for the amounts paid, including any portion of the distribution that is includable in federal gross income, and the portion of the distribution which is not so includable.

(10) “Final average compensation” means the average annual salary for the last 2 years of service with the department of state police for which the member was compensated as defined in subsection (13). In the case of a nonclassified member of the department holding the rank of colonel, final average compensation means the same average annual salary as that computed for the highest salaried classified member of the department, or at the average annual salary for the last 2 years of service with the department of state police for which the member was compensated, whichever is greater. Average annual salary includes only the following compensation items:

(a) Regular salary paid for the last 2 years of service, including, but not limited to, that salary that is deferred pursuant to a state deferred compensation program.

(b) Overtime, shift differential, and shift differential overtime paid for the last 2 years of service.

(c) Gross pay adjustments paid affecting the last 2 years of service, including compensatory time and emergency response compensation.

(d) Up to a maximum of 240 hours of accumulated annual leave, paid at the time of retirement separation excluding part B annual leave hours paid at the time of retirement separation.

(e) Deferred hours under Plan B of the fiscal years ending September 30, 1981, and September 30, 1982, that are paid at the time of retirement separation.

(f) Longevity pay equal to 2 full years.

(g) Bomb squad pay paid for the last 2 years of service.

(h) Post 29 freeway premium paid for the last 2 years of service.

(i) On-call pay paid for the last 2 years of service.

(j) Beginning October 1, 2003, the value of any unpaid furlough hours or the value of any unpaid hours exchanged for part B annual leave hours, calculated at the member’s then-current hourly rate or rates of pay, for a period during which a member is participating in the banked leave time program.

(11) “Furlough hours” means unworked hours incurred in conjunction with the banked leave time program.

(12) “Internal revenue code” means the United States internal revenue code of 1986.

(13) “Last 2 years of service” means the 2-year period immediately preceding the member’s last day of service or that period of 2 consecutive years of service with the department of state police immediately preceding the date the duty disability occurred according to the medical examinations conducted pursuant to section 29 or, if the officer participated in the deferred retirement option plan, the 2-year period immediately preceding participation in the deferred retirement option plan.

Sec. 14a. (1) This section is enacted pursuant to section 401(a) of the internal revenue code that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with 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 of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, deferred members, retirants, and beneficiaries before satisfaction of all retirement system liabilities.

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

(5) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires. The required minimum distribution requirements imposed by section 401(a)(9) of the internal revenue code, 26 USC 401, shall apply to this act and be administered in accordance with a reasonable and good faith interpretation of the required minimum distribution requirements for all years to which the required minimum distribution requirements apply to this act.

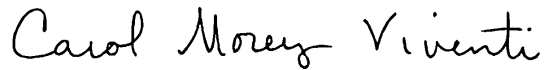
(6) If the retirement system is terminated, the interest of the members, deferred members, retirants, and beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411, and related internal revenue service regulations applicable to governmental plans.

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

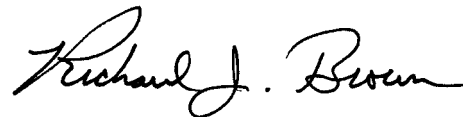
(8) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(9) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code, 26 USC 414. This subsection applies to all qualified military service on or after December 12, 1994. Effective January 1, 2007, in accordance with section 401(a)(37) of the internal revenue code, 26 USC 401, if a member dies while performing qualified military service for purposes of determining any death benefits payable under this act, the member shall be treated as having resumed and then terminated employment on account of death.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor